



Bail Slip

The Appellant / Accused-1 namely H.Krishnamurthy S/o.Harihara Subramanian, in Crl.A.No.630 of 2008 and Appellant / Accused-2 namely K.Ramesh, S/o.Kandasamy in Crl.A.No.635 of 2008 were directed to be released on bail as per order of this Court dated 21.08.2008 and 14.10.2008 made in MP 1/08 in Crl.A.No.630/2008 and MP 2/08 in 635/2008 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.09.2021

PRONOUNCED ON : 02.11.2021

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

Crl.A.Nos.630 and 635 of 2008

Crl.A.No.630 of 2008

H.Krishnamurthy

...Accused No.1/Appellant

Vs.

The Inspector of Police,
Central Bureau of Investigation,
Special Police Establishment,
Haddows Road,
Chennai

...Respondent/Complainant

Crl.A.No.635 of 2008

K.Ramesh

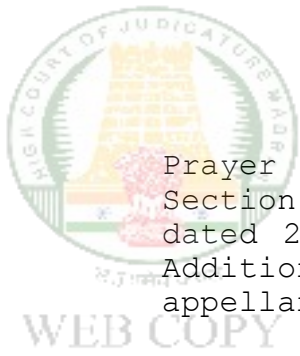
...Accused No.2/Appellant

Vs.

State by Inspector of Police,
CBI/ACB, Chennai.

...Respondent/Complainant

Prayer in Crl.A.No.630 of 2008 : Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the impugned judgment, dated 20.08.2008 in C.C.No.7 of 1999, passed by the learned IX Additional Sessions Judge (Special Judge for C.B.I cases) at Chennai.



Prayer in Crl.A.No.635 of 2008 : Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the impugned judgment, dated 20.08.2008 in C.C.No.7 of 1999, passed by the learned IX Additional Special Judge for C.B.I., at Chennai and set the appellant at liberty by acquitting him of all the charges.

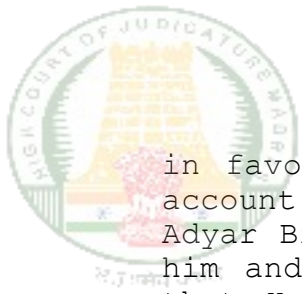
For Appellant in Crl.A.No.630 of 2008	.. Mr.B.Kumar, Senior Counsel for Mr.S.Anbalagan
For Appellant in Crl.A.No.635 of 2008	.. Mr.Prakash Goklaney
For Respondent (in both Criminal Appeals)	.. Mr.K.Srinivasan Special Public Prosecutor (C.B.I)

COMMON JUDGMENT

Crl.A.No.630 of 2008 had been filed by A1 and Crl.A.No.635 of 2008 had been filed by A2 in C.C.No.7 of 1999, questioning the judgment, dated 20.08.2008, passed by the learned IX Additional Sessions Judge (Special Judge for C.B.I Cases), Chennai, convicting and sentencing them for commission of offences punishable under Section 120-B IPC r/w 420 IPC, 477-A I.P.C, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and under Sections 120-B IPC, 420 I.P.C.

2. A1/H.Krishnamurthy/appellant in Crl.A.No.630 of 2008 was Branch Manager of Andhra Bank in Triplicane Branch during the years 1993 - 1996. A2/K.Ramesh/appellant in Crl.A.No.635 of 2008 is a private individual, who was running a firm by name M/s.Ramesh Cars Private Limited., in Chennai and was holding a current account with Andhra Bank, Triplicane Branch.

3. A complaint, dated 19.12.1996 was given by the Assistant General Manager of Andhra Bank Zonal Office, Chennai to the Inspector of Police, C.B.I/A.C.B, Chennai in which it had been stated that M/s.Ramesh Cars Finance Corporation, a partnership firm had opened a current account No.1307 with Triplicane Branch of Andhra Bank on 04.04.1996. The account was converted into a secured overdraft account against deposits on 23.07.1996. It was stated that H.Krishnamurthy, the Branch Manager had accommodated the self cheques of M/s.Ramesh Cars Finance Corporation on 14.10.1996 for Rs.4,50,000/- drawn on Indian Bank, Alwarpet Branch and had given credit into their account. In the same manner, again on 22.11.1996, he accepted a self cheque for Rs.7,00,000/- drawn on the same bank of M/s.Ramesh Cars Finance Corporation and credited the same into the secured overdraft account. Again on 23.11.1996, another cheque issued



in favour of Ramesh Cars Finance Corporation by a savings bank account holder bearing Account No.7099 of State Bank of India, Adyar Branch, dated 18.11.1996 for Rs.2,50,000/- was accepted by him and had given credit on the same day. It was complained that H.Krishnamurthy, instead of sending the above instruments for local clearing account, had kept the same with him in order to facilitate M/s.Ramesh Cars Finance Corporation to get pecuniary advantage.

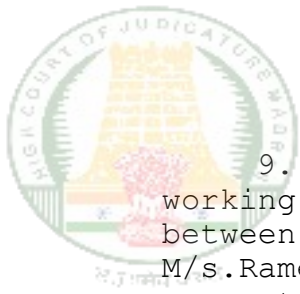
4. It was further stated that H.Krishnamurthy on 10.10.1996 made a false entry in the secured overdraft account against the deposits of M/s.Ramesh Cars Finance Corporation for a sum of Rs.2,00,000/- without any corresponding cheque. Subsequently, on 08.11.1996 and 13.11.1996, he made false credit entries in the said account for Rs.5,00,000/- and Rs.3,00,000/- without corresponding instruments.

5. It was also stated that he had accepted four cheques issued by M/s.Reddy and Sons, Oxford College of Advanced Studies and T.Nagar Citizens Benefit Fund Limited in favour of M/s.Ramesh Cars Finance Corporation and made credit entries into the said account and thereafter, sent the instruments for clearing. The cheques were returned unpaid. But he failed to make debit entries in the account of M/s.Ramesh Cars Finance Corporation and kept the instruments with him and failed to inform his higher officials and it was stated, he had thus, caused wrongful gain to M/s.Ramesh Cars Finance Corporation and corresponding wrongful loss to the bank.

6. It was further stated that H.Krishnamurthy had entered into criminal conspiracy with M/s.Ramesh Cars Finance Corporation to cheat Andhra Bank to a sum of Rs.38,90,000/- and by abusing his position as public servant, had made M/s.Ramesh Cars Finance Corporation to obtain pecuniary advantage by illegal means.

7. On the basis of the said complaint, the respondent, Inspector of Police, Special Police Establishment, CBI, ACB, Chennai had registered a First Information Report in R.C.No.4(A) 97 on 10.01.1997 against H.Krishnamurthy, Branch Manager, Andhra Bank Triplicane Branch Chennai/A1 and M/s.Ramesh Cars Finance Corporation Chennai/A2 alleging offences punishable under Section 120-B and 13(2) r/w 13(1)(d) of P.C.Act, 1988.

8. Investigation was, thereafter, conducted and a final report was filed in the jurisdictional Court against A1, H.Krishnamurthy and A3, K.Ramesh, alleging offences under Sections 120-B r/w 420 IPC, 477-A I.P.C and 13(2) r/w 13(1)(d) of P.C.Act, 1988.



9. In the final report, it was stated that A1 who was working as Branch Manager of Andhra Bank, Triplicane branch between 1993 and 1996 and A2, who was running a firm by name M/s.Ramesh Cars Finance Corporation and who was holding current account with Andhra Bank, Triplicane Branch, which account was later converted as M/s.Ramesh Cars Finance Corporation had entered into criminal conspiracy in 1996 and A2, knowing that he did not have sufficient balance in his account with other branches, issued self cheques and also deposited outstation cheques into his account in Andhra Bank and A1 discounted the said cheques and other local cheques presented by A2 and credited the amounts to the account of Ramesh Finance Limited.

10. It was further alleged that A1, in order to regularize the account of A2, made false entries in the books of the bank and altered the accounts and therefore, caused wrongful pecuniary advantage to a sum of Rs.75,45,000/- and corresponding loss to the Andhra Bank, Triplicane branch.

11. The details of the cheques were also given in the final report. There were both local cheques and outstation cheques. The details of the cheques are as follows:-

Local Cheques			
S.No	Cheque No. & Date	Amount	Drawn on
1	804803/14.10.96	Rs.4,50,000/-	Indian Bank, Alwarpet Branch, Madras.
2	838096/22.11.96	Rs.7,00,000/-	Indian Bank, Alwarpet Branch, Madras.
3	141698/18.11.96	Rs.2,50,000/-	State Bank of India, Adyar Branch, Madras.
4	241113/02.09.96	Rs.4,90,000/-	Andhra Bank, T.Nagar Branch, Madras.
5	420861/1.9.96	Rs.2,00,000/-	Karur Vysya Bank, T.Nagar, Madras.
6	420862/2.9.96	Rs.4,00,000/-	Karur Vysya Bank, T.Nagar, Madras.
7	388193/31.8.96	Rs.4,00,000/-	Union Bank of India, Mylapore Branch, Madras.



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Out-Station Cheques			
S.No	Cheque No. & Date	Amount	Drawn on
1	771252/3.10.96	Rs.3,00,000/-	Bank of Maharashtra, Bombay.
2	771251/9.9.96	Rs.2,00,000/-	Bank of Maharashtra, Bombay.
3	742793/22.8.96	Rs.3,00,000/-	State Bank of India, Public School Branch, Hyderabad.
4	742543/12.8.96	Rs.3,00,000/-	State Bank of India, Public School Branch, Hyderabad.
5	748827/18.9.96	Rs.5,50,000/-	State Bank of India, Public School Branch, Hyderabad.
6	748825/7.9.96	Rs.4,00,000/-	State Bank of India, Public School Branch, Hyderabad.
7	748808/6.9.96	Rs.3,00,000/-	State Bank of India, Public School, Hyderabad.
8	006477/6.9.96	Rs.15,00,000/-	Lakshmi Vilas Bank, Bangalore.
9	094937/30.8.96	Rs.2,00,000/-	Bank of Maharashtra, Bombay.

12. It was stated that necessary sanction, to initiate prosecution against A1, had been issued under Section 19(1)(c) of P.C.Act, 1988. It was alleged that the accused had committed offences punishable under Sections 120-B, 420 and 477-A of I.P.C and under Section 13(2) r/w 13(1)(d) of P.C.Act, 1988. The final report was taken cognizance and summons were issued to the accused. Documents, under Section 207 Cr.P.C., were furnished on their appearance. The following charges had been framed:-

- (i) Against A1 and A2 - Under Section 120-B r/w 420, 477 of I.P.C and under Section 13(2) r/w 13(1)(d) of PC Act, 1988.
- (ii) Against A1 and A2 - Under Section 420 of I.P.C;
- (iii) Against A1 - Under Section 477-A of I.P.C;
- (iv) Against A1 - Under Section 13(2) r/w 13(1)(d) of P.C.Act, 1988.



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13. The accused denied the charges. The prosecution was then invited to adduce oral and documentary evidence to substantiate the charges. On the side of the prosecution, PW.1 to PW.14 were examined and Exs.P1 to P130 were marked. On the side of the accused, D.W.1 to D.W.4 were examined and Exs.D1 to D14 were marked.

14. After recording the evidence of the prosecution witnesses, the accused were questioned with respect to the incriminating evidence under Section 313 of Cr.P.C., and their statements were recorded.

15. On analysis of the evidence, the learned Trial Judge convicted the accused on all the charges. A1 was then sentenced to undergo Rigorous Imprisonment for a period of one year and fine of Rs.1,000/- and in default of payment of fine, to undergo Simple Imprisonment for a period of one month, for offence under Section 120-B of I.P.C and sentenced to undergo Rigorous imprisonment for a period of one year and fine of Rs.1,000/- and in default of payment of fine to undergo Simple Imprisonment for a period of one month, for the offence under Section 420 of I.P.C and sentenced to undergo Rigorous imprisonment for a period of one year and fine of Rs.1,000/- and in default payment of fine to undergo simple imprisonment for a period of one month, for the offence under Section 477-A of IPC and sentenced to undergo Rigorous Imprisonment for a period of five years and fine of Rs.1,00,000/- and in default of payment of fine to undergo Simple Imprisonment for a period of six months, for the offence under Section 13(2) r/w 13(1)(d) of P.C.Act, 1988.

16. A2 was sentenced to undergo Rigorous Imprisonment for a period of one year and fine of Rs.10,00,000/- and in default of payment of fine to undergo simple imprisonment for a period of one year, for the offence under Section 120 of I.P.C and sentenced to undergo Rigorous Imprisonment for a period of three years and fine of Rs.10,00,000/- and in default of payment of fine to undergo simple imprisonment for a period of one year, for the offence under Section 420 of I.P.C. It was also directed that the sentences, with respect to both the accused, shall run concurrently. It was also directed that the accused would be entitled to set off the period of imprisonment already undergone, if any, under Section 428 of Cr.P.C.

17. Questioning the conviction and sentence, A1 filed CrI.A.No.630 of 2008 and A2 filed CrI.A.No.635 of 2008.

18. Heard arguments advanced by Mr.B.Kumar, learned Senior Counsel for Mr.S.Anbalagan for A1/appellant in CrI.A.No.630 of 2008 and Mr.Prakash Goklaney, learned counsel for A2/appellant in CrI.A.No.635 of 2008 and Mr.K.Srinivasan, learned Special



Public Prosecutor for CBI cases for the respondents in both the appeals.

19. It is the contention of Mr.B.Kumar, learned Senior Counsel that there has been no monetary loss suffered by the Andhra Bank, since the claim, made by the bank towards the fourteen cheques, which had been returned unpaid, was Rs.63,90,000/- and with interest, the claim was Rs.1,28,02,681/-. However, a property at Salem had been given as collateral security and the property had been sold in the year 2012 for a sum of Rs.2,74,00,000/- and the entire amount had been appropriated by the bank towards principle, interest and penal interest.

20. It had been stated that the property had been released after the bank had issued a no due certificate. It is, thus, contended that the offence under Section 13(1)(d) of P.C.Act, 1998 will not stand attracted as there has been no wrongful gain either to the accused or more specifically to A1 or wrongful loss caused to the Andhra Bank.

21. The learned Senior Counsel questioned the allegation that A1 had indulged in a criminal activity by facilitating bill discounting facility and purchase of self cheques. It is the contention of the learned Senior Counsel that bill discounting facility was a normal feature prior to the computerization of the banks. Further, the rules of Andhra Bank do not specifically prohibit discounting or purchase of self cheques. In this connection, the learned Senior Counsel pointed out the charges framed against A1 and stated that no charge framed that A1 had committed an offence owing to purchase of self cheques or owing to the discounting of bills. Since there is no charge, there cannot be a conviction on that particular ground. It is the further contention of the learned Senior Counsel that even if purchase of self cheques were to be viewed with scrutiny, they had been purchased only with the knowledge of the Zonal Officer.

22. In this connection, the learned Counsel drew the attention of the Court to the evidence of PW.3 who stated that self cheques were purchased quite often and who had further stated that the daily statement had been sent by A1 to Zonal Office and it was verified by the officials and there was no adverse entry.

23. The learned Senior Counsel further stated that Ex.P20 which is the Clean Bills Purchase Register for outstation cheques reflected the purchase of 147 outstation self cheques of A2. In the said register in Ex.P20, PW.10, the Deputy General Manager had signed with the remark "seen". Further the general



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ledger balance Ex.C4/D18 reflected the entire business of the branch on a day to day basis and PW.10 admitted that he had prepared and signed the same and apart from him, PW.12, the Senior Branch Manager and also A1 had signed in the said register.

24. Pointing out these facts, the learned Senior Counsel asserted that A1 cannot be arrayed as the sole accused, if at all any criminal offence is alleged with respect to the above transactions. All the other officers who had actively participated or put their signatures in the registers should also have been similarly held accountable along with A1.

25. The learned Senior Counsel further pointed out the evidence of PW.3 and also Ex.D18/Ex.C4 and pointed out that, PW.10, the Assistant General Manager had again signed after inspecting the bank records. The learned Senior Counsel stated that A1 had purchased self cheques of A2 with the knowledge of all the bank officials and with the knowledge of the zonal office. It was not done secretly. He also stated that the cheques of A2 were purchased regularly and they were also honoured and the bank had earned revenue. Out of 147 cheques, only 7 cheques had been returned and in this connection, the value of the cheques had also been, subsequently paid back to the bank and therefore, the learned Senior Counsel insisted that the conviction of A1 should be set aside by this Court.

26. The learned Senior Counsel once again reiterated that security had been obtained from A2 and title deeds had been deposited with the bank on 12.08.1996, much prior to the dates on which the cheques were returned. The title deeds stood in the name of the company and therefore, a charge had to be created in the office of the Registrar of Companies. Before creating such a charge, the bank had to obtain a Valuation Certificate from the approved Engineer. At that time, there was no approved Engineer at Salem and therefore, an Engineer from Chennai had to inspect and issue the Valuation Certificate. This took time and the valuation of the Engineer was dated 22.11.1996 and thereafter, the charge was created on 26.11.1996.

27. It was pointed out by the learned Senior Counsel that the prosecution has suppressed these material facts. The claim that no immovable security was given was false and as a matter of fact, PW.1, who had asserted that fact, had actually signed the application of the bank before the Debt Recovery Tribunal, wherein, the bank had proceeded against the security given by A2.

28. The learned Senior Counsel lamented that the bank officials had deliberately suppressed material facts. He also



stated that vital documents had not been placed before the Sanctioning Authority, particularly, the fact that security was available with the bank including promissory note and there was also deposit of title deeds and that charge had also been created. It was also contented by the learned Senior Counsel that the fact that a case had been filed before the Debt Recovery Tribunal was also not placed before the Sanctioning Authority and therefore, it was urged that the sanction granted itself should be interfered with.

29. The learned Senior Counsel further stated that the charge under Section 420 of I.P.C could not be made out, because the primary ingredient for a charge under Section 420 of I.P.C is that there must be loss to the bank and in this case, there no loss had occurred to the bank. Further when the act of bill discounting was proper and justified, there was no creation of false documents and therefore the charges under Section 477-A of I.P.C could also not be made out. As a matter of fact, in the charge, it had not been specifically stated which document or books of account was falsified by A1.

30. The learned Senior Counsel very strongly attacked the reliance placed by the prosecution on Ex.P115 which the Trial Court had considered as an extra-judicial confession. The evidence of PW-10, in this regard, was seriously questioned. PW.10 had contended that it was handwritten, whereas, it was typed. It was stated by PW.10 that PW.2, another General Manger, was a witness but PW.2 stated that he was not aware of Ex.P115. Even though PW.10 had received the letter on 02.12.1996, he did not mention about it in the complaint, dated 19.12.1996 and produced it only on 16.09.1997 to the Inspector of Police.

31. The learned Senior Counsel pointed out that the self cheques were purchased with the knowledge of PW-10. As a matter of fact, PW.10 had inspected the branch on 13.11.1996. The learned Senior Counsel further stated that according to PW.10, complaint was given to C.B.I on the basis of vigilance report. However, the report of the vigilance was not placed before the Court. The learned Senior Counsel therefore charged that Ex.P115 had been created only to safeguard the interest of PW.10 as he had specifically approved the transactions of the branch on various dates in Ex.P20 and in Ex.C4. The accused, when questioned under Section 313 Cr.P.C., stated that he had signed in blank papers. With respect to the department proceedings, the learned Senior Counsel pointed out that the suspension of A1 was revoked by the bank and he was reinstated into service. Therefore, even the bank did not take note of Ex.P115, the alleged extra-judicial confession. In view of these facts, the



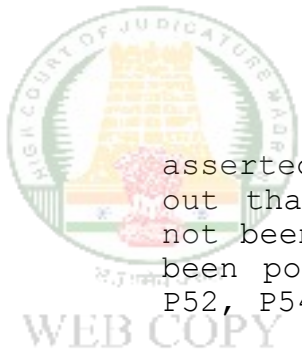
learned Senior Counsel urged that the conviction of A1 should be set aside by this Court.

32. Mr. Prakash Goklaney, learned Counsel for A2 questioned the investigation and stated that in the F.I.R., the amount, which the bank had suffered as loss, was mentioned as Rs.38,00,000/-. On that date, sufficient security was already available with the bank. The learned counsel pointed out that A2 had two separate companies namely, Ramesh Cars Limited and Ramesh Cars Finance Corporation. Out of 147 cheques, several of the cheques had been discounted by two previous Managers. It was, therefore, urged that discounting of a cheque was a common practice. He also pointed out that when the first four cheques dishonoured, A2 had immediately sold a property at Triplicane and had paid back Rs.16,00,000/- to the bank. This fact had also been suppressed by the prosecution.

33. The learned counsel pointed out that cash was never withdrawn by A2. The property offered as security had been sold by order of the Debt Recovery Tribunal and the entire dues were settled by an order of Court. The learned Counsel differentiated this from a settlement of amounts independently by the accused. Here, the amounts had been settled by an order of Court and it was, therefore, urged that the prosecution should also accept that particular fact and should have dropped the prosecution. The learned counsel therefore stated that the conviction of A2 should also be set aside.

34. Mr. K. Srinivasan, learned Special Public Prosecutor on behalf of the respondent, however, stated that security was given only after the last cheque had been returned. The learned Special Public Prosecutor pointed out that on the dates when the cheques were being dishonoured the bank did not have any security. In this connection, the learned Special Public Prosecutor pointed out the admissions of A1 in Ex.P115, the extra-judicial confession and stated that the particular document had not been challenged by the accused. The learned Special Public Prosecutor also pointed out the evidence of PW-1 who very categorically stated that the branch has no power to purchase self cheques and also, as a matter of fact, the cheques had not been forwarded for collection, but at the same time, the entries in the register had been rounded off which indirectly implied that they had been honoured. Further cheques in Exs.P18, P39, P30, P33, P57, P46, P50, P52, P67, P70, P62, P40 and P43 were recovered from the drawer of A1 and had not been sent for collection.

35. The learned Special Public Prosecutor also pointed out the cross-examination of PW.1 wherein, the role of A1 was not questioned. He also relied on the evidence of PW.2, who also



asserted that self cheques cannot be purchased. He also pointed out that seizure of the cheques from the drawer of the A1 had not been denied. Further with respect to four cheques which had been pointed out by PW.3 and which had been marked as Exs.P50, P52, P54 and P46, debit entries had not been made.

36. The learned Special Public Prosecutor also pointed out the evidence of PW.4 and that there was no cross-examination and in the evidence, he had identified the writing of A1 in the 15 debit vouchers. Further PW.5 also stated that the rounding of the entires were in the handwriting of A1 and in this connection, the learned Special Public Prosecutor pointed out the registers marked as Exs.P20, P35 and P36. With respect to the sanction, the learned Special Public Prosecutor pointed out the evidence of PW.13. His competency was not questioned and he had very clearly stated that he had applied his mind before granting sanction.

37. The learned Special Public Prosecutor also pointed out the evidence of PW.12 with respect to the seizure of cheques from the drawer of A1. The learned Special Public Prosecutor pointed out that the settlement of the dues would not wipe away the commission of offence and therefore stated that the said fact should not be taken into account by this Court. Further, the settlement was only after the charges had been laid against the accused. It was therefore contended by the learned Special Public Prosecutor that the Trial Court rightly convicted the accused and it was asserted that the judgment does not require any interference.

38. I have carefully considered the argument advanced and perused the materials on records.

39. A final report had been filed by the respondent/the Inspector of Police, C.B.I/A.C.B, Chennai alleging that A1, H.Krishnamurthy, Branch Manager of Andhra Bank in Triplicane Branch between the years 1993 and 1996 and A2, K.Ramesh, a private individual, who was running a firm by name M/s. Ramesh Cars Private Limited and who was hold a current account with Andhra Bank, Triplicane Branch, had both entered into a criminal conspiracy in 1996 and A2, knowing that he did not have sufficient balance in his account with other branches, issued self cheques and also outstation cheques in his account in Andhra Bank, Triplicane Branch and A1 had, abusing his position as public servant, discounted the said cheques and also other local cheques, presented by A2.

40. The accounts of Ramesh Cars Private Limited was, later, converted as Ramesh Cars Finance Corporation and after discounting the cheques presented by A2, it was further alleged



that A1 credited the amounts to the account of Ramesh Cars Finance Corporation. Later the cheques had been returned dishonoured. However, it is alleged, A1 had made false entries in the books of the bank and altered the accounts and enabled unlawful gain of Rs.75,45,000/- to A2 and corresponding loss to Andhra Bank.

41. It was alleged that A1 and A2 had, therefore, committed offences punishable under Sections 120-B read with 420, 477-A of I.P.C and also under Section 13(2) read with 13(1)(d) of P.C.Act, 1988. The respondent also obtained sanction under Section 19(1)(c) of P.C.Act, 1988, to prosecute A1.

42. The Final Report was taken cognizance by the learned Additional Sub Court for C.B.I Cases, Chennai as C.C.No.7 of 1999. Summons were directed to the accused and when they appeared, copies of records were furnished under Section 207 Cr.P.C. Thereafter, the following charges were framed against A1 and A2:-

- (i) Against A1 and A2 - Under Section 120-B of I.P.C read with Sections 420, 477-A of I.P.C and 13(2) read with 13(1)(d) of P.C.Act;
- (ii) Against A1 and A2 - Under Section 420 of I.P.C;
- (iii) Against A1 - Under Section 477-A of I.P.C;
- (iv) Against A1 - Under Section 13(2) read with 13(1)(d) of P.C.Act, 1988.

43. The charges were read over and explained to the accused. They denied the same and they claimed to be tried. Prosecution was, therefore, invited to substantiate the charges while adducing oral and documentary evidence. To substantiate the charges, prosecution examined PW.1 to PW.14 witnesses and also marked Exs.P1 to P130. On the side of the accused, DW.1 to DW.4 witnesses were examined and Exs.D1 to D14 were marked. On conclusion of the evidence of the prosecution, the incriminating portion of the evidence was put to the accused and their explanations/statements were recorded under Section 313 Cr.P.C. On appreciation of the oral and documentary evidence, the learned Additional Sub Judge for C.B.I Cases, Chennai, by judgment, dated 20.08.2008 had found the accused guilty of all the charges and convicted them. Questioning that finding of conviction and the sentences imposed, A1 filed Criminal Appeal No.630 of 2008 and A2 filed Criminal Appeal No.635 of 2008.

44. The facts are not in dispute.

45. A1 was Branch Manager, Andhra Bank, Triplicane branch in the year 1996. A2 had a current account in the name Ramesh Cars Finance Corporation. A secured overdraft facility of



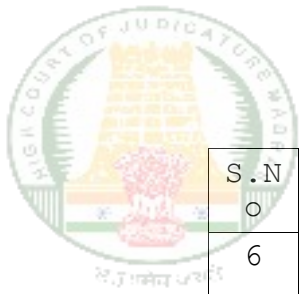
Rs.15,00,000/- had been granted by Andhra Bank against fixed deposit of Rs.20.53 lakhs. A2 deposited both local and outstation cheques in the account of Ramesh Cars Finance Corporation and those cheques were discounted by A1.

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46. It is claimed that between 02.04.1996 and 03.10.1996, nearly about 147 cheques had been so presented for deposit and purchased/discounted by the bank. Out of the 147 cheques, the amounts, with respect to 7 cheques were not realised. It is, with respect to those 7 cheques, that criminal prosecution has been, primarily, launched against A1 and A2. It is claimed that owing to the fact that the amounts were not realised, even though the bank had discounted/purchased the cheques, the bank had suffered loss and there was a corresponding gain to A2.

47. It is stated that A1 facilitated this unlawful gain of A2. It is further stated that A1 had altered the books of accounts to screen such loss to the bank. The 7 cheques, in which the amounts were not realised, are as follows:-

S.N o	Cheque No. & Date	Amount	Drawn on	Exhibit No.
1	742543/12.08.1996	Rs.3,00,000/ -	State Bank of India, Public School Branch, Hyderabad,	Ex.P74
2	094937/30.08.1996	Rs.2,00,000/ -	Bank of Maharashtra , Bombay.	Ex.P21
3	748808/06.09.1996	Rs.3,00,000/ -	State Bank of India, Public School, Hyderabad.	Ex.P60
4	748825/07.09.1996	Rs.4,00,000/ -	State Bank of India, Public School Branch, Hyderabad,	Ex.P65
5	771251/09.09.1996	Rs.2,00,000/ -	Bank of Maharashtra , Bombay.	Ex.P28



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S.N O	Cheque No. & Date	Amount	Drawn on	Exhibit No.
6	748827/18.09.1996	Rs.5,50,000/ -	State Bank of India, Public School Branch, Hyderabad,	Ex.P79
7	771252/03.10.1996	Rs.3,00,000/ -	Bank of Maharashtra , Bombay.	Ex.P106

48. It has been insisted by Mr.B.Kumar, learned Senior Counsel appearing for A1 that the Court should take a holistic and pragmatic view of the entire transactions to determine whether there was actual loss suffered to the bank, in view of the discounting of the cheques and in view of the cheques, subsequently being dishonoured.

49. It is a fact that earlier, as soon as 4 local cheques issued by G.V.Reddy and sons, issued between August and September, 1996 had been dishonoured, A1 had taken immediate steps and A2 had sold his property at Old No.136 Buildings Road, Triplicane, which stood in the name of his wife and a sum of Rs.16,00,000/- had been deposited into Andhra Bank on 25.10.2006 itself as against the dishonour of the four cheques. The details of four cheques are as follows:-

S.No	Cheque No. & Date	Amount	Drawn on
1	241113/02.09.96	Rs.4,90,000/ -	Andhra Bank, T.Nagar Branch, Madras.
2	420861/1.9.96	Rs.2,00,000/ -	Karur Vysya Bank, T.Nagar, Madras.
3	420862/2.9.96	Rs.4,00,000/ -	Karur Vysya Bank, T.Nagar, Madras.
4	388193/31.8.96	Rs.4,00,000/ -	Union Bank of India, Mylapore Branch, Madras.

50. Pointing out this particular fact, Mr.B.Kumar, learned Senior Counsel for A1 and Mr.Prakash Goklaney, learned Counsel for A2, vehemently stated that if at all there had been any intention to cheat the bank, a valuable property at Triplicane, Chennai would not have been sold and the amounts would not have been, immediately, given to the bank.



51. It had been stated that the purchase and discounting of cheques is a normal course of business, which the bank adopts and to ensure that there is no loss suffered by the bank, security is obtained and that is proceeded against, whenever there is dishonour of the cheques presented for payment. This fact that a property was sold and amounts of Rs14,90,000/-, which was the value of the 4 cheques had, actually, been realised by deposit of Rs.16,00,000/-, had not been denied by any of the prosecution witnesses.

52. It is also seen from the records that Andhra Bank had initiated proceedings before the Debt Recovery Tribunal and Andhra Bank had also admitted that they had more than sufficient security given by A2 and had also brought a particular property for sale and it actually realised a sum of Rs.2,74,00,000/- and the entire amount had been taken by the bank towards principle, interest and penal interest. This fact has been substantiated by Ex.D15/Ex.C1. It is, therefore, contended that there has been again no loss suffered to the bank and that the entire case should be viewed from that particular angle.

53. The claim of the bank before the Debt Recovery Tribunal was Rs.63,90,000/- and along with interest, it was Rs.1,28,02,681/-. However, they had realised sum of Rs.2,74,00,000/-, nearly, more than twice which they had claimed together with interest before the Debt Recovery Tribunal. It had, therefore, been urged that there had been no lawful loss to the bank and when there is no such loss, offences under Section 420 of I.P.C and also under Section 13(1)(d) of P.C.Act would not be attracted.

54. Even though these are the facts, PW.10, M.M.L.Kumar, who retired as Deputy General Manager of Andhra Bank denied that Ramesh Cars Finance Corporation enjoyed a secured overdraft facility.

55. As a matter of fact, the title deeds of the property which had, actually, been sold and amount realised by the bank through the Debt Recovery Tribunal proceedings, had been deposited with the bank on 12.08.1996 itself. This was prior to the date when the first cheque was dishonoured.

56. It had been the contention of Mr.K.Srinivasan, learned Special Public Prosecutor for C.B.I Cases that the security was offered after the date of the last cheque was dishonoured. However, the fact that the title deeds had been deposited with the bank on 12.08.1996, has not been denied. The property, which was offered for security, stood in the name of the company. Therefore, the charge had to be created in the office



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of the Registrar of Companies. Before creation of such charge, the property had to be valued. After obtaining the valuation certificate, which was on 22.11.1996, the charge was created on 26.11.1996. The procedures took time. But the title deeds were already available with the bank.

57. This fact was, however, denied by PW.1, who stated during his evidence "no immovable security was given either by Ramesh or by guarantor".

58. I am really surprised by that statement because, PW.1, Sree Hari, who succeeded A1 as Manager of Andhra Bank in Triplicane branch, had signed the petition before the Debt Recovery Tribunal claiming the amount due to be realised by sale of the security given by A2. I must state that a witness for the prosecution is expected to state the truth because he is on oath and should not be more devoted to the case of the prosecution than the investigating agency. Security was available. The witness, however, denied that fact. The actual evidence is as follows in cross-examination.

"No immovable security was given either by Ramesh or by guarantor. If it is said house property at Salem 5/24B, Junction Road, Indhu Muk Road of worth about more than Rs.1 crore was given as security to avail facilities, witness says the bank has no records the above said security. If it is said charge has been created register of companies at Chennai, witness says I am aware of the same".

59. As explained, the title deeds had been deposited in the bank and PW.1 had denied that security had been given. He further stated in cross-examination as follows:-

"I am not aware that the document relate to immovable property Salem was deposited with the bank. I am not aware that on the strength of security given bank has filed recover before DRT".

60. He was the signatory to the petition before the Debt Recovery Tribunal. This evidence by PW.1 is smeared with prejudicial and amounts to perjury. I must express shock at the manner in which a witness, who held high position in the bank patently spoke falsity in a Court of law. He, however, admitted that with respect to the four cheques, referred above, for Rs.14.96 lakhs, A2 had sold his wife's property and had paid a sum of Rs.16,00,000/-. To that extent, credit must be given to him.



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61. His statement in cross-examination of A2 is as follows:-

"Reddy & sons four numbers of cheques were returned immediately. A2 sold his wife's property at Bells Road and remitted Rs.16 lakhs in the form of DD in favour of bank".

62. PW.7, G.Venkateswarulu Reddy, also confirmed this particular fact.

63. PW.3, R.Anandhi, worked as Clerk in Andhra Bank, Triplicane branch, during the relevant period. She made necessary entries in the Clearing Register, Ex.P48 in Ex.P35. She stated that Ex.P46, cheque, was presented on 02.09.1996. She also made entry with respect to Ex.P50, cheque, which was presented on 02.09.1996, which was marked as Ex.P51. She also stated that she made entry with respect to Ex.P52, cheque, presented on 02.09.1996 and that entry was marked as Ex.P107. She made entry Ex.P56, with respect to the cheque Ex.P54, presented on 02.09.1996. Those four cheques had been returned. It is, thus, seen that it was PW.3, who was making the actual entries in the relevant records. Similarly, PW.4 was also examined on the same aspect.

64. The crux of the prosecution case rests on Ex.P115. It is said to be an extra-judicial confession given by A1 to PW.10. It must be kept in mind that PW.10 had given a complaint before the respondent, based on which, the First Information Report was registered. The complaint is Ex.P116 and F.I.R had been marked as Ex.P124. The complaint is dated 19.12.1996. He admitted, during cross-examination, that Ex.P115 had not been mentioned in Ex.P116, complaint. He also did not mention about seizure of 16 cheques from the table drawer of A1 on 03.12.1996. This non-mentioning of Ex.P115, dated 02.12.1996 by PW.10 and the non-mentioning of the seizure of cheques in his complaint to the respondent had been very seriously questioned by Mr.B.Kumar, learned Senior Counsel for A1. There is no reason for why Ex.P115 was not disclosed in the complaint. PW.10, in his chief-examination, stated that Ex.P115 was typed. In his cross-examination, he stated that it was reduced to writing by A1.

65. In this connection, Mr.K.Srinivasan, learned Special Public Prosecutor for C.B.I Cases relied on a judgment of the Hon'ble Supreme Court reported in (2019) 17 SCC 411, Ramlal Vs. State of Himachal Pradesh. In Paragraph No.11, the Hon'ble Supreme Court had stated as follows:-

"11. Contention of the appellant is that the confession statement of the appellant was



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not voluntary and PWs 2 and 3 were persons in authority who have pressurised the appellant to make the confession and therefore, Ex.-PW-3/A and Ex.-PW-2/A cannot be said to have been made voluntarily and cannot form the basis for conviction.

12. Placing reliance upon *Ajay Singh v. State of Maharashtra* (2007) 12 SCC 341, it was contended that extra-judicial confession can only form basis of conviction if it is voluntary and person to whom confession is made should be unbiased and not inimical to the accused. Learned counsel also placed reliance upon *Madan Gopal Kakkad v. Naval Dubey and another* (1992) 3 SCC 204 to contend that extra-judicial confession of accused should not have been obtained by coercion, promise of favour and should be voluntary in nature acknowledging the guilt. Learned counsel submitted that the officers who obtained extra-judicial confession of the appellant (Exts.-PW-3/A and PW-2/A) had other vested interest to act upon and the appellant being a Peon must have been allured by the false hope of being absolved from the charges.

13. Extra-judicial confession is a weak piece of evidence and the court must ensure that the same inspires confidence and is corroborated by other prosecution evidence. In order to accept extra-judicial confession, it must be voluntary and must inspire confidence. If the court is satisfied that the extra-judicial confession is voluntary, it can be acted upon to base the conviction. Considering the admissibility and evidentiary value of extra-judicial confession, after referring to various judgments, in *Sahadevan and Another v. State of Tamil Nadu* (2012) 6 SCC 403, this court held as under:-

"15.1. In *Balwinder Singh v. State of Punjab* 1995 Supp (4) SCC 259 this Court stated the principle that:

"10. An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a



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great deal of care and caution. Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance."

15.4. While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, this Court in *State of Rajasthan v. Raja Ram* (2003) 8 SCC 180 stated the principle that:

"19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made."

The Court further expressed the view that: "19. ... Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused...."

15.6. Accepting the admissibility of the extra-judicial confession, the Court in *Sansar Chand v. State of Rajasthan* (2010) 10 SCC 604 held that:

"29. There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. [Vide *Thimma and Thimma Raju v. State of Mysore* (1970) 2 SCC 105, *Mulk Raj v. State of U.P.* AIR 1959 SC 902, *Sivakumar v. State By Inspector of Police* (2006) 1 SCC 714 (SCC paras 40 and 41 : AIR paras 41 and 42),



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Shiva Karam Payaswami Tewari v. State of Maharashtra (2009) 11 SCC 262 and Mohd. Azad alias Shamin v. State of W.B. (2008) 15 SCC 449]”

14. It is well settled that conviction can be based on a voluntarily confession but the rule of prudence requires that wherever possible it should be corroborated by independent evidence. Extra-judicial confession of accused need not in all cases be corroborated. In Madan Gopal Kakkad v. Naval Dubey and Another (1992) 3 SCC 204, this court after referring to Piara Singh and Others v. State of Punjab (1977) 4 SCC 452 held that the law does not require that the evidence of an extra-judicial confession should in all cases be corroborated. The rule of prudence does not require that each and every circumstance mentioned in the confession must be separately and independently corroborated.

15. As discussed above, if the court is satisfied that if the confession is voluntary, the conviction can be based upon the same. Rule of Prudence does not require that each and every circumstance mentioned in the confession with regard to the participation of the accused must be separately and independently corroborated. In the case at hand, as pointed out by the trial court as well as by the High Court, R.K. Soni (PW-2) and R.C. Chhabra (PW-3) were the senior officers of the bank and when they reached the bank for inspection on 23.04.1994, the accused submitted his confessional statement (Ex.-PW-2/A). Likewise, in the enquiry conducted by R.C. Chhabra (PW-3), the accused had given confession statement (Ex.-PW-3/A).

16. Contention of the appellant is that PWs 2 and 3 being the higher officials, it cannot be said that the confession statement of the accused has been made voluntarily and it must have been under the inducement or under false promise of favour. Mere allegation of threat or inducement is not enough; in the court's opinion, such



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inducement must be sufficient to cause a reasonable belief in the mind of the accused that by so confessing, he would get an advantage. As pointed out by the trial court and the High Court, though the confession statement has been initially made in the presence of R.C. Chhabra (PW-3) and M.P. Sethi by the appellant, no question was put to R.C. Chhabra (PW-3) that extra-judicial confession (Ex.-PW3/A) was an outcome of any threat, inducement or allurement. The statement which runs to eleven sheets has been held to be made by the appellant voluntarily. Likewise, confession statement (Ex.-PW-2/A) made before R.K. Soni (PW-2) was in the handwriting of the appellant made in the presence of R.K. Soni (PW-2) and H.O. Agrawal, the then Assistant Chief Officer (Inspection). Here again, it was not suggested to R.K. Soni (PW-2) that Ex.-PW-2/A was outcome of some threat or pressure. The trial court as well as the High Court concurrently held that the confession statements (Ex.-PW-3/A and PW-2/A) were voluntarily made and that the same can form the basis for conviction. We do not find any good ground warranting interference with the said concurrent findings".

66. The principle laid down in the said judgment is that extra-judicial confession is a weak piece of evidence and that the Court should ensure that it is corroborated by other prosecution evidence. It must inspire confidence. It must also be voluntary. Conviction can be based on a voluntary confession. But, rule of prudence requires that wherever possible, it should be corroborated by other independent evidence.

67. In the instant case, the entire enquiry by the bank officials commenced only after Ex.P115, which is said to have been given by A1 to PW.10. PW.10 stated about the steps taken by him, on receipt of Ex.P115 from A1. In chief examination, he stated as follows:-

"Mr.Krishnamurthy, he voluntarily explained how the things had happened and gave me statement in writing. Ex.P115 is the written statement given by Mr.Krishnamurthy. The statement was given voluntarily by him



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without any compulsion by anybody. The statement was typed one of the line in the second para was scored out when it was handed over to me. Similarly second line of the second page also was scored of these portion. He told me that he was subjected to threat by the political parties but he did not name the party. On the very same day, I took him other officers of the bank namely Simhadri, Chief Manager, Main Branch, Chennai and Mr.P.S.N.Murthy, another Chief Manager, Zonal office. I asked Mr.Krishnamurthy to tell us about what was happened actually. He confirmed the contents Ex.P115 once again. The next day morning I sent a team to Triplicane Branch along with Chief Manager P.S.N.Murthy and Ramu Ramesh, another Sr.Manager of ZO. To investigate what had happened. On the same day afternoon I visited the Triplicane branch along with Dy.G.M.Narayanamurthy, who came to the ZO for conducting inspection on the instructions of HO".

68. When steps to that particular extent had been taken, the normal course of action of PW.10, when he had, immediately, thereafter, given a complaint before C.B.I, would have been to state that he had also received a statement in writing from A1, had verified that statement, had found substance in it and had therefore, given a complaint. Ex.P115 was not at all disclosed in the complaint given by PW.10. The reason for the same has not been explained at all. He admitted that he had not referred Ex.P115 in his complaint. This creates suspicion about the genuineness of Ex.P115 itself. The Hon'ble Supreme Court had stated that an extra-judicial confession should be examined with much prudence and it should be corroborated.

69. In his chief examination extracted above, PW.10 had stated that immediately after receiving Ex.P115 from A1, he and the Chief Manager, P.S.N.Moorthy, who was examined as PW.2 and another Senior Manager, Ramu Ramesh, who was not examined visited the Triplicane branch.

70. P.S.N.Moorthy/PW.2, in his examination had not spoken about Ex.P115. He, however, spoke about going over to the Triplicane branch and seizing cheques from the drawer of A1. It is, thus, seen that except for the evidence of PW.10, there is no independent corroboration for Ex.P115.



71. During the hearing of Criminal Appeal No.630 of 2008, four documents were marked, vide order in Crl.M.P.No.6844 of 2018. Ex.C1 is the order of the Debt Recovery Tribunal, Chennai. Ex.C2 is the revocation of the suspension of A1. In the order of the Debt Recovery Tribunal, it had been stated that a One Time Settlement of Rs.2.74 crores had been paid by the guarantor towards full and final statement of the claim of the bank. In Ex.C2, it had been stated that an enquiry had been conducted with respect to certain "irregularities" committed by A1, while working as Manager of Triplicane branch and it had been decided to revoke the order of suspension without prejudice to the right of the management to initiate disciplinary proceedings. This was dated 27.05.1999.

72. On the side of A2, in Criminal Appeal No.635 of 2008, three exhibits i.e., Ex.C1, Ex.C2 and Ex.C3 were marked. Ex.C1 was the Registered Sale deed, executed by Ramesh Cars Limited and Ex.C3 was the order passed by the Debt Recovery Tribunal with respect to the One Time Settlement referred above.

73. The Sanctioning Order to prosecute A1 was marked as Ex.P123. This was dated 25.11.1998. In that, it had been mentioned that owing to acts of A1 and A2, Andhra Bank had suffered a loss of Rs.75,40,000/-. However, there is no reference to the fact that security had been given, which covered the entire loss.

74. The learned Special Public Prosecutor stated that the bank has no power to purchase self cheques and in this connection, drew reference to Ex.P14 self cheque drawn on Bank of Maharashtra and discounted by Andhra Bank. Ex.P15 is the credit challan, which was authorised by A1 in his capacity as Manager. In Ex.P21, the entry had been rounded off without even sending the cheque for collection. The learned Special Public Prosecutor claimed that this entry has been made by A1. The entry register, relating to Clean Bills Purchase, had been marked as Ex.P20. The Clean Bills Purchase Register, Ex.P20 would show intention and motive, particularly because even though cheques had been returned, the corresponding entries had been rounded off, which would normally give an impression that the cheques had, actually, been honoured. Similar entries continuously go on in Ex.P20.

75. Attention has also been drawn by the learned Special Public Prosecutor to Exs.P24, P25. Ex.P24 issued by Ramesh Cars Finance Corporation to Ramesh Cars Finance Limited, but, wrongly credited to Ramesh Cars Limited. This was also authorized to A1. The entries in Exs.P30, P33 and P34 were also pointed out by the learned Special Public Prosecutor.



76. With respect to these exhibits, it is the contention of Mr.B.Kumar, learned Senior Counsel for A1 that Ex.P20, Bill Purchase Register had, actually, been verified by PW.10, which was also forwarded to the Zonal Office, day after day, after the closing and it was counter signed by PW.10. It is, therefore, stated that inference cannot be drawn of commission of criminal offence against A1. The act can only be an irregularity. It is a transaction within the bank. It was not a transaction in the nature of providing forged or a false or a fabricated document to avail loan. Here, the discounting of cheques is a normal transaction undertaken by every bank because security is obtained by the bank. If the bank ends up with loss, then the security given by the customer would cover up such loss. In this case, A2 had provided more than sufficient security with respect to the four cheques of Reddy and Sons, amounting to Rs.14,90,000/-, as immediately, a property was sold and Rs.16,00,000/- had been credited covering the entire loss.

77. All these points were pointed by Mr.B.Kumar, learned Senior Counsel, who stated that for transactions complained, security was already available. There was a process of charge to be created before the Registrar of Companies. Prior to that, valuation of property had to be undertaken. That took time. But, the title deeds had, already, been given to the bank. The learned Senior Counsel stated that the evidence of the witnesses, who denied that they had no knowledge about the deposit of title deeds, cannot be believed.

78. It is seen that before the Debt Recovery Tribunal, the bank had recovered the entire amount on the basis of sale of the property, the title deeds of which had been deposited. More than twice the amount had been recovered by the bank. Even though, it was purported to be a One Time Settlement, no concession was granted to A2.

79. It is, therefore, denied by Mr.B.Kumar, learned Senior Counsel that there was any criminal offence committed by A1. With respect to the seizure of cheques from the drawer of A1, it had been contended by Mr.B.Kumar, learned Senior Counsel that those cheques are related to line transactions. The learned Senior Counsel also contended that Ex.P115 cannot be relied on without any corroboration. The fact that it was not mentioned in the complaint given by the investigating agency itself showed that said document will have to be viewed with much scrutiny by the Court.

80. The learned Special Public Prosecutor relied on (2012) 10 SCC 303, Gian Singh Vs. State of Punjab and another and particularly, the paragraph No.61.



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"61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court.....Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences....."

81. It is seen that in the instant case, the One Time Settlement was not offered by the accused, but, was on the basis of a judgment of a competent tribunal, namely the Debt Recovery Tribunal. It had a judicial force in it. The property was sold pursuant to orders of Court. Amounts were realised and the loss of the bank was completely erased. Therefore, the facts in this case prevail upon me to look at the settlement of the loan, as an event, not to avoid criminal liability, but, to accept liability and to pay all the dues to the bank in a normal banking transaction.

82. The learned Special Public Prosecutor relied on (2014) 15 SCC 29, State of Maharashtra Vs. Vikram Anantrai Doshi and others, wherein, again the Hon'ble Supreme Court was examining an issue with respect to exercise of power under Section 482 of Code of Criminal Procedure. In that particular case, the entire working capital and term loan were to be paid directly to U.T.I bank and Federal bank. But, A1 had induced the bank to release the sanctioned working capital funds to a current account and from that account, A1 had diverted money to his own account in S.B.I and Dena Bank, to bring down the outstanding liabilities in those banks.

83. In that context, the Hon'ble Supreme Court stated that settling the dues cannot be a ground to quash the charge sheet.



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"26. We are in respectful agreement with the aforesaid view. Be it stated, that availing of money from a nationalized bank in the manner, as alleged by the investigating agency, vividly expositis fiscal impurity and, in a way, financial fraud. The modus operandi as narrated in the chargesheet cannot be put in the compartment of an individual or personal wrong. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kind of benefits it cannot be regarded as a case having overwhelmingly and predominatingly of civil character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the offence creates a dent in the economic spine of the nation. The cleverness which has been skillfully contrived, if the allegations are true, has a serious consequence. A crime of this nature, in our view, would definitely fall in the category of offences which travel far ahead of personal or private wrong. It has the potentiality to usher in economic crisis. Its implications have its own seriousness, for it creates a concavity in the solemnity that is expected in financial transactions. It is not such a case where one can pay the amount and obtain a "no due certificate" and enjoy the benefit of quashing of the criminal proceeding on the hypostasis that nothing more remains to be done. The collective interest of which the Court is the guardian cannot be a silent or a mute spectator to allow the proceedings to be withdrawn, or for that matter yield to the ingenuous dexterity of the accused persons to invoke the jurisdiction under Article 226 of the Constitution or under Section 482 of the Code and quash the proceeding. It is not legally permissible. The Court is expected to be on guard to these kinds of adroit moves. The High Court, we humbly remind, should have dealt with the matter keeping in mind that in these kind of litigations the accused when perceives a tiny gleam of success, readily invokes the



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inherent jurisdiction for quashing of the criminal proceeding. The court's principal duty, at that juncture, should be to scan the entire facts to find out the thrust of allegations and the crux of the settlement. It is the experience of the Judge comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence. As we find in the case at hand the learned Single Judge has not taken pains to scrutinize the entire conspectus of facts in proper perspective and quashed the criminal proceeding. The said quashment neither helps to secure the ends of justice nor does it prevent the abuse of the process of the Court nor can it be also said that as there is a settlement no evidence will come on record and there will be remote chance of conviction. Such a finding in our view would be difficult to record. Be that as it may, the fact remains that the social interest would be on peril and the prosecuting agency, in these circumstances, cannot be treated as an alien to the whole case. Ergo, we have no other option but to hold that the order of the High Court is wholly indefensible".

84. The Hon'ble Supreme Court had stated that the Court's principal duty is to scan the entire facts to find out the thrust of allegations and the crux of the settlement.

85. In this case, when such an exercise is done, it is seen that the property had, already, been given as security to cover any loss and that particular property was sold by orders of the Debt Recovery Tribunal. Therefore, this case stands on a different footing.

86. The learned Special Public Prosecutor again relied on (2016) 1 SCC 376, State of Tamil Nadu Vs. R.Vasanthi Stanley and another. In that case, no-dues certificates were issued by the respective banking institutions and settlements were arrived at under a settlement scheme. Holding that prosecution was an exercise in futility, the criminal proceedings were quashed.

87. The Hon'ble Supreme Court had, in paragraph No.13, observed as follows:-

"13. Testing the present controversy on the anvil of the aforesaid principles, we are



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disposed to think that the high Court has been erroneously guided by the ambit and sweep of power under Section 482 Cr.P.C., for quashing the proceedings. It has absolutely fallaciously opined that the continuance of the proceeding will be abuse of the process of the court. It has been categorically held in (1992) 4 SCC 305 : 1993 SCC (Cri) 36, Janata Dal Vs. H.S. Chowdhary, that the inherent power under Section 482 Cr.P.C., though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. In Inder Mohan Goswami Vs. State of Uttaranchal, (2007) 12 SCC 1 : (2008) 1 SCC (Cri) 259, it has been emphasised that inherent powers have to be exercised sparingly, carefully and with great caution".

88. That was a case, where the Hon'ble Supreme Court had quashed proceedings under Section 482 of Code of Criminal Procedure. Here, the property, which was already available, had been sold through due process under directions of the Debt Recovery Tribunal. The title deeds had been given even much earlier and there was a delay in the charge being created, owing to the fact that the charge had to be created at the Registrar of Companies.

89. I would respectfully state that in this particular case, the issue revolves around normal banking transactions and therefore, since a judicial authority has authorised settlement of the entire dues, that should be respected.

90. The learned Special Public Prosecutor also relied on (2016) 1 SCC 389, Central Bureau of Investigation Vs. Maninder Singh. That was an appeal against an order passed under Section 482 of Code of Criminal Procedure. The facts were as follows:-

"16. The allegation against the respondent is "forgery" for the purpose of cheating and use of forged documents as genuine in order to embezzle the public money. After facing such serious charges of forgery, the respondent wants the proceedings to be quashed on account of settlement with the bank. The development in means of communication,



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science and technology, etc. had led to an enormous increase in economic crimes viz. phishing, ATM frauds, etc. which are being committed by intelligent but devious individuals involving huge sums of public or government money. These are actually public wrongs or crimes committed against society and the gravity and magnitude attached to these offences is concentrated at the public at large".

91. In the instant case, cheques had been presented. They had been discounted in the normal course of business. The cheques had been dishonoured. Securities were available. The amounts had been covered by sale of the securities. They are normal banking transactions. It is also seen that in the instant case, in the departmental proceedings, the bank themselves had stated that A1 was only guilty of irregularity. He was then reinstated. That is a very significant fact to be taken into consideration.

92. Mr.B.Kumar, learned Senior Counsel relied on (2009) 6 SCC 77, S.V.L. Murthy Vs. State represented by C.B.I, Hyderabad. In that case, cheque discounting facilities allowed by bank officials to the customers of the bank without any criminal intent being proved were held not to amount to commission of offence, particularly, as the facility allowed was not contrary to R.B.I guidelines. It has been held as follows:-

"47. The prosecution, apart from the fact that it had utterly failed to bring on record any evidence of conspiracy, must also be held to have failed to bring on record any evidence of wrongful gain so as to attract the provisions of the Prevention of Corruption Act, 1988 or otherwise.

50. The learned Special Judge as also the High Court unfortunately proceeded on the basis that the cheque discounting facility could under no circumstances be made available to them. We do not think that that was a correct approach. RBI Guidelines categorically show that it was not a wrong practice. It is one thing to say that there has been an abuse of a prevalent banking practice for the purpose of causing wrongful loss to the Bank and causing wrongful gain to others but it is another thing to say that by reason thereof, the ingredients of cheating are attracted".



93. It must also be pointed out in the instant case, the entire amounts had been settled by an order of the Debt Recovery Tribunal. This fact is very significant.

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94. When the entire issue is once again re-examined, the facts of the present case show that A2 had an account in Andhra Bank, Triplicane Branch, Chennai. He deposited nearly about 147 cheques and discounting facilities were given. Out of 147 cheques, 7 cheques were returned dishonoured. It must also be kept in mind that actually A1 did not provide discounting facility for all the 147 cheques. Previous Bank Managers also permitted such facility for A2.

95. In one of the instances, when four cheques were dishonoured, A2 had immediately sold a property and had settled the dues. With respect to the cheques which were dishonoured, the bank had sufficient security at hand. They proceeded against A2 on the basis of such security before the Debt Recovery Tribunal. The Tribunal directed sale of the secured property. Sale was effected. The entire amount was taken up by the bank. It was termed as One Time Settlement. But, the amount was nearly twice the amount which the bank had claimed before the Debt Recovery Tribunal. Thus, by no stretch of imagination can it be said that there had been loss suffered by the bank. The bank also realised this fact and in the departmental enquiry, stated that A1 had only committed an irregularity and he had been reinstated.

96. The main thrust of the prosecution is the extra-judicial confession said to be given by A1.

97. Ex.P115 is said to have been given by A1, but, PW.10, to whom it was given did not produce it in the earliest instance, when he gave the complaint to C.B.I. That gives rise to a very deep suspicion against the very authenticity of Ex.P115. As held in (2019) 17 SCC 411, an extra-judicial confession is a weak piece of evidence. In the instant case, it has not been corroborated also. PW.2 disclaimed all knowledge about Ex.P115.

98. As a matter of fact, Ex.P115 cannot be stated to contain a confession of commission of criminal offence. There was a statement of a procedural irregularity. Security was already available. The bank could have proceeded with the security and recovered the amounts. But, the witnesses, PW. 2 and PW.10 did not speak honestly, to put it mildly, when they gave witness box. They denied that there was any security in the bank. PW.1, who stated that particular statement before the trial Court, had actually signed the verification of the Debt Recovery Application marked as Ex.D2, claiming that securities have been



given and asking for sale of securities to cover the default amount. Thus, prosecution, unfortunately, had to rely on witnesses, who did not think it fit to speak the truth before the Court.

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99. In view of the above reasons, I hold that the conviction against A1 and A2 will, necessarily, have to be interfered with.

100. In the result, the present Criminal Appeals are allowed and the conviction and the sentence in C.C.No.7 of 1999, dated 20.08.2008 by the learned Additional Special Judge for C.B.I Cases, Chennai against the appellant/A1 in CrI.A.No.630 of 2008 and the appellant/A2 in CrI.A.No.635 of 2008 are set aside. The appellants, in both the Criminal Appeals, are acquitted of all charges levelled against them. The fine amounts, if any paid, are directed to be refunded. The bail bonds, if any executed, shall stand cancelled.

List of witnesses examined:-

PW.3: R.Anandi, Clerk, Andhra Bank, Triplicane branch
(further examination).

Additional Documents marked on behalf of appellant/A1 in CrI.A.No.630 of 2008:-

S.No.	Exhibit	Date	Description
1	Ex.C1	15.05.2012	Order of D.R.T II, Chennai in Sarfaesi App.No.156 of 2011.
2	Ex.C2	27.05.1999	Revocation of Suspension by Chief Manager & Competent Authority
3	Ex.C3	25.11.1995 to 18.01.1996	Daily Statement No.3(B) maintained at Triplicane branch.
4	Ex.C4	09.11.1996 and 11.11.1996	General Ledger balances, dated 09.11.1996. (Page No.21) maintained at Triplicane branch.



Additional Documents marked on behalf of appellant/A2 in
Crl.A.No.635 of 2008:-

S.No.	Exhibit	Date	Description
1	Ex.C1	08.05.2013	Registered Sale Deed No.3186 of 2013, on the file of Sub-Registrar, Suramangalam executed by M/s. Ramesh Cars Limited.
2	Ex.C2	11.12.2012	Order, dated 2012.2012 passed in Comp.Appl.Nos.1014 of 2002, 889 of 2006 and 704 of 2011, on the file of the Hon'ble High Court of Madras, dismissing Comp.Appl.No.1014 of 2002 and 889 of 2006 and Comp.Appl.No.704 of 2011 ordered permanent stay of winding up order, dated 29.01.2001 in pursuance of settlement of creditors.
3	Ex.C3	15.05.2012	Order passed in S.A.No.156 of 2011, on the file of Debt Recovery Tribunal II, Chennai filed by Ramesh Cars Investors Settlement Committee in pursuance of the ONE TIME SETTLEMENT made to the creditors on behalf of the Appellant.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

grs

To

1. The Additional Special Judge for C.B.I Cases,
Chennai.
2. The Inspector of Police,
Central Bureau of Investigation,
Special Police Establishment,
Haddows Road,
Chennai.
3. The Inspector of Police,
CBI/ACB,
Chennai.



4. The IX Additional Sessions Judge,
Additional Sessions Judge for CBI Cases,
Chennai.

5. The Superintendent of Police,
Central Prison,
Puzhal,
Chennai.

6. The Special Public Prosecutor (CBI),
High Court Madras.

Copy to

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

+2ccs to Mr.Prakash Goklaney, Advocate, S.R.No.57323
+1cc to the Special Government Pleader, S.R.No.57048

Crl.A.Nos.630 and 635 of 2008

NR[co]
NSK 24/11/2021