Bail Slip

The Appellant/3rd Accused namely P.S.Balasubramaniam aged (46 years) S/o P.Sundaraiah @ Sundara Ramaiah was directed to released on bail by the order of this Court dated 12/07/2011 in Crl.M.P.No.1/2011 in Crl.A No.424 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.09.2021

PRONOUNCED ON: 30.09.2021

CORAM

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

Crl.A.No. 424 of 2011

P.S.Balasubramaniam ... Appellant/Accused-3

Vs.

State By:
Inspector of Police,
SPE: CBI: ACB,
(RC/11(a)/2003)
Chennai. ... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 (2) Cr.P.C., against the Judgment and sentence of one year Rigorous Imprisonment and fine of Rs.10,000.00 in default to undergo three months Simple Imprisonment imposed on the Appellant under Section 467 read with 471 IPC and the sentence of One year Rigorous Imprisonment and fine of Rs.10,000.00 in default to undergo three months Simple Imprisonment imposed on the appellant under Section 420 IPC (sentences to run concurrently), imposed on the Appellant by the learned XI Additional City Civil & Sessions Judge, (Spl. Judge for CBI Cases), Chennai, by his Judgment dated 10.06.2011 in C.C.No. 21 of 2004.

For appellant : Mr. E.J.Ayyappan

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

ORDER

The present Criminal Appeal has been filed by the third accused in C.C.No. 21 of 2004 aggrieved by the Judgment dated

10.06.2011 passed by the XI Additional City Civil and Sessions Judge/Special Judge for CBI Cases relating to Banks and Financial Institutions, Chennai, whereby the appellant/A3 had been convicted for offence under Section 467 r/w 471 IPC and sentenced to undergo one year rigorous imprisonment and fine of Rs.10,000/- and in default of payment of fine to undergo simple imprisonment for three months and also convicted under Section 420 IPC and sentenced to undergo rigorous imprisonment for one year and fine of Rs.10,000/- and in default of payment of fine to undergo simple imprisonment for three months. It was further held that the sentences were to run concurrently and set off had been granted under Section 428 Cr.P.C.

2. There were four accused, who faced trial in C.C.No. 21 of 2004. A-1 to A-4 were charged under Section 120-B read with 420, 419, 467 read with 471, 468 read with 471 IPC and under Section 13(2) read with 13(1)(d) of PC Act 1988. A-4 was also charged under Section 419 IPC and also under Section 467 read with 471 IPC and also under Section 468 read with 471 IPC. The present appellant/A-3 was also charged under Section 467 read with 471 IPC. Both A-3 and A-4 were also charged under Section 420 IPC. A-1 and A-2 were charged under Section 13(2) read with 13(1)(d) of PC Act 1988.

3. On conclusion of trial, the learned Sessions Judge held that the prosecution had not proved the case as against A-1, A-2 and A-4 and acquitted them of all charges. The petitioner/A-3 was also acquitted of the substantial charge under Section 120-B read with 420, 419, 467 read with 471, 468 read with 471 IPC and under Section 13(2) read with 13(1)(d) of PC Act 1988. However, the appellant/A-3 was convicted under Section 467 read with 471 IPC and also under Section 420 IPC and sentenced as aforesaid. Questioning that conviction and sentence, the present Criminal Appeal had been filed under Section 374(2) of Cr.P.C.

4. Based on information received in the Office of Superintendent of Police/CBI/ACB/Chennai, a First Information Report in Crime No. RC MA1 2003 was registered under Section 120-B, read with 420, 467, 468 and 471 IPC and also under Section 13(2) read with 13(1) (d) of PC Act 1988 against K.Devendra Kumar, Senior Manager, Indian Overseas Bank, TM Street Branch, Chennai and P.Suchitra, wife of P.Balasubramanian, partner of M/s. Sri Susila Traders, 121/6, Central Cross Street, Chennai and R.Vijayan, Panel Advocate, Indian Overseas Bank, TM Street Branch, Chennai and R.Udayakumar, Panel Valuer, Indian Overseas Bank, TM Street Branch, Chennai and against P.S.Natarajan, Panel Valuer, Indian Overseas Bank, TM Street Branch, Chennai.

5. In the complaint, it had been alleged that the named accused had entered into criminal conspiracy and in pursuance of such criminal conspiracy, P.Suchitra and a deceased individual, K.G. Narasimhan, who were partners of M/s. Sri Susila Traders had fradulently submitted fabricated property documents as genuine to Indian Overseas Bank, TM Street Branch, Chennai and K.Devendra Kumar, Senior Manager, knowing that the documents were false had recommended and got sanctioned credit facilities of Rs.60/- lakhs to M/s. Sri Susila Traders and the Panel Advocate and the Panel Valuers gave false valuation certificates with respect to the documents given as collateral securities and therefore, all the named individuals had caused wrongful loss of Rs.63.85 lakhs to Indian Overseas Bank, TM Street Branch, Chennai and corresponding wrongful gain to themselves.

6. The allegations in the First Information Report were then investigated and a final report was presented before the jurisdictional Court which was taken cognizance as C.C.No. 21 of 2004 against four accused, namely, K,Devendra Kumar/ A-1, S.Ramachandran/A-2, P.S.Balasubramaniam/A-3, R.Ramesh/A-4. The other named accused in the First Information Report, namely, P.Suchitra and the Panel Advocate and the Panel Valuers were not arrayed as accused.

7. In the final report, it had been stated that all the named four accused had committed offence under Section 120-B read with 420, 461, 467 read with 471, 468 read with 471 IPC and also under Section 13(2) read with 13(1)(d) of PC Act 1988. The accused were also individually charged with the substantive offences.

8. A-1 as stated was working as Senior Manager/Branch Manager in Indian Overseas Bank, TM Street Branch, Chennai. A-2 was working as Assistant Manager in Advances Department in the same Bank and Branch. A-3 was the husband of P.Suchitra, who was named in the First Information Report.

9. M/s. Sri Susila Traders, a partnership firm was doing business in dhall, rice etc. It was stated that A-3 was the authorised signatory to operate the current account of M/s. Sri Susila Traders. A-4 was a private individual residing at Ponneri. It had been stated in the final report that M/s. Sri Susila Traders trading was originally a proprietorship concern run by P.Suchitra, the mother of A-3 and had an account in Indian Overseas Bank, TM Street Branch, Chennai, which was opened on 09.10.1995 in the name of P.Suchitra. Thereafter, a partnership firm was constituted in the same name and the parters were P.Suchitra/wife of A-3 and one K.G. Narasimhan. It was claimed in the final report that A-4 had actually executed

the partnership deed holding himself as K.G.Narasimhan and had forged the signatures of K.G.Narasimhan.

10. It had been further alleged that on 12.05.1999, A-3 submitted a request letter signed by his wife P.Suchitra seeking cash credit limit of Rs.20/- lakhs. As security, a property situated at 185/1, G.N.T Road, Sembilivaram Village, Ponneri, worth about Rs.40 lakhs was offered. Subsequently, on 05.06.1999 a current account No.1205 was opened in the name of M/s. Sri Susila Traders and it is claimed that the partners were shown as P.Suchitra and K.G.Narasimhan and A-3 as the Mandate holder of the account but it was further claimed that A-4 impersonated K.G.Narasimhan and his photograph was also affixed in the speciman card and account opening form and A-4 forged the signature of K.G.Narasimhan.

11. Forged and fake documents relating to the aforementioned property like encumbrance, patta, legal heirship certificate of K.G.Narasimhan had been submitted to the Panel Advocate and the Panel Valuers, who then gave their reports. It was stated that these documents were submitted by A-3. It was also stated that A-2 did not make proper verification of the genuineness of the property and submitted an inflated value of the property which enabled M/s. Sri Susila Traders to get higher cash credit limit. It was also stated that A-1 and A-2 forwarded the proposal for sanction of Rs.15/- lakhs to the Regional Office even though it was claimed they knew that K.G.Narasimhan did not have title over the property and that the documents were fabricated. Cash credit limit of Rs.15/- lakhs was sanctioned by the Regional Office on 10.07.1999. P.Suchitra then executed relevant loan documents and the title deeds were deposited even though it was claimed that A-3 knew that K.G. Narasimhan was not the title holder of the said property.

12. Thereafter, A-3 gave a written request on 25.11.1999 on behalf of M/s. Sri Susila Traders seeking enhancement of the limit to Rs.30/- lakhs and offered a property at A.P. 397, Anna Nagar West, Chennai and the Cash credit limit was enhanced to Rs.23/- lakhs, purportedly on the recommendation of A-1.

13. A further letter was given on 07.09.2000 by A-3 signed by P.Suchitra and A-4 who it is claimed signed as K.G.Narasimhan, to A-1 to further enhance the Cash credit limit from Rs.23/- lakhs to Rs.50/- lakhs and in this connection land measuring 74 cents together with building valued at Rs.99/- lakhs in the name of K.Ramadoss was offered as security. It was stated that K.G. Narasimhan was the son of the brother of K.Ramadoss and the property at No. 167, Sriperumbudur High Road, Manavala Nagar, was offered as security.

14. It was stated that A-3 produced fake documents with respect to the said property to the Panel Advocate and Panel Valuers, who gave their reports and thereafter A-1 prepared a preliminary valuation without making proper verification of the genuineness of the property and gave a valuation report estimating the property to be Rs.75/- Lakhs. A-1 further stated that he had inspected the property at Manavala Nagar and also gave a report that it is valued at Rs.75/- lakhs. A proposal for increasing the cash credit limit was forwarded to the Regional Office by A-1 and A-2 and the cash credit limit was enhanced from Rs.23/- lakhs to Rs.40/- lakhs. It is further stated that P.Suchitra and A-4 who impersonated as K.G.Narasimhan executed relevant bank documents. K.Ramadoss and A-3 also executed guarantee forms.

15. Thereafter another request dated 01.06.2001 was submitted by A-3 for adhoc cash credit limit of Rs.10/- lakhs for one month from 01.06.2001 and the Regional Office permitted the same upto 15.07.2001 and thereafter upto September 2001.

16. It was claimed that A-1 knew that the property was not owned by K.Ramadoss but belonged to his brother K.Sugumar. It had been further stated that A-3 issued a cheque on behalf of M/s. Sri Sushila Traders and diverted the sanctioned cash credit limited violating the terms and conditions and the purpose for which it was given. It had been stated that in this manner, all the accused had caused wrongful loss of Rs.63.85 lakhs to Indian Overseas Bank, TM Street Branch, Chennai.

17. This final report was taken cognizance by the learned XI Additional City Civil and Sessions judge, CBI Cases relating Banks and Financial Institution, Chennai, as stated as C.C.No. 21 of 2004.

18. Charges were framed and explained to A-1 and A-4 and they pleaded not guilty. Prosecution was then invited to prove the charges. Prosecution examined PW-1 to PW-37 and marked Exs. P-1 and P-117. During the course of cross examination of the prosecution witness, the accused marked Exs. D-1 to D-11. On conclusion of trial, the learned Sessions Judge had acquitted A-1, A-2 and A-4 of all charges. A-3 was convicted for offence under Section 467 read with 471 IPC and for offence under Section 420 IPC and sentenced as stated above. The present Criminal Appeal had been filed challenging the said conviction and sentence.

19. Heard arguments advanced by Mr. E.J.Ayyappan, learned counsel for the appellant / A-3 and Mr. K. Srinivasan, learned Special Public Prosecutor for CBI Cases for the respondent.

20. Mr. E.J.Ayyappan, learned counsel for the appellant pointed out that the appellant herein had no role in the partnership firm M/s. Sri Sushila Traders. He was not a partner. The learned counsel pointed out that in the Judgment, it had been held that the appellant herein had produced the documents on the basis of which, the credit facilities have been extended. However, the perusal of the documents produced by the prosecution would show that the documents had been actually produced by K.G.Narasiman and K.Ramadoss themselves whose signatures are found in the documents. The learned counsel stated that the appellant had no role to play in the preparation of the documents or in producing the same before the bank authorities. The prosecution witnesses also did not specifically state that it was the appellant, who produced the documents before the bank authorities. It was also pointed out that in view of the acquittal of A-1 and A-2, the appellant should also be necessarily acquitted since he had no role to play in obtaining the cash credit facilities for the partnership firm M/s. Sri Sushila Traders. He also pointed out that A-4 had been acquitted by the trial Judge and the prosecution has not filed any appeal as against the acquittal of the other accused. The learned counsel pointed out that the provisions under which the appellant had been convicted are not attracted particularly because the ingredients as stipulated under Section 464 of IPC had not been established by the prosecution. The learned counsel stated that the appellant had been convicted on a wrong premise without appreciation of evidence and as a matter of fact on no evidence. The learned counsel therefore stated that the Judgment under Appeal should be reversed by this Court.

21. Mr. K.Srinivasan, learned Special Public Prosecutor for CBI Cases, however argued that the appellant was directly involved with the day today activities of M/s. Sri Sushila Traders. As the mandate holder, he had the right to operate the accounts. He was the only person who interacted with the bank officials and sought credit facilities from the bank. He was the person who deposited the title deeds of the two properties which documents were later found to be forged and fabricated. The learned Special Public Prosecutor also pointed out that the petitioner had also taken the documents to the panel advocate and to the panel valuers and had also obtained legal opinion and valuation certificates and therefore contended that his role was evident from the very beginning of the application of cash credit facilities and continued till the end when they were sanctioned. The learned Special Public Prosecutor also stated that since usage of the forged and fabricated documents have been proved, naturally, the offence under Section 467 is directly attracted. The learned Special Public Prosecutor also stated that using such forged documents, pecuniary gain had also

been obtained by the appellant herein either directly or in directly owing to extension of credit facilities by the bank and therefore stated that the offence under Section 420 IPC was also made out. The learned Special Public Prosecutor stated that in the Judgment under Appeal, the role of the appellant in the commission of the offences has been clearly pointed out and therefore urged that the Court should not revisit the order and the conviction of the appellant should be upheld.

22. I have carefully considered the arguments and the documents on record.

23. On information received, the Inspector of Police, CBI/ACB, Chennai, had registered First Information Report in Crime No. RC MA1 2003 A0011 on 20.02.2003 under Sections 120-B, read with 420, 467, 468 and 471 IPC and also under Section 13(2) read with 13(1) (d) of PC Act 1988 against K.Devendra Kumar, Senior Manager, Indian Overseas Bank, TM Street Branch, Chennai and P.Suchitra, wife of P.Balasubramanian, partner of M/s. Sri Susila Traders, 121/6, Central Cross Street, Chennai and R.Vijayan, Panel Advocate, Indian Overseas Bank, TM Street Branch, Chennai and R.Udayakumar, Panel Valuer, Indian Overseas Bank, TM Street Branch, Chennai and against P.S.Natarajan, Panel Valuer, Indian Overseas Bank, TM Street Branch, Chennai.

24. It had been stated that P.Suchitra, a partner of M/s. Sri Susila Traders along with K.G.Narasiman, who had since died, had submitted false and fabricated property documents as genuine to Indian Overseas Bank, TM Street Branch, Chennai and K.Devendra Kumar, Senior Manager, had recommended and also obtained sanction of credit facilities of Rs.60/- lakhs to M/s. Sri Susila Traders. It had been stated that the panel lawyer and the panel valuers had not properly verified the title or given the value of the lands offered as security and since the loan was not properly secured, the accused had committed the offences as aforesaid. It had been further stated that the account of M/s. Sri Susila Traders, became irregular as a result of which about Rs.64/- lakhs was outstanding as on 31.01.2002.

25. Investigation was conducted on the allegations in the First Information Report and a final report was filed before the competent Court. In the final report, the prosecution had charged four accused, namely, A-1 K.Devendra Kumar, Senior Manager, Indian Overseas Bank, TM Street Branch, Chennai and A-2 S.Ramachandran, Assistant Manager, Advances Department, Indian Overseas Bank, TM Street Branch, Chennai and A-3 P.S.Balasubramaniam, claimed to be a mandate holder of M/s. Sri Susila Traders, and A-4 R.Ramesh, private individual. On issuance of summons to the accused, they appeared and the learned trial Judge/XI Additional City Civil and Sessions

Judge/CBI Cases relating to Bank and Financial Institutions had forwarded copies under Section 207 Cr.P.C., and later framed the following charges against the accused:-

(1) A-1 to A-4 under Sections 120(B) read with 420, 419, 467 read with 471, 468 read with 471 IPC and under Section 13(2) read with 13(1)(d) of PC Act, 1988;

(2) A-2 under Section 419 IPC;

(3) A-4 under Section 467 read with 471 IPC;

(4) A-4 under Section 468 read with 471 IPC;

(5) A-3 under Section 467 read with 471 IPC;

(6) A-3 and A-4 under Section 420 IPC;

(7) A-1 and A-2 under Section 13(2) read with 13(1)(d) of PC Act, 1988.

26. The accused abjured the charges and prosecution was then invited to prove the charges. Accordingly, prosecution examined PW-1 to PW-37 and also marked Exs. P-1 to P-117. During cross examination of the prosecution witness, the accused marked Exs. D-1 to D-11. On conclusion of recording of evidence, the accused were questioned under Section 313 Cr.P.C. Their statements were recorded. They did not examine any witnesses.

27. By Judgment dated 10.06.2011, the learned trial Judge had acquitted A-1, A-2 and A-4 of all charges and had convicted A-3 under Section 467 read with 471 IPC and sentenced him to undergo one year rigorous imprisonment and fine of Rs.10,000/- and in default of payment of fine for a further period of three months simple imprisonment. The learned Judge also convicted A-3 under Section 420 IPC and sentenced him to undergo one year rigorous imprisonment and fine of Rs.10,000/- and in default of payment of fine to undergo simple imprisonment for three months. The sentences were directed to run concurrently and set off under Section 428 Cr.P.C., was also allowed. Questioning that conviction and sentence, A-3 had filed the present appeal. The prosecution did not file any appeal challenging the acquittal of A-1, A-2 and A-3.

28. M/s. Sri Susila Traders was a business concern doing business in Dhall, rice, etc., and was originally a proprietorship concern with P.Susila, mother of A-3 as the proprietrix and had an account in Indian Overseas Bank, TM Street Branch, Chennai, which had been opened on 09.10.1995. Subsequently, a partnership deed had been entered into between P.Suchitra, wife of A-3 and another individual K.G. Narasimhan.

29. The main thrust of the case of the prosecution was that A-4 had forged the signatures of K.G. Narasimhan. That charge by the prosecution was held as not proved by the learned trial Judge on analysis of evidence and A-4 had been acquitted of such charge. Therefore, prosecution cannot now state that A-4 had

affixed the signature of K.G. Narasimhan. At any rate, it is claimed that A-3 had given a letter signed by P.Suchitra for cash credit limit of Rs.20/- lakhs and had offered property said to be worth Rs.40/- lakhs situated at 185/1, G.N.T. Road, Sembilivaram Village, Ponneri.

30. It is the specific case of the prosecution that A-3 was the mandate holder of the account of M/s. Sri Susila Traders. It is also stated that A-3 had submitted false and fabricated documents like encumbrance certificate, patta, legal heirship certificate to the panel advocate and the panel valuer and obtained cash credit limit of Rs.15/- lakhs against the title deeds. It is the further case of the prosecution that the documents were produced by A-3. However, the exhibits marked prosecution show otherwise.

31. Ex.P-25 dated 16.07.1999 is a letter signed by K.G.Narasimhan addressed to Indian Overseas Bank, TM Street Branch, Chennai, on behalf of M/s. Sri Susila Traders giving a list of documents for obtaining cash credit sanction. The documents were, an original sale deed dated 17.08.1964 marked as Ex.P-26, the original patta dated 12.05.1980 marked as Ex.P-84; property tax receipt dated 05.03.1999 marked as Ex.P-76; encumbrance certificate from 01.01.1960 to 01.12.1992 marked as Ex.P-78 and encumbrance certificate for the period from 01.12.1992 to 05.05.1999 marked as Ex.P-71.

32. It is claimed by the prosecution that all these documents, namely, Ex.P-26, Ex.P-84, Ex.P-76, Ex.P-78 and Ex.P-79 are forged and fabricated documents. The learned trial Judge had observed in the course of his Judgment that these documents had been submitted by A-3/appellant to the bank but as stated Ex.P-25 as contains the signature of K.G.Narasimhan, who was said to be the owner of the property. The efforts of the prosecution to establish that A-4 had forged the signature of K.G.Narasimhan had failed to pass the scrutiny of the trial Court and therefore that stand of the prosecution cannot still be insisted by them. It has therefore to be held that the documents had been submitted only by K.G.Narasimhan. Prosecution charged that the petitioner herein had submitted the said documents. Even PW-2 in the course of his examination in chief had not stated that these documents had been submitted by A-3 to the Bank.

33. It is the further case of the prosecution that the cash credit limits had been subsequently enhanced to Rs.23/- lakhs and thereafter, a further request was made on 07.09.2000 by letter signed by P.Suchitra and by K.G.Narasimhan for further increase of the cash credit limit to Rs.50/- lakhs. The regional office had enhanced the limit to Rs.40/- lakhs. For

this purpose, documents of property of land measuring 74 cents with building measuring 1255 sq.ft., at Kammavarpalayam, Manavala Nagar, had been submitted.

34. It is the specific finding of the learned trial Judge that A-3 had submitted the documents and which documents were later found to be false and fabricated. Again the exhibits marked speak otherwise.

35. Ex.P-67 is the letter addressed by K.Ramadoss to the Manager, Indian Overseas Bank, T.M. Street Branch, Chennai, wherein it was stated that he had known the partners of M/s. Sri Susila Traders, namely, P.Suchitra and K.G.Narasimhan, and that K.G.Narasimhan was his nephew and that he was offering personal guarantee for the operations of M/s. Sri Susila Traders and that his landed property at No. 167, Sriperumbadur, Manavala Nagar, may be accepted. The appellant's signature is not found in this particular document. The document shows that it was only given by K.G.Ramadoss. Thereafter, he had also given the details of the property proposed to be given as security. It is the contention of the prosecution that these documents have been found to be false and fabricated.

36. But the essential features to drive home conviction under Section 467 IPC is that there should be satisfaction of the ingredients under Section 464 IPC. It is not the case of the prosecution that A-3 had prepared the documents and had forged the signatures found in the various documents. Even if it is to be stated that he had used false and fabricated documents for the purpose that enhancing the cash credit limit, it must be established by the prosecution that he knew that the documents were false and fabricated. However, he had produced those documents for examination before the panel advocate and the panel valuers. No person would produce documents for such purposes if he had the knowledge that they were false and fabricated documents. The duty of every panel lawyer and every panel valuer is to verify the genuinity of the documents. PW-2 in his chief examination had stated as follows:-

> "For immovable property, the Manager have to see the original title deeds and be prima facie satisfied, he has to interview the person who had given the documents as collateral security. The Manager can himself or depute another person and inspect the place of property. They should inspect the property along with the owner and they can take the valuer, if possible. We also call for the latest tax paid receipt, EB receipt and also we make local enquiry, verify the ration card and ascertain whether the property belongs to the

> person who offers the same as collateral security. The Manager or the officer who makes the verification should submit his report about verification in a prescribed form 'Form No.337' and if the power is within the discritionery limits, the Manager can sanction the limits and if it is beyond the powers, it has to be forwarded to the R.O., The Manager should obtain the opinion about the title deeds from the Panel Lawyer. The branch will forward the title deeds to the panel lawyer direct the borrower to approach the panel lawyer and obtain the legal opinion. The panel advocate should verify the genuineness of the title deeds and also verify whether there is any encumbrance ever the property and also see the chitta adangal, etc. The property should be valued by an Engineer / approved valuer of the Bank. He has to make personal inspection of the property and make local enquiry regarding the ownership of the property and do his valuation on the basis of the guidelines fixed by the concerned Sub Registrar Office."

37. The witness had very clearly spoken about the duties and responsibilities of the Bank Manager, the Panel lawyer and the Panel valuer. In this case, A-1 is the concerned Branch Manager and A2 was Assistant Manager in Advances Department. After analysing the evidence on record, the trial Judge had acquitted both A-1 and A-2 of all charges. Prosecution had not filed any appeal against the acquittal of A-1 and A-2. Even though the names of the panel of lawyer and the panel valuer were found in the First Information Report as accused, for reasons best known, the Investigating Officer had dropped them as accused in the final report. Had the steps stated PW-2 been taken by A-1, A-2 and the Panel lawyer and Panel valuers, then it would have been found out even before the credit amount was sanctioned that the documents produced were false and fabricated. They did not verify the documents or the lands. I agree that this would not brush away the fact that the documents produced were false and fabricated. The prosecution has established that fact. However, the prosecution has not established the fact that it was the present appellant, who had produced the documents. He was only a mandate holder. He was not a partner of M/s. Sri Susila Traders. He would not stand to gain personally by the increase in cash credit facility. Ex.P-25 and Ex.P-67 clearly show that it was K.G.Narasimhan and K.Ramadoss, who had signed the forms/letters forwarding the documents. The exhibits speak clearly. They do not even whisper about the role of the appellant/A3.

38. In Black's Law Dictionary, tenth edition, the word 'Mandate' had been defined as follows:-

> "....... A written command given by a principal to an agent; specifically a commission or contract by which one person [the mandator] requests someone (the mandatoary) to perform some service gratuitously, the commission becoming effective when the mandatary agrees."

39. It had also been defined as follows:-

> "A contract by which one person, the principal, confers authority on another person, the mandatary, to transact one or more affairs for the principal."

40. It is clear that a mandate holder either acts gratiously or on commission. In this case, the terms of the mandate had not been produced by the prosecution. The appellant/A-3 is not a partner of M/s. Sri Susila Traders. He cannot gain from any profits earned. He would not be put to loss if any loss is suffered by the Firm. He is only a representative. He has no direct role officially in the partnership Firm. He is not answerable if any suit is brought against the partnership firm. Therefore, the charge of the prosecution that A-3 made unlawful gain has to be rejected.

41. In (2009) 8 SCC 751 [Md. Ibrahim & Ors. Vs. State of Bihar & Anr.], the Hon'ble Supreme Court had held as follows:-

> "11. The term "forgery" used in these two sections is defined in Section 463. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery.
>
> 12. Section 464 defining "making a false document" is extracted below:
>
> "464. Making a false document.—A person is said to make a false document or false electronic record—
>
> First.—Who dishonestly or fraudulently—

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or a part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1.—A man's signature of his own name may amount to forgery.

Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

[Note.— The words 'digital signature' wherever they occur were substituted by the words 'electronic signature' by Amendment Act 10 of 2009.]"

13. The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

14. An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a "false document", if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses.

15. The sale deeds executed by the first appellant, clearly and obviously do not fall under the second and third categories of "false documents". It therefore remains to be

seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of the complainant's land (and that Accused 2 to 5 as the purchaser, witness, scribe and stamp vendor, colluded with the first accused in execution and registration of the said sale deeds) would bring the case under the first category.

16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of “false documents”, it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.

18. Let us now examine whether the ingredients of an offence of cheating are made

out. The essential ingredients of the offence of "cheating" are as follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

19. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived

(i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the

retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.

22. As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 of the Code.

23. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is, the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint.

24. The term "fraud" is not defined in the Code. The dictionary definition of "fraud" is "deliberate deception, treachery or cheating intended to gain advantage". Section 17 of the Contract Act, 1872 defines "fraud" with reference to a party to a contract.

25. In Vimla (Dr.) v. Delhi Admn. [AIR 1963 SC 1572] this Court explained the meaning of the expression "defraud" thus: (AIR pp. 1576-77, para 14)

"14. … the expression 'defraud' involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied."

The above definition was in essence reiterated in State of U.P. v. Ranjit Singh [(1999) 2 SCC 617 : 1999 SCC (Cri) 293] .

26. The Penal Code however defines "fraudulently", an adjective form of the word "fraud" in Section 25, as follows:

"25. 'Fraudulently'.—A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise."

27. The term "fraudulently" is mostly used with the term "dishonestly" which is defined in Section 24 as follows:

"24. 'Dishonestly'.—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing 'dishonestly'."

28 To "defraud" or do something fraudulently is not by itself made an offence under the Penal Code, but various acts when done fraudulently (or fraudulently and dishonestly) are made offences. These include:

(i) Fraudulent removal or concealment of property (Sections 206, 421 and 424).

(ii) Fraudulent claim to property to prevent seizure (Section 207).

(iii) Fraudulent suffering or obtaining a decree (Sections 208 and 210).

(iv) Fraudulent possession/delivery of counterfeit coin (Sections 239, 240, 242 and 243).

(v) Fraudulent alteration/diminishing weight of coin (Sections 246 to 253).

(vi) Fraudulent acts relating to stamps (Sections 255 to 261).

(vii) Fraudulent use of false instrument/weight/measure (Sections 264 to 266).

(viii) Cheating (Sections 415 to 420).

(ix) Fraudulent prevention of debt being available to creditors (Section 422).

(x) Fraudulent execution of deed of transfer containing false statement of consideration (Section 423).

(xi) Forgery making or executing a false document (Sections 463 to 471 and 474).

(xii) Fraudulent cancellation/destruction of valuable security, etc. (Section 477).

(xiii) Fraudulently going through marriage ceremony (Section 496).

It follows therefore that by merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to be an offence under the Code or other law."

42. In (2018) 7 SCC 581 [Sheila Sebastian Vs. R.Jawaharaj & Anr.], the Hon'ble Supreme Court had held as follows:-

"22. In Mohd. Ibrahim [Mohd. Ibrahim v. State of Bihar, (2009) 8 SCC 751 : (2009) 3 SCC (Cri) 929] , this Court had the occasion to examine forgery of a document purporting to be a valuable security (Section 467 IPC) and using of forged document as genuine (Section 471 IPC). While considering the basic ingredients of both the offences, this Court observed that to attract the offence of forgery as defined under Section 463 IPC depends upon creation of a document as defined under Section 464 IPC. It is further observed that mere execution of a sale deed by claiming that property being sold was executant's property, did not amount to commission of offences punishable under Sections 467 and 471 IPC even if title of property did not vest in the executant.

23. The Court in Mohd. Ibrahim [Mohd. Ibrahim v. State of Bihar, (2009) 8 SCC 751 : (2009) 3 SCC (Cri) 929] observed that: (SCC p. 757, paras 16-17)

"16. … There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there

is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.”

24. In Mir Nagvi Askari v. CBI [Mir Nagvi Askari v. CBI, (2009) 15 SCC 643 : (2010) 2 SCC (Cri) 718] , this Court, after analysing the facts of that case, came to observe as follows: (SCC p. 687, para 164)

“164. A person is said to make a false document or record if he satisfies one of the three conditions as noticed hereinbefore and provided for under the said section. The first condition being that the document has been falsified with the intention of causing it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of someone else. The second criteria of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore, in our opinion the second criteria of the said section is also not applicable to the present case. The third and final condition of Section 464 deals with a document, signed by a person who due to his mental capacity does not know the contents of the documents which were made i.e. because of intoxication or unsoundness of mind, etc. Such is also not the case before us. Indisputably therefore the accused before us could not have been convicted with the making of a false document.”

25. Keeping in view the strict interpretation of penal statute i.e. referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be

made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.

26. The definition of "false document" is a part of the definition of "forgery". Both must be read together. "Forgery" and "fraud" are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. In the case in hand, there is no finding recorded by the trial court that the respondents have made any false document or part of the document/record to execute mortgage deed under the guise of that "false document". Hence, neither Respondent 1 nor Respondent 2 can be held as makers of the forged documents. It is the imposter who can be said to have made the false document by committing forgery. In such an event the trial court as well as the appellate court misguided themselves by convicting the accused. Therefore, the High Court has rightly acquitted the accused based on the settled legal position and we find no reason to interfere with the same. "

43. The ratio laid down the above Judgments is very clear. It had been held that to attract the offences of forgery as defined under Section 467 IPC, there must be creation of a document. Further execution of a sale deed claiming that a property being sold was the executant's property would not amount to commission of offence punishable under Sections 467 and 471 IPC even if title of property did not vest in the executant.

44. In the instant case, in the first place, there is no evidence that A-3, the appellant herein produced the documents before A-1 for sanction of cash credit limits. The first set of documents had been produced by a document signed by K.G.Narasimhan under Ex.P-25 and the second set of documents had been produced under a document signed by P.Ramadoss under Ex.P-67. The signature of the appellant/A-3 is not found in the said documents. The efforts of the prosecution to prosecute A-4 had failed since the evidence produced did not pass the scrutiny of the trial Judge. There is thus no evidence that the appellant herein had created forgery of the said documents. There is

absolutely no evidence to show that the offence of cheating had been made out. The ingredients of the charges against the appellant under Section 467 read with 471 and under Section 420 of IPC under which provisions the appellant had been convicted are certainly not made out. The deposition of the witnesses, who speak that the documents produced are not true documents would not be sufficient to convict the present appellant under Section 467 read with 471 or under Section 420 IPC. It must be established that the appellant herein had prepared those documents and knowingly after such preparation, produced the said documents to the bank authorities. In the absence of such evidence, the conviction against the appellant cannot stand.

45. In Bhagwan Singh and others Vs. State of Madhya Pradesh, (2002) 4 SCC 85, the Hon'ble Supreme Court held as follows:-

> "the golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favorable to the accused should be adopted."

46. In view of the above reasons, I have no hesitation in reversing the findings of the learned trial Judge convicting the present appellant/A-3 for commission of offence under Section 467 read with 471 IPC and under Section 420 IPC. Accordingly, this Criminal Appeal is allowed. The conviction is set aside. The sentences are set aside. The fine amounts if any paid are directed to be refunded back to the appellant/A-3. The Bail bond executed are directed to be forefeited.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vsg

To

1.The XI Additional City Civil Sessions Judge,
(Special Judge for CBI Cases)
Chennai.

2.The Inspector of Police,
SPE: CBI: ACB,
(RC/11(a)/2003)
Chennai.

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

+1cc to M/s.E.J.Ayyappan, Advocate Sr.50735
+1cc to M/s.K.Srinivasan, Advocate Sr.50761

Crl.A.No. 424 of 2011

sj[co]
srg 18/10/2021