BAIL SLIP

1.N.S.Gnanaeswaran, S/o.Late.N.S.Subburam, Male, aged about 52 years/ 2017(Accused No 2), 2. N.S.Madanlal, S/o.N.S.Subburam, Male, aged about 39 years/ 2017(Accused No.4), 3.R.R.Sathyasekaran,S/o. Late.R.N.Rangachary, Male, aged about 71 years/2017(Accused No 3), and 4. S.Selvaraj, S/o. N. Subbareddy, Male ,aged about 62 years /2017 (Accused No 1) were released on bail vide court Order dated 07.08.2017 made in CRL MP(MD).No.5888, 5908 & 5909 and 4673 of 2017 in CRL A(MD).Nos. 154 and 166 of 2017 respectively.

BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT
Reserved on : 23.12.2020
Pronounced on : 29.03.2021
CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
Crl A(MD)Nos.154 & 166 of 2017

1.N.S.Gnanaeswaran

2.R.R.Sathiyasekaran

3.N.S.Madanlal ... Petitioners/Appellants/Accused Nos. 2 to 4 in Crl A(MD)No.154 of 2017

4.S.Selvaraj ... Petitioner/Appellant/Accused No 1 in Crl A(MD)No.166 of 2017

Vs.

State,
rep.by the Inspector of Police,
SPE : CBI : ACB : Chennai,
In Rc.No.22(A) of 2005 ... Respondent / Complainant

Prayer : These Criminal Appeals are filed under Section 374 (2) of Criminal Procedure Code, to call for the records of the impugned judgment in C.C No.9 of 2006 dated 19.05.2017 on the file of the learned 2nd Additional District Court for CBI Cases, Madurai and acquit the appellants from all the charges.

For Appellants in Crl A(MD)No.154 of 2017 : Mr.Y.Krishnan
For Appellant in Crl A(MD)No.166 of 2017 : Mr.K.Govindarajan for Ms.M.Shobana
For Respondent : Ms.L.Victoria Gowri, Assistant Solicitor General of India

COMMON JUDGMENT

These two criminal appeals are directed against the judgment dated 19.05.2017 made in C.C No.9 of 2006 on the file of the II Additional District Judge for CBI Cases, Madurai. By the impugned judgment, the court below convicted the appellants as follows :

Appellant's name and rank	Charge	Punishment given by the court below
S.Selvaraj / Accused No.1	Under Section 120-B – r/w.420 IPC	Seven years Rigorous Imprisonment and fine of Rs.50,000/-, in default to pay the fine, 3 months Simple Imprisonment.
	Under Section 120-B r/w. Section 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988	One year Rigorous Imprisonment and fine of Rs.25,000/-, in default to pay the fine, 3 months Simple Imprisonment.
	Section 13(2) r/w. 13 (1)(d) of the Prevention of Corruption Act, 1988	One year Rigorous Imprisonment and fine of Rs.25,000/-, in default to pay the fine, 3 months Simple Imprisonment.
N.S.Gnaneswaran/ 2nd Accused	Under Section 120-B – r/w.420 IPC	Seven years Rigorous Imprisonment and fine of Rs.50,000/-, in default to pay the fine, 3 months Simple Imprisonment.
R.R.Sathyasekaran/ 3rd Accused	Section 120-B r/w. 420 IPC	Five years Rigorous Imprisonment and fine of Rs.25,000/-, in default to pay the fine, 3 months Simple Imprisonment.
N.S.Madanlal / 4th Accused	under Section 120-B – r/w.420 IPC	Seven years Rigorous Imprisonment and fine of Rs.50,000/-, in default to pay the fine, 3 months Simple Imprisonment.
	Section 120-B r/w.419 IPC	Three years Rigorous Imprisonment and fine of Rs.20,000/-, in default to pay the fine, 3 months Simple Imprisonment.

2.The case of the prosecution is as under :

Based on Ex.P86 complaint, Ex.P121 FIR was registered by the Inspector of Police, SPE : CBI : ACB : Chennai, on 27.04.2005 in RC MA1 No.22A of 2005 for the offences under Sections 120 B r/w.420 IPC, Section 13(2) r/w.13(1)(d) of the Prevention of Corruption Act, 1988. The Senior Regional Manager, Punjab National Bank, Regional Office, Kailasapuram, Trichy gave the said complaint alleging that their branch office at West Masi Street, Madurai had sanctioned cash credit facilities in favour of Sri Durga Textiles and Mangalam Textiles against hypothecation of textile goods in June, 2003. Subsequently, the accounts turned into non-performing assets. Physical verification of the borrowers' premises indicated that the loans have been taken in the name of fictitious entities and that the collateral securities were overvalued and that the bank was finding it difficult to recover the outstanding amounts. There was collusion between the borrowers and the bank officials. It was also alleged that one Gnanaeswaran/A2 had played a major role in the transactions and that he was the beneficiary.

3.After registering the criminal case, investigation was undertaken. Witnesses were examined. Disputed signatures were sent for expert opinion. Finally, two final reports were filed. The learned Special Judge took cognizance of the case against the Mangalam Textiles in C.C No.8 of 2006 and the case against Durga Textiles was taken on file in C.C No.9 of 2006. Summons were issued to the accused. On their appearance, copies were served. They were questioned as regards their guilt. The accused denied their guilt and claimed to be tried. The prosecution examined as many as 36 witnesses and marked Exs.P1 to P121. On the side of the accused, no witnesses were examined and no exhibits were marked. In C.C No.9 of 2006, there were as many as five accused. The fifth accused N.S.Sarangan died and the charge against him abated.

4.The learned trial Judge after a detailed consideration of the evidence on record, found the accused and sentenced them as mentioned above. The third and fourth accused guilty were however acquitted in respect of the charge under the Prevention of Corruption Act. Questioning the same, these appeals have been filed. A1 Selvaraj was the Branch Manager who sanctioned the loan. He is the appellant in Crl A(MD)No.166 of 2017. The other accused have filed Crl A(MD)No.154 of 2017.

5.Heard the learned counsel for A1 and the learned Senior Counsel appearing for A2 to A4.

6.The learned Senior Counsel submitted that a careful reading of the entire evidence on record would clearly show that the prosecution had miserably failed to establish its case against the accused and that the court below had erroneously found them guilty. He wanted this Court to set aside the impugned judgment, allow this appeal and acquit the accused.

7.Per contra, the learned Assistant Solicitor General of India appearing for CBI submitted that the impugned judgment does not call for any interference and wanted this Court to dismiss these appeals.

8.I carefully considered the rival contentions and went through the evidence on record. A1 Selvaraj was working as Branch Manager of Punjab National Bank, West Masi Street Branch, Madurai from 31.01.2003 to 27.10.2003. A3 Sathyasekaran opened current account in the said branch in the name of Durga Textiles on 14.05.2003. The address of the firm was shown as Door No.46, Mahal 4th Street, Madurai. The case of the prosecution is that Durga Textiles was not actually running and the property bearing Dr.No.14-B/3, Srinivasaperumal Koil Street, Madurai was overvalued and shown as collateral security for securing cash credit facilities of a sum of Rs.8.00 lacs. A3 and A4 diverted the proceeds of C.C facility and to enable such diversion, A3 signed blank cheques of Durga Textiles and handed over the same to A4 and thus, caused loss of Rs.9.58 lakhs to Punjab National Bank. The accused thus wrongfully enriched themselves in the process. In support of the aforesaid charges, the prosecution examined a number of witnesses.

9.PW.1 Jegat Ram was working as the General Manager, at the time of deposing. He was the Zonal Manager during 2006. He had the authority to remove the Branch Manager from service. He issued Ex.P2 sanction order. PW.2 Vivekanandan was working as the Deputy Commissioner in Commercial Taxes Department during the relevant time and he deposed that Durga Textiles had not registered themselves with the Commercial Taxes Department and that it was a non-existent firm. PW.3 Suresh was a registered valuer and he deposed that the property offered as collateral security was worth only about Rs.4,46,215/-. His valuation report was marked as Ex.P4. PW.4 M.Chandrasekharan had succeeded A1 Selvaraj as Branch Manager. He deposed that when he visited the premises of Durga Textiles along with loan officer Mr.Gopalakrishnan in March 2004, the proprietor was not available and he was asked to come to the unit at 5.00 PM. But when he again went at 5.00 PM, the door was locked. During the second inspection in May 2004, again, they found the premises locked. PW.5 Singaravadivelu was working in the audit unit of the bank and he gave Ex.P5 report to the effect that the loan application was not properly processed and that the collateral security was overvalued. PW.6 Ehanathan is a weaver and he deposed that after encashing Ex.P6 and Ex.P7 cheques, he handed over the amount to A4 Madhanlal. PW.7 Venkatakumar was a postman and when he went to deliver a registered post to Durga Textiles, he found that there was no such addressee and hence, he made an endorsement "left" on the back side of the returned cover. PW.8 Sathappan is an auditor and he stated that he gave Ex.P9 project report and Ex.P10 profit and loss account for Durga Textile at the request of A1 Selvaraj. PW.9 Sarojini is the owner of the property bearing Dr.No.23-B New No.46, Mahal 4th Street and she had entered into a rental agreement with A3 Sathayasekharan. A3 was there for four months and he defaulted in payment of rent and he had not done any business. When PW.9 demanded that A3 should vacate the house, he vacated.

10.PW.10 R.G.Sankar Ganesh identified that Ex.P12 legal opinion was given by his late father Shri.Gurusamy, Advocate. He stated that A3, A2 and one Ramamoorthy came to his father seeking legal opinion for the mortgaged property in favour of Punjab National Bank and after perusing the same, his father gave the opinion on 23.05.2003. PW.11 V.Gopalakrishnan joined the Branch as loan officer on 05.03.2004. He deposed that when he inspected the premises of Durga Textiles in March 2004, he found the door locked. Name board was available. When he visited the premises later, he again found the premises locked.

11.P.W.12 Thiru.Chandran identified his signatures in Ex.P38 and Ex.P42 cheques. He deposed that Ex.P45 loan application was sanctioned only by A1. PW.13 S.Indhira and PW.14 S.Govindharajan were working as Clerk and Cashier and they deposed about encashment of some of the cheques. They also deposed that the singatures of the receivers were obtained on the back side of the cheques. PW.15 M.S.Prakash stated that he signed in Ex.P52 account opening form of Durga Textiles and that he had introduced on the request of A1. PW.16 S.Krishnamoorthy was working as the Chief Manager, Vigilance during the period from 2005-07 and he deposed regarding the standard procedure to be adopted in such cases. PW.17 Maharajan was working as computer operator and he deposed regarding the passing of cheques Ex.P13, Exs.P15 to Ex.P23 to Ex.P31, Exs.P34 to P42 and Ex.P51.

12.PW.18 Varalakshmi was also a bank employee and she identified her initials in some of the cheques. PW.20 Mohanram and PW.21 Balaji are recipients of the cheques issued to Durga Textiles. PW.23 R.Sundaram was a Corporation employee and he deposed that the property in question was used only for residential purposes. PW.24 K.M.Mohan Raju was the Senior Manager and he had directed his subordinates to undertake inspection of the premises. He also deposed regarding the standard procedures to be adopted in the matter of sanction of cash credit facilities. PW.25 Rammohan signed Ex.P86 complaint and filed the same before the Superintendent of Police, CBI, Chennai. PW.26 N.B.R.Raghavan deposed that A3 Sathyasekharan was his employee in the Chit business run by him. PW.31 was a handwriting expert and he identified regarding the matching of signatures found in the admitted documents and questioned documents. PW.30 M.N.Anathaswamy turned hostile. PW.33 G.Pitchaimani also turned hostile. PW.34 P.K.Nagarajan also turned hostile. PW.35 Jamuna admitted that Ex.P120 Guarantor form was signed by her. She also identified A2 Gnanaeaswaran, elder brother of A4 Madanlal. PW.36 E.P.Suresh Kumar was the Investigation Officer who filed the final report.

13.The learned Trial Judge arrived at a finding that Durga Textiles is a fictitious entity. The basis for such a finding was the testimony of PW.2, the official from Commercial Taxes Department. Ex.P3 is the report submitted by him and he had mentioned that Durga Textiles did not register themselves as a dealer. When during March and May 2004, the loan officers of the bank visited the premises, Durga Textiles was locked. No stock register, invoices, bill books or sale register were shown to the inspecting officials. The landlady PW.9 also deposed that to her knowledge, A3 never did any business. PW.23/R.Sundaram, the corporation employee testified that the premises was not shown as used for business purposes in the property tax register maintained by the corporation. PW.8 S.Sathappan the auditor had stated that he prepared the project report for Durga Textiles at the instance of A1. Though the property was valued only at Rs.4,46,215/-, as per the testimony of PW.3 J.Suresh, the cash credit facility to the tune of Rs.8.00 lacs was sanctioned by A1. A2 and A4 obtained blank cheques from A3 and through such self cheques, obtained cash from the bank. PW.6 S.Ehanathan had spoken about the involvement of the fourth Accused Madanlal. PW.21 K.Balaji had testified that one Pitchaimani had taken loan from him and towards discharge of the same, Ex.P79 cheque belonging to Durga Textiles was given to him and that is how the loan liability to Pitchaimani was cleared. PW.21 had deposed that he did not have any business transaction with Durga Textiles. Thus, A3 had lent his name to open the account in the name of Durga Textiles so as to favour A2, A4 and A5. The handwriting expert had also confirmed the handwriting of the fourth accused in the encashed cheques.

14.Therefore, the court below came to the conclusion that there was a conspiracy among the accused so as to wrongfully enrich themselves and cause wrongful loss to the bank. Now, the question that arises for my consideration is as to whether this reasoning of the court below can hold good in the light of the contentions advanced by the learned Senior Counsel appearing for the appellants.

15.The learned Senior Counsel pointed out that it has not been shown anywhere that A1 Selvaraj obtained any unlawful pecuniary advantage himself. After receiving the loan application, A1 Selvaraj did not straightaway sanction cash credit facilities on his own. One Balakumar loan officer conducted spot inspection. Entries were made in the drawing power register on 18.06.2003. The value of stock available for Durga Textiles was

Rs.12,43,375/-. In view of such positive recommendation of Balakumar, the loan officer, A1 sanctioned the cash credit facilities. The role played by Balakumar and entries made in the bank records are evident from the testimonies of PW.4, PW.5 and PW.11. When the stock value was more than Rs.12.00 lacs, A1 was justified in sanctioning the cash credit facilities to the tune of Rs.8.00 lacs. Interestingly, Balakumar was neither arraigned as accused nor cited as witness. No explanation is forthcoming from the prosecution for this omission. Balakumar did not play any fringe role. He was the central character in the matter of processing the loan application. Therefore, I have to necessarily take an adverse view against the prosecution in this regard.

16.Durga Textiles could not have been a fictitious firm. When PW.4 visited Durga Textiles in 2004, he did see some Textile stock, but he would estimate its value at about 2 to 3 lacks. When PW.5 inspected the premises on 15.09.2003/17.09.2003, stocks were available. PW.5 had admitted in his cross examination that A3 had eight years of experience in the field. PW.11 also admitted that when on 11.07.2003, Balakumar inspected the premises, he found that stocks to the tune of Rs.11,72,750/- were available. The cash credit facilities were sanctioned based on Ex.P9 Project Report, Ex.10 Balance Sheet and Ex.P12 legal opinion. It can be seen from the above that only after following the usual procedures, A1 had sanctioned the C.C facility. The court below has taken adverse view of the conduct of A1 because cash credit facilities were allowed to be operated even before the expiry of six months from the date of opening of account. But, PW.24 who was the Chief Manager admitted that the Manager may at his discretion sanction cash credit facility even before the expiry of the six months period.

17.The proof of pudding is in the eating. The whole case projected by the prosecution was that A3 was an ordinary employee in a chit fund and that his name was used for fraudulently obtaining a sum of Rs.8.00 lacs from the bank. The prosecution alleged that bogus security was offered and that is how, the bank has been put to loss. After the account turned NPA, the bank filed T.A No.329 of 2007 against Sathyasekaran and his guarantor Jamuna before the Debts Recovery Tribunal at Madurai. Sathyasekaran had been calling upon the bank right from 2008 onwards that he was ready to settle the amount and wanted the bank to come up with some solution. As early as on 07.02.2012, the borrower paid a sum of Rs.17.00 lacks and the bank also had issued letter dated 09.05.2012 stating that there are no outstanding dues against the loan account of Durga Textiles.

18.The learned counsel for the borrower would state that if they did not settle the dues, the collateral security offered by them which was highly valuable would be sold for a song. Merely because the premises in which Durga Textiles was being run was not assessed to property tax as a commercial building, that cannot by itself lead to any adverse inference against the accused. It is well known that if a property is classified as commercial, it will be levied at a higher rate of tax. The owners are usually reluctant to inform the local body, even if the premises have given for rent for business purposes. Therefore, from the testimony of PW.23/Corporation official, the court below could not have come to an adverse inference against the appellants. Likewise, failure to register as a dealer with the Commercial Taxes Department can be a cause of action for initiating prosecution against the assessee. But that cannot be a ground for coming to the conclusion that no business was run in the name of Durga Textiles. There is no logical connection between the initial premise and the eventual conclusion. While every business entity must register themselves with the taxing authority, the non-reflection of the name of the business entity in the records of the taxing authority cannot by itself lead to the conclusion that there was no such business. A person earning income beyond a prescribed level must pay income tax. In order to evade payment of income tax, he may not have filed his returns or registered himself as an assessee. Merely because, he does not figure as assessee in the records cannot lead to the conclusion that he was not earning taxable income. The same logic and reasoning can be applied in the present case also.

19.It is brought out from the testimony of Jamuna, the guarantor that A2 to A5 are closely related to each other. The business association among A2 to A5 cannot by itself lead to the conclusion that there was criminal conspiracy amongst themselves. It has been substantiated that A1 did follow the standard procedures before sanctioning cash credit facility. The Branch Manager is always on the look out for expanding his business. It is not enough if in a bank, there are only depositors. On the deposits collected by the bank, there is liability to pay interest. Only if there are matching number of loan accounts, the bank will be able to earn profit. There is nothing wrong in A1 having adopted a pro-active approach for expanding the business of the bank.

20.I am also bound to take note of the subsequent developments. The subsequent developments clearly show that the loan account was fully settled and the bank itself had certified that there are no dues from Durga Textiles and that the account has been closed. While the cash credit facility was for Rs.8.00 lacs, the account was closed after accepting a sum of Rs.17.00 lacs. This shows that the collateral security offered by the borrower was sound. The legal opinion as well as the valuation report stand vindicated by this development. It has not been shown that A1 received any pecuniary advantage for himself. These relevant facts were not taken note of by the court below. The learned Trial Judge had taken the case projected by the prosecution as gospel truth. The court below erred in fastening the guilt on A1 Selvaraj. The reasons which impel me to disbelieve the case of the prosecution as regards A1 would equally hold good for holding in favour of A2 to A4 also. The prosecution failed to establish its case against the accused. The impugned judgment is set aside. The appellants are acquitted. The appeals stand allowed. The bail bonds executed by the appellants if any stand cancelled. The fine amount if any paid by them shall be refunded.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The II Additional District Judge for CBI Cases, Madurai.

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

3.The Superintendent, Central Prison, Madurai.

4.The Special Public Prosecutes for CBI CASES
Madurai Bench of Madras High Court, Madurai

Copy to
The Section Officer,Criminal Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

+1 CC to M/s.D.SELVANAYGAM, Advocate (SR-14232[F] dated 29/03/2021)

+1CC to M/s. Shobana, Advocate SR.No.14235 dated 29/03/2021

Crl A(MD)Nos.154 & 166 of 2017
29.03.2021

NS(CO)
KB(30.04.2021) 9P 9C