BAIL SLIP

The Appellant/A2 namely N.S.Gnaneswaran, S/o.N.S.Subburam in Crl A(MD)No.155 of 2017, and the Appellant/A1 namely S.Selvaraj, Son of N.Subbareddy with Crl A(D)No.165 of 2017 were directed to be released on bail vide order of this Hon'ble Court dated 07.08.2017 made in Crl MP(MD)Nos.5889 of 2017 in Crl A(MD)No.155 of 2017 and Crl MP(MD)No.4672 of 2017 in Crl A(MD)No.165 of 2017.

The Appellant / A3 namely C.B. Ramamurthy, Son of Balaiyaar in Crl A(MD)No.130 of 2019 was directed to be released on bail vide order dated 23.04.2019 made in Crl MP(MD)No.2986 of 2019 in Crl A (MD)No.130 of 2019.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)Nos.155, 165 of 2017
and Cr.A.(MD)No.130 of 2019

N.S.Gnanaeswaran ... Appellant/A2 in Crl.A.(MD)No.155 of 2017

S.Selvaraj ... Appellant/A1 in Crl.A.(MD)No.165 of 2017

C.B.Ramamurthy ... Appellant/A3 in Crl.A.(MD)No.130 of 2019

Vs.

State through represented by
The Inspector of Police,
SPE.CBI.ACB: Chennai,
In Rc.No.22(A)/2015 .. Respondent in all Crl.As.

Common Prayer: Criminal Appeals filed under Section 374(2) of Cr.P.C., to call for the records and set aside the Judgment of C.C.No.8 of 2006 dated 19.05.2017 on the file of the learned 2nd Additional District Court, for CBI Case, Madurai and acquit the appellant/accused herein from all the charges.

For A1	:	Mr.K.Govindarajan for Ms.Shobana
For A2	:	Mr.V.Karthick Senior Counsel for M/s.D.Selvanayagam
For A3	:	Mr.Y.Krishnan
For Respondent (in both appeals)	:	Mrs.L.Victoria Gowri Assistant Solicitor General for CBI cases (in all Crl.As.)

COMMON JUDGMENT

These Criminal Appeals are directed against the Judgment dated 19.05.2017 made in C.C.No.8 of 2006 on the file of the second Additional District Court, for CBI cases, Madurai. By the impugned Judgment, the accused were convicted and sentenced as follows:-

Accused	Penal Provision	Punishment
A1	Under Section 120—B r/w 420 IPC	7 years RI and Fine of Rs.50,000/- in default simple imprisonment for three months
	Under Section 120-B IPC r/w 13(2) r/w 13 (1)(d) of PC Act, 1988	1 year RI and fine of Rs.25,000/- in default simple imprisonment for 3 months
	Under Section 13(2) r/w 13(1)(d) of PC Act, 1988	1 year RI and fine of Rs.25,000/- in default simple imprisonment for 3 months
A2	Under Section 120-B r/w 420 of IPC	7 years RI and fine of Rs.50,000/- in default, simple imprisonment for three months
	Under Section 419 of IPC	3 years RI and fine of RS.20,000/- in default simple imprisonment for 3 months
A3	Under Section 120-B r/w 420 of IPC	5 years RI and fine of Rs.25,000/- in default simple imprisonment for three months.

2.The prosecution case is as under:-

Based on Ex.P.68-complaint lodged by the Senior Regional Manager, Punjab National Bank, Kailasapuram, dated 23.03.2005, Ex.P.87-FIR in RC MA 1 2005 A 0022 of 2005 was registered on 27.04.2005 by the respondent for the offences under Sections 120B r/w 420 of IPC and under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. The substance of the complaint was that the branch office of Punjab National Bank at west masi madurai had sanctioned cash credit facility for Durga Textiles and Mangalam Textiles against hypothecation of stock of handloom, silk sarees, mill textiles etc., in June 2003. It came to be known that they were bogus proprietary concerns and no business activity had taken place in the addresses given by them. They were created for obtaining bank funds by fraudulent means. It was also revealed that Thiru.N.S.Ganeshwaran resident of No.7, Ismailpuram, 19th Street, Madurai, was in collusion with the so called proprietors of these concerns and that he was one of the beneficiaries. Since the hypothecated goods were not available and in view of the over valuation of the properties held as collateral security, the balance outstanding in the account to the tune of Rs.26.82 lakh could not be recovered. Since the proprietors of these two concerns conspired with the bank officials and N.S.Gnaneswaran, it was requested that prosecution should be initiated against them. Following the registration of the criminal case, investigation was conducted. Witnesses were examined. Expert opinion was obtained regarding some of the signatures and finally, two final reports came to be filed. The learned Special Judge took cognizance of the same. C.C.No.8 of 2006 pertained to Mangalam textiles, while C.C.No.9 of 2006 pertained to Durga Textiles. Summons were issued to the accused on their entering appearance. Copies were served on them and they were questioned as regards their guilt. The accused pleaded not guilty and claimed to be tried. The prosecution examined as many as 28 witnesses P.W.1 to P.W.28 and marked Ex.P.1 to Ex.P.87. On the side of the accused, two witnesses were examined and Ex.D.1 to Ex.D.3 were marked. The learned trial Judge, after a consideration of the evidence on record, found the accused guilty and sentenced them as mentioned above. Questioning the same, these criminal appeals have been filed.

3.The learned Senior Counsel and the other counsel appearing for the appellants / accused submitted that the impugned Judgment ought to be reversed and wanted this Court to acquit the appellants because the prosecution has miserably failed to establish its case against the appellants.

4.Per contra, the learned Assistant Solicitor General appearing for CBI submitted that the impugned Judgment does not call for any interference.

5.The learned counsel on either side filed their written submissions also. I carefully considered the rival contentions and went through the evidence on record.

6.A1-Selvaraj was the Branch Manager of West Masi Street Branch of Punjab National Bank Limited Madurai till 31.01.2003 to 27.10.2003. He sanctioned cash credit loan facility to Mangalam Textiles to the tune of Rs.15,00,000/- on 18.06.2003. A3-C.B.Rama

Murthy was the proprietor of Mangalam Textiles. N.S.Gnaneswaran (A2) is said to be the kingpin who manipulated the entire process. P.W.1-Jagat Ram was working as General Manager and he granted sanction to prosecute A1-Selvaraj vide Ex.P.2 sanction order. P.W.2-Vivekanandan was employed as Deputy Commissioner of Commercial Taxes, Madurai and he issued Ex.P.3 letter to the investigation officer stating that Mangalam Textiles and Durga Textiles were not existing firms. P.W.3-Suresh was a registered valuer and he issued Ex.P.4-valuation report indicating that the value of the collateral security was Rs.2,20,970/-. P.W.4-Chandrasekaran was a bank employee and he deposed that when he visited the address given for Mangalam Textiles, A3-Ramamoorthy was not available. His accountant showed some stocks stored in the Almirah but he was not able to show the stock register, sales book etc., When he visited the place in the last week of March 2004, he found that the premises were locked. When another visit was made in May 2004, even the name board was not available and he was informed by the building owner that the business has been wound up and that A3-Ramamoorthy had vacated the building. P.W.5-Singaravadivelu was employed in the audit wing of the Bank and his investigation revealed that cash credit facilities were sanctioned without adhering to the usual procedure. He submitted his report Ex.P5 to the superior officials. P.W.6-K.S.D.Kishorilal a local business man deposed that it was he who introduced A-3 and signed in the account opening form. P.W.7-R.Venkatakumar was a postal employee and he deposed that when he went to serve the registered post on Mangalam Textiles on 09.06.2005, the addressee was not available and therefore, he made the endorsement 'left' on the returned postal cover. It was marked as Ex.P6. P.W.8-K.Murugan- Civil Engineer, who inspected the collateral securities along with A2-Gnaneswaran on 02.06.2003, gave his valuation report vide Ex.P.7 and Ex.P.8 to the chartered engineer-Balasubramanian (P.W.9). P.W.9, on the strength of the reports given by P.W.8-Murugan, issued the valuation certificate Ex.-P.9 in respect of the collateral security. P.W.10-S.Gomathi Nayagam was working as Sub Registrar of Tallakulam and through him, Ex.P.11 to Ex.P.15 were marked. They contain the details pertaining to the transactions of Rajaram who owned the collateral security. P.W.11-Karthikeyan is the son of the building owner which had rented out in favour of Ramamoorthy for running the Mangalam Textiles. Ex.P.16 is the rent agreement deed. He deposed that Ramamoorthy committed default in the matter of payment and that, therefore, he was made to vacate. P.W.12-R.G.Shankar Ganesh is the son of Thiru.Gurusamy who had given legal opinion vide Ex.P.17 and Ex.P.18. P.W.13-Gopalakrishnan was the loan officer who joined in March 2004 and he held enquiries following the report of irregularities in the loan account of Mangalam Textiles and Durga Textiles. P.W.14-S.Chandran deposed that he knew A1-Selvaraj and that it was A1-Selvaraj who sanctioned the loan for Mangalam Textiles. The loan application was marked as Ex.P.19 and Ex.P.20 is the pay-in-slip. P.W.15-Indhira was working as clerk-cum-cashier in the bank and through her, Ex.P.21 to Ex.P.30 were marked. Ex.P.30 to Ex.P.32 are the cheques which were encashed by the receiver of the cheque amount across the counter. P.W.16-.S.B.Kesavan Nambi was the auditor who prepared Ex.P33 proposal. P.W.17-S.Krishnamoorthy was working as chief manger of vigilance, Punjab National Bank and through him, Ex.P.34 to Ex.P.38 were marked and he deposed regarding standard procedures to be followed regarding disbursement of loans and advances. P.W.18-K.Maharajan was also a bank employee and he deposed that Ex.P.39 to Ex.P.54 were encashed. P.W.19-. N.Varalakshmi deposed regarding encashment of cheques Ex.P55 to Ex.P.58. P.W.20-P.Nalladurai was the another bank employee. P.W.21-C.Muthumanickam was employed in the registration department and through him, Ex.P.60 and Ex.P.61 were marked. P.W.22-M.L.Rajaram deposed that A2-Gnaneswaran purchased his house, but no document was executed and that he signed on certain vouchers. He also deposed that he was threatened to sign the same. He claimed that he signed in Ex.P.23 guarantee agreement because of inducement by his brother Krishna Kumar. P.W.23-Poornachary was the land broker who had taken A2 to P.W.22. P.W.24-R.Sundaram was a corporation official. P.W.25-K.M.Mohan Raju is the bank official who succeeded A1-Selvaraj as branch manager and he directed his subordinates to conduct verification exercise because irregularities had by then came to light. P.W.26-K.Ram Mohan was working as Regional Manager in the National Bank, Trichy and it was he who lodged Ex.P.68 complaint. P.W.27 -R.Venugopala Rao was the forensic expert and he issued Ex.P.70 expert opinion. P.W.28-E.P.Suresh Kumar was the investigation officer and filed the final report on 26.09.2006.

7.The learned trial Judge gave a finding that A1-Selvaraj being a branch manager was under a bounden duty to make inspection prior to sanction of the loan as per the Rules and Regulation of the bank and that he had not done so. The Court below relied on the testimony of P.W.7-Venkatakumar-postal employee and P.W.24-corporation employee. While the postal employee deposed that when he went to deliver the registered post, the addressee was not present in the relevant address and that therefore, he made the endorsement 'left' on the returned cover. The Corporation employee deposed that if the building was used for business purpose, appropriate entries would have been incorporated in the property tax assessment register that the building was used for commercial or business purpose. In the the case on hand, the concerned building was not so categorised.

8.The Court below also noted that P.W.11-T.A.Karthikeyan through whom Ex.P.16 rental agreement was marked had clearly spoken about the role of A2-Gnaneswaran. When the rent was not paid and the landlord went to question the tenant, it was Gnaneswaran who was present in the premises. According to the Court below, link of A2-Gnaneswaran with A3-Ramamurthy is revealed by P.W.11. From the evidence of P.W.13-Gopalakrishnan, it could be discerned that when a visit was made in the second week of March 2004, the premises were locked and there was only the name board. The second inspection made in May 2004 revealed that even the board was not there and the unit was wound up. The current account was opened on 05.06.2003, while the credit cash facility was sanctioned on 18.06.2003. By May 2004, Mangalam Textiles vanished. P.W.2-Vivekanandan, Deputy Commissioner of Commercial Taxes also deposed that Mangalam Textiles had not registered itself. The Court below, after appreciating the aforesaid testimony, came to the conclusion that Mangalam textiles was a fictitious firm. The Court below also noted that the collateral securities had been over valued. The cheques issued for business transactions of Mangalam Textiles were misused by Gnaneswaran who had obtained the signatures of Rama moorthy in the blank cheques and he had withdrawn the entire cash up to the limit of the credit facilities in the names of various persons between 18.06.2003 to 30.06.2003. P.W.27-Venugopal Rao had testified that the specimen signatures of A2-Gnaneswaran in S.1 to S.21 were compared with the questioned writings and signatures in Ex.P.39 to Ex.P.57. It was established that the questioned writings are that of A2-Gnanaeswaran. It is from this the Court below inferred conspiracy among the accused. In other words, the reasoning of the Court below was that A1-Selvaraj had sanctioned the cash credit facility for Mangalam Textiles without following the standard norms and procedures. It turned out that Mangalam Textiles was a fictitious entity. Ramamoorthy-A3 was projected as proprietor for the same. The entire cash was allowed to be withdrawn through self cheques. The writings of Gnaneswaran are found on the said cheques. The collateral securities were clearly over valued. Therefore, the Court below came to the conclusion that the prosecution had established its case against the accused beyond reasonable doubt. Now the question that arises for my determination is whether the reasoning of the Court below can stand scrutiny.

9.It may be stated at the very out set that a house property and punja land measuring 1.45 acres were offered as collateral security to secure the loan transaction of Mangalam Textiles. The account was declared as NPA on 31.03.2004 itself. Punjab National Bank filed T.A.No.328/2007 before the Debts Recovery Tribunal, Madurai. In the said proceedings, Ramamurthy was shown as first defendant, while Rajaram was shown as the second defendant. The first item was sold for a sum of Rs.18,05,000/- on 21.09.2015, while the second item was sold for a sum of Rs.5,10,000/- on 11.09.2012. There was also exchange of correspondence between Mangalam Textiles and the bank. The bank sanctioned one time settlement,if Ramamoorthy would pay Rs.1,00,000/- immediately. Ramamoorthy paid a sum of Rs.1,00,000/- and the bank had issued certificate vide proceedings No.PNB/ARMB/CBE/252/2020, dated 27.07.2020 closing the loan account.

10.The learned counsel for the third accused/appellant therefore wanted this Court to allow these appeals as the loan account itself has been closed and that, the bank has also admitted that there are no dues pending as on date. The learned counsel appearing for the third accused would place reliance on the decision of the Hon'ble Supreme Court reported in *(2008) 9 Supreme Court Cases 677 (Nikhil Merchant Vs. Central Bureau of Investigation*).

11.I am not in a position to accept the aforesaid submission of the learned counsel for the third accused. As rightly contended by the learned Assistant Solicitor General for CBI, in the cases mentioned by the learned counsel for the third accused, the defacto complainant had also agreed for quashing the proceedings. The case on hand is not one such. The defacto complainant had made it clear that the criminal prosecution would go on and acceptance of OTS proposal was without prejudice to the pending prosecution. Therefore, this contention of the learned counsel for the third accused is rejected. However, it has to be brought on record that as on date, all the dues of the bank have been realized. Both the collateral securities were brought for sale in public auction and that they fetched a total sum of Rs.23,00,000/-. This by itself demonstrates that the title opinion given by the late lawyer was sound and that it could also not be stated that they were over valued.

12.In fact, the learned counsel for the third accused/appellant would lament that the properties were worth several millions and they were sold for a song through public auction. As rightly pointed out by the learned Senior Counsel appearing for the first accused, for mere infraction of bank procedure, penal provisions cannot mechanically be invoked. A1-Selvaraj was the branch manager. Even according to the prosecution, A1-Selvaraj did not get any pecuniary advantage. The loan officer Balakumar had conducted field inspection. The stock verification done by him has been brought out in the evidence of P.W.4, P.W.5 and P.W.13. It can be seen therefrom that the office procedures were duly followed. Balakumar figures prominently in the records. But he was neither arraigned as accused nor cited as witness. A1-Selvaraj-Branch Manager had gone by the recommendation of the field officials. The prosecution did not examine Balakumar to show that he acted on the dictation of A1.

13.From a mere reading of the inspection report of Balakumar, it can be seen that Mangalam Textiles was not a fictitious firm. In fact, FIR itself mentions about the stock of sarees. When P.W.5-S.Singaravadivelu, inspected Mangalam Textiles on 15.09.2003 and 17.09.2003, he found that it was a running concern and that stocks were also available. Through P.W.13, the defence had established that when the loan officer Balakumar inspected the premises on 22.07.2003, he found that the stocks worth Rs.20,23,750/- were available. When the notes made by Balakumar are very much available in the records and they have already been duly reflected in the evidence, the Court below ought not to have gone by the endorsement made by P.W.7 Venkatakumar-post man.

14.A3-Ramamurthy opened the bank account and he was introduced by P.W.6-K.S.D.Kishori Lal. Collateral securities with legal opinion and valuation certificates were also filed. P.W.16-S.B.Kesavan Nambi-chartered accountant had prepared Ex.P.33 proposal. Thus, A1-Selvaraj had scrupulously adhered to all the banking norms. Cash credit facility can be sanctioned to the extent of 75% of the stock value. Since Balakumar had noted that the value of the stocks even on 14.06.2003 was Rs.22,20,200/-, A1-Selvaraj did not commit any wrong by sanctioning cash credit facility on 18.06.2003 to the tune of Rs.15,00,000/-.

15.As rightly contended by the learned Senior Counsel for A1-Selvaraj, the testimony of P.W.26 is rather vague. He had not precisely stated as to how A1 had violated the banking norms. On the other hand, it could be seen that the value of the collateral security was mentioned as Rs.56,08,580/-. Such a valuable property was disposed off for a far lesser sum. But the loan amount was fully recovered. Hence, by no stretch of imagination, can it be stated that the bank was put to wrongful loss. The Court below, without taking into account any of the foregoing circumstances, has mechanically accepted the case of the prosecution as gospel truth to fasten guilt on the first accused.

16.The reasons given by me in the foregoing paragraphs to set aside the finding of guilt against the first accused would enure in favour of the other accused also. P.W.6 -K.S.D.Kishori Lal had introduced A3-Ramamoorthy and had signed in the bank Account Opening Form. The prosecution has not established that A1-Selvaraj persuaded P.W.6-K.S.D.Kishori Lal to introduce A3. Merely because, A2-Gnaneswaran was associated with A3, that itself cannot establish that there was any criminal conspiracy to cheat the bank. Legal opinion Ex.P.17 & Ex.P.18 were obtained from the father of P.W.12. Legal opinion had certified regarding marketability of title in respect of collateral securities. Since collateral securities were successfully sold in the public auction, Ex.P.17 & Ex.P.18 stand validated. Likewise, valuation certificates were submitted, while sanctioning the cash credit facility. This Court has to take note of the undisputed subsequent developments which disprove the allegation of over valuation. It is true that the Mangalam Textiles was wound up within one year of its starting. That the business did not successfully take off cannot by itself lead to the inference that it was a fictitious entity. Such an approach betrays lack of awareness of ground realities.

17.One can take note of the fact that a number of business firms are operating without getting themselves registered with the taxation department. For failure to register the entity as dealer or assessee, the proprietor can be prosecuted. But from the factum of non-registration, one cannot imply that the business itself is non existent. The prosecution had clearly put the cart before the horse. Likewise, no adverse inference can be drawn, merely because, in the corporation assessment register, the building in question was not shown as commercial property. One can again take judicial notice of the fact that if the property is classified as commercial property, property tax will be on the higher side. If it is classified as residential property, the property tax will be on the lower side. Therefore, the building owners do not go to the local body for re-classifying their property as a commercial property, even if the premises are let out for business purpose.

18.In the case on hand, the building owner himself had admitted that he entered into a rental agreement with A3-Ramamoorthy for letting out his house in favour of Mangalam Textiles. Nothing more is required. The evidence of commercial tax official and the corporation official as well as the postal employee are utterly irrelevant. The testimony of the other banking officials could not have been relied upon because they are not contemporaneous. Only after allegations were made that the loan was not properly processed, investigation was undertaken. That was subsequent in point of time. The question was whether on the date of sanctioning of the cash credit facility, Mangalam Textiles was in existence or not. The evidence given by the prosecution themselves would indicate that mangalam textiles was very much in existence. The endorsement made by Balakumar speaks eloquently about the existence of mangalam textiles and the availability of the stocks. The Court below had completely ignored this part of the evidence. Therefore, I have no hesitation to come to the conclusion that the prosecution has not at all established its case against the accused. In this view of the matter, the impugned judgment is set aside. The Criminal Appeals are allowed. The appellants are acquitted. The fine amount, if any paid by them shall be refunded forthwith. The bail bond, if any, executed by the appellants shall stand cancelled.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Second Additional District Court, for CBI Case, Madurai

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

3.The Special Public Prosecutor for CBI Cases,
Madurai Bench of Madras High Court,
Madurai.

Copy to:
1. The Superintendent,
Central Prison,
Madurai.

2.The Section Officer,
Criminal Section (Records)
Madurai Bench of Madras High Court,
Madurai. (2c)

+1cc to M/s.M.SHOBANA, ADVOCATE, SR NO 14234
+1cc to M/s.D.SELVANAYAGAM, ADVOCATE, SR NO 14233
+2cc to M/s.Y.KRISHNAN, ADVOCATE, SR NO 14425,14310

Crl.A(MD)Nos.155, 165 of 2017 & 130 of 2019
29.03.2021

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