BAIL SLIP

The Appellant/Accused-1 namely M.Gopalakrishnan (Died) S/o.Mayor Radhakrishnan aged about 73 years was released on bail as per order of this Hon'ble Court dated 09.06.2009 made in Mp.1 of 2009 in Crl.A.No.223 of 2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 20..01..2022
JUDGMENT PRONOUNCED ON : 04..02..2022

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

CRIMINAL APPEAL NO.223 OF 2009

M.Gopalakrishnan (Died)
Mrs.Shakila Ramesh

[Leave granted and impleaded as per order dated 02.12.2021 in Crl.M.P.No.12619 of 2021 in Crl.A.No.223 of 2009]

... Appellant/ Accused

-Versus-

State by
Deputy Superintendent of Police,
CBI, BS & FC,
Bangalore.

... Respondent/ Complainant

Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment of conviction and sentence imposed on the appellant (A1) by the learned XI Additional Judge, Special Court for CBI Cases (Cases relating to Banks and Financial Institutions), Chennai in C.C.No.66 of 2020 by Judgment dated 27.04.2009 in C.C.No.66 of 2000.

For Appellant : Mr.Sunder Mohan

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

JUDGEMENT

This appeal is against the judgment dated 27.04.2009 in C.C.No.66 of 2000 on the file of the learned XI Additional Judge, Special Court for CBI Cases, Chennai, convicting and sentencing A-1 (since deceased) to undergo rigorous imprisonment and to pay fine under various charges, the details of which will be narrated at the appropriate place in this Judgment.

2. There were totally 6 accused in the case and the deceased appellant was arrayed as A1. A1 to A6 stood charged for various offences as detailed below:-

Sl.No.	Accused	Stood Charged under
1	A1 to A6	Section 120-B r/w 420 of IPC, Section 5(2) r/w 5(1)(d) of The Prevention of Corruption Act, 1947 and Section 13(2) r/w 13(1)(d) of The Prevention of Corruption Act, 1988
2	A2	Section5(2) r/w 5(1)(d) of The Prevention of Corruption Act, 1947
3	A1	Section 420 of IPC
4	A1	Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988
5	A2	Section 420 of IPC
6	A2	Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988
7	A1 and A2	Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988
8	A1 and A2	Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988
9	A3 to A6	Section 420 of IPC
10	A3 to A6	Section 420 of IPC

Sl.No.	Accused	Stood Charged under
11	A1 and A2	Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988
12	A3 to A6	Section 420 of IPC
13	A1 and A2	Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988
14	A3 to A6	Section 420 of IPC
15	A1 and A2	Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988
16	A5	Section 420 of IPC
17	A1 and A2	Section 420 of IPC
18	A1 and A2	Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988
19	A3 to A6	Section 420 of IPC
20	A1 and A2	Section 109 r/w 420 of IPC

Pending trial, A3 died and therefore, charges against him stood and the trial court, after full-fledged trial convicted A1 and A2 on certain charges framed against each of them and acquitted them from the other charges while A4 to A6 were acquitted from all the charges and sentenced A1 and A2 accordingly as detailed under:-

Charge No.	Rank of the Accused	Penal provisions under which Accused was/were Convicted/ Charges from which Accused was/were Acquitted	Quantum of Sentence Imposed by the trial court on A1 and A2/Finding against A3 to A6
1	A1	Section 120-B r/w 420 of IPC, Section 5(2) r/w 5(1)(d) of The Prevention of Corruption Act, 1947 and Section 13(2) r/w 13(1)(d) of The Prevention of Corruption Act, 1988	RI for 7 years and to pay a fine of Rs.10,00,000/- in default to undergo RI for 1 years

	A2	Section 120-B r/w 420 of IPC, Section 5(2) r/w 5(1)(d) of The Prevention of Corruption Act, 1947 and Section 13(2) r/w 13(1)(d) of The Prevention of Corruption Act, 1988	RI for 7 years and to pay a fine of Rs.10,00,000/- in default to undergo RI for 1 years
	A3	Section 120-B r/w 420 of IPC, Section 5(2) r/w 5(1)(d) of The Prevention of Corruption Act, 1947 and Section 13(2) r/w 13(1)(d) of The Prevention of Corruption Act, 1988	Charges Abated
	A4 to A6	Section 120-B r/w 420 of IPC, Section 5(2) r/w 5(1)(d) of The Prevention of Corruption Act, 1947 and Section 13(2) r/w 13(1)(d) of The Prevention of Corruption Act, 1988	Acquitted
2	A2	Section5(2) r/w 5(1)(d) of The Prevention of Corruption Act, 1947	RI for 7 years and to pay a fine of Rs.10,00,000/- in default to undergo RI for 1 years
3	A1	Section 420 of IPC	RI for 7 years and to pay a fine of Rs.10,00,000/- in default to undergo RI for 1 years
4	A1	Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988	RI for 7 years and to pay a fine of Rs.10,00,000/- in default to undergo RI for 1 years
5	A2	Section 420 of IPC	RI for 7 years and to pay a fine of Rs.10,00,000/- in default to undergo RI for 1 years

6	A2	Section 13(2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988	RI for 7 years and to pay a fine of Rs.10,00,000/- in default to undergo RI for 1 years
7	A1	Section 13(2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988	RI for 7 years and to pay a fine of Rs.10,00,000/- in default to undergo RI for 1 years
	A2	Section 13(2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988	RI for 7 years and to pay a fine of Rs.10,00,000/- in default to undergo RI for 1 years
8	A1	Section 13(2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988	RI for 7 years and to pay a fine of Rs.10,00,000/- in default to undergo RI for 1 years
	A2	Section 13(2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988	RI for 7 years and to pay a fine of Rs.10,00,000/- in default to undergo RI for 1 years
9	A3		Charges Abated
	A4 to A6	Section 420 of IPC	Acquitted
10	A3	Section 420 of IPC	Charges Abated
	A4 to A6	Section 420 of IPC	Acquitted
11	A1	Section 13(2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988	RI for 7 years and to pay a fine of Rs.10,00,000/- in default to undergo RI for 1 years
	A2	Section 13(2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988	RI for 7 years and to pay a fine of Rs.10,00,000/- in default to undergo RI for 1 years
12	A3	Section 420 of IPC	Charges Abated
	A4 to A6	Section 420 of IPC	Acquitted

13	A1	Section 13(2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988	RI for 7 years and to pay a fine of Rs.10,00,000/- in default to undergo RI for 1 years
	A2	Section 13(2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988	RI for 7 years and to pay a fine of Rs.10,00,000/- in default to undergo RI for 1 years
14	A3	Section 420 of IPC	Charges Abated
	AA4 to A6	Section 420 of IPC	Acquitted
15	A1 and A2	Section 13(2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988	Acquitted
16	A5	Section 420 of IPC	Acquitted
17	A1 and A2	Section 420 of IPC	Acquitted
18	A1 and A2	Section 13(2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988	Acquitted
19	A3	Section 420 of IPC	Charges Abated
	A4 to A6	Section 420 of IPC	Acquitted
20	A1 and A2	Section 109 r/w 420 of IPC	Acquitted

The sentences imposed on A1 and A2 respectively were ordered to be run concurrently. The total find imposed on A1 was Rs.70,00,000/- while total fine imposed on A2 was Rs.80,00,000/-

3. Challenging the conviction and sentence imposed as set out above, A1 (since deceased) filed this appeal. Pending appeal, A1 died and at the instance of his wife, by order dated 02.12.2021 in Crl.M.P.No.12619 of 2021, leave was granted to continue the appeal. Accordingly, the wife of A1, continued the appeal.

4. The case of the prosecution in brief is as follows:-

(a) A1 was functioning as Executive Director and latter as Chairman and Managing Director of Indian Bank, Chennai; A2 was functioning as Assistant General Manager, Indian Bank, Credit Department, Head Office, Chennai; and A3 was functioning as Managing Director of M/s.P.J.Pipes and Vessels Limited, Mumbai; and A4 and A5 were the Directors of the above said company during the relevant period.

(i) Between 1987-1992, A1 to A6 entered into a criminal conspiracy with an intention to cheat Indian Bank, Mumbai Branch to sanction Import Letter of Credit (LC) for Rs.1,200 lakhs, Bank Guarantee (BG) for Rs.250 lakhs and Over Due (OD) facility to the tune of Rs.245 lakhs on the recommendation of A2 and another officer of Indian Bank in favour of M/s.P.J.Pipes & Vessels Limited (hereinafter will be referred to as “PJ Pipes” which A3 was the Managing Director and A4 to A6 were directors based on false representations and thereby caused wrongful gain to the accused and loss to the Indian Bank to the tune of Rs.8.67 crores, excluding interest. After the release of the funds A3 to A6 diverted the funds to their sister concerns which was approved by A2 and also recommended for grant of bank guarantee and over due facilities to one M/s.Boiler Tube Company, Mumbai, which is a part of A3 Group of Companies despite objections raised by the General Manager, Credit Division, Head Office, A1 ignoring that note, approved the recommendation of A2 and granted facilities to M/s.P.J. Pipes & Vessels Limited which was not eligible for any bank finance and the MPBF of the company was negative thereby A1, A2 and A4 to A6 have committed offences Section 120-B r/w 420 of IPC, Section 5 (2) r/w 5(1)(d) of The Prevention of Corruption Act, 1947 and Section 13(2) r/w 13(1)(d) of The Prevention of Corruption Act, 1988;

(ii) that in furtherance of the criminal conspiracy, A2 along with one V.Ramanan, abused his position as public servant by closing the file, and sent a fresh proposal for sanctioning facilities of import letter of credit of Rs.1200 lakhs, bank guarantee of Rs.250 lakhs and OD for Rs.245 lakhs followed by fresh recommendation of V.Ramanan totally ignoring the fact that as per balance sheet of PJ Pipes as on 31.03.1988 already availed the maximum permissible bank Finance and that the bank finance was negative of Rs.32.04 lakhs and that the company was not eligible for further bank finance and that the health code of the company was category 2 (irregular) and thereby A2 committed offence punishable under Section 5(2) r/w 5(1)(d) of the Prevention of Corruption Act, 1947;

(iii) that in furtherance of the above conspiracy and in the course of the same transaction, A1 had given oral permission to A2 to release the facilities of Rs.1072 lakhs as import letter of credits and Rs.175 lakhs as bank guarantee in the account of PJ Pipes on 01.11.1988 even before he had seen the file and given in-principle approval on 05.11.1988 and thereby A1 committed an offence punishable under Section 420 of IPC;

(iv) that in furtherance of the above conspiracy and in the course of the same transaction, A1 had ignored the note put up by the General Manager, Credit Department, Indian Bank, Head Officer, Chennai that PJ Pipes was not eligible for further bank finance in view of the balance sheet as on 31.03.1988, that the MPBF was in negative and Health Code of PJ Pipes was category 2 (irregular) and had given oral permission to release the funds and thereby A1 committed the offence of criminal misconduct by abusing his position as public servant to facilitate pecuniary advantage to PJ Pipes and it is punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988;

(v) that in furtherance of the above conspiracy and in the course of the same transaction, A2 had already released the facilities to PJ Pipes by releasing bank guarantee for Rs.176.73 lakhs and opened LCs for Rs.1008.83 lakhs on various dates between 18.11.1988 and 14.02.1989 in the light of the oral permission given by A1, without taking any securities, without putting them up to the Board of Directors of Indian Bank, in spite of the fact that as many as nine meetings were held between 05.11.1988 and 06.05.1989 and thereby A2 has committed offence punishable under Section 420 of IPC;

(vi) that in furtherance of the above conspiracy and in the course of the same transaction, A2 committed criminal misconduct by abusing his position as a public servant, by corrupt or illegal means, to facilitate pecuniary advantage to PJ Pipes represented by its Managing Director (A3) and Directors (A4 to A6) and thereby committed the offence punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988;

(vii) that in furtherance of the above conspiracy and in the course of the same transaction, A1 along with V.Ramanan and one S.Ramachandran has committed criminal misconduct permitting A3 to A6 to apply for various loan amounts in favour of PJ Pipes and to avail of the further facilities as per adhoc sanction and releases without proper authority like BG of Rs.229.35 lakhs; Rs.11.46 lakhs and Rs.176.13 lakhs and LC of Rs.1008.95 lakhs by abusing his official position as public servant and thereby committed an offence punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988;

(viii) that in furtherance of the above conspiracy and in the course of the same transaction, A1 renewed the facilities sanctioned in favour of PJ Pipes by the Board of Indian Bank at their meeting held on 06.05.1989 only on 07.09.1991, while the sanction ought to have renewed on 06.05.1990, on the recommendation of A2, S.Ramachandran and V.Ramanan to the tune of Rs.4532.62 lakhs when the Health Code of PJ Pipes was sticky and non-eligible, that the company had caused wrongful loss to the tune of Rs.8.67 cores, excluding interest, and thereby A1 and A2 has committed the offence of criminal misconduct by abusing their official position as public servants and it is punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988;

(ix) that in furtherance of the above conspiracy and in the course of the same transaction, A3 to A6 with a dishonest and fraudulent intention submitted application to Indian Bank, Fort Branch, Mumbai, of which A2 was the Assistant General Manager for release of various loan amounts in favour of PJ Pipes being fully aware of the fact that the said company's Health Code was sticky and non-viable and availed of facilities like Bank Guarantee of Rs.229.35 lakhs, Rs.11.46 crores and Rs.176.13 lakhs and LC of Rs.1008.95 lakhs along with other facilities thereby they have committed the offence punishable under Section 420 of IPC;

(x) that in pursuance of the above conspiracy and in the course of the same transaction, A3 to A6 with a dishonest and fraudulent intention had obtained payment directions from ONGC/JCCI & E and deposited the said amounts in the accounts of PJ Pipes in Central Bank of India, Juhu Branch, Mumbai, and the Kapoli Cooperative Bank Limited, Mumbai to the tune of Rs.12.49 crores and Rs.5.03 crores respectively and converted them to their own use and thereby they have committed the offence punishable under section 420 of IPC;

(xi) that in furtherance of the above conspiracy and in the course of the same transaction, A1 and A2 along with V.Ramanan and S.Ramachandran being public servants abused their official positions as public servants and allowed A3 to A6 to receive payments directly from ONGC/JCCI & E and deposit the amounts in the name of their company with Central Bank of India, Juhu Branch, Mumbai, and the Kapoli Cooperative Bank Limited, Mumbai to the tune of Rs.12.49 crores and Rs.5.03 crores respectively and they have committed the offence punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act,1988;

(xii) that in furtherance of the above conspiracy and in the course of the same transaction, A3 to A6 diverted the funds with dishonest and fraudulent intention to cheat the Indian Bank, Fort Brnach, Mumbai, to their sister concerns viz., M/s.Boiler Tube Company, Mumbai, to the tune of Rs.48.80 lakhs and Rs.71.16 lakhs respectively and thereby they have committed the offence punishable under Section 420 of IPC;

(xiii) that in furtherance of the above conspiracy and in the course of the same transaction, A1 and A2 along with V.Ramanan and S.Ramachandran being public servants abused their official positions as public servants by corrupt or illegal means and allowed A3 toA6 to divert funds to their sister concerns M/s.Boilder Tube Limited, Mumbai and M/s.P.Jayantilal and Company Private Limited to the tune of Rs.48.80 lakhs and Rs.71.16 lakhs respectively and thereby they have committed the offence punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988;

(xiv) that in furtherance of the above conspiracy and in the course of the same transaction, A3 to A6 with the dishonest and fraudulent intention to cheat Indian Bank, Fort Branch, Mumbai, diverted the funds to M/s.Arunodaya Exports, M/s.Gaurav Containers Limited, M/s.Hindustan Agro Chemicals Limited and M/s.Golden Fertilizers to the tune of Rs.90.46 lakhs, Rs.90.00 lakhs, Rs.30.00 lakh sand Rs.17.50 lakhs respectively and thereby they have committed the offence punishable under Section 420 of IPC;

(xv) that in furtherance of the above conspiracy and in the course of the same transaction, A1 and A2 along with V.Ramanan and S.Ramachandran being public servants abused their official positions as public servants abused their official positions as such public servants, by corrupt or illegal means and allowed A3 to A6 to divert funds to M/s.Arunodaya Exports, M/s.Gaurav Containers Limited, M/s.Hindustan Agro Chemicals Limited and M/s.Golden Fertilizers to the tune of Rs.90.46 lakhs, Rs.90.00 lakhs, Rs.30.00 lakh sand Rs.17.50 lakhs respectively and thereby they have committed the offence punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

(xvi) that in furtherance of the above conspiracy and in the course of the same transaction, A5 obtained Inland L.C. for Rs.3.82 crores in the account of PJ Pipes in favour of M/s.Lodestar Investments Private Limited, a company run by A5 for payment of customs duty by concealing the said fact from the Board of Directors of Indian Bank and thereby A5 has committed the offence punishable under Section 420 of IPC;

(xvii) that in furtherance of the above conspiracy and in the course of the same transaction, A1 and A2 along with V.Ramanan and S.Ramachandran had issued Inland LC for Rs.3.82 crores in the account of PJ Pipes in favour of M/s.Lodestar

Investments Private Limited, run by A5 for payment of customs duty knowing fully well that A5 had concealed this fact to the Board of Directors of Indian Bank and thereby A5 has committed the offence punishable under Section 420 of IPC;

(xviii) that in furtherance of the above conspiracy and in the course of the same transaction, A1 and A2 along with V.Ramanan and S.Ramachandran being public servants committed criminal misconduct by abusing their position as such public servants by corrupt or illegal means and issued Inland LC for Rs.3.82 crores in the account of PJ Pipes in favour of M/s.Lodestar Investments Private Limited for payment of customs duty who had concealed this fact from the Board of Directors of Indian Bank and thereby they have committed the offence punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988;

(xix) that in furtherance of the above conspiracy and in the course of the same transaction, A3 to A6 with the dishonest and fraudulent intention to cheat Indian Bank, Fort Branch, Mumbai, sold unauthorizedly, hypothecated stainless steel plates imported under Duty Free Scheme and kept in the factor and office of PJ Pipes in open market to the tune of Rs.2.07 crores and the remainder of which seized by the Directorate of Revenue Intelligence on 03.11.1990 and did not credit the proceeds with the bank and thereby they have committed the offence punishable under Section 420 of IPC; and

(xx) that in furtherance of the above conspiracy and in the course of the same transaction, A1 and A2 along with V.Ramanan and S.Ramachandran failed to take any precautionary steps to safeguard the raw materials which were imported on the LCs opened with Indian Bank and allowed, A3 to A6 to sell them in open market causing wrongful gain to A3 to A6 and wrongful loss to Indian Bank to the tune of Rs.2.07 crores and thereby committed the offence punishable under Section 109 r/w 420 of IPC.

5. In order to prove its case, the prosecution has examined as many as 41 witnesses and 72 documents were exhibited.

6. Out of the above said witnesses, P.W.1, Mr.M.K.Subramanian, the then General Manager and in charge of Credit Division of Indian Bank has spoken about various orders passed by A1 and A2 for the release of funds to M/s.P.J. Pipes & Vessels Limited, Mumbai. P.W.2, Mr.S.Annadurai, the then Chief Officer and in charge of credit department of Indian Bank, Zonal Office, Mumbai, has spoken about the confirmation of opening of letter of credit and other facilities to PJ Pipes. P.W.3, then Chief Officer of Indian Bank, Zonal Office, Mumbai, has spoken

about the orders passed by bank authorities and sanction accorded by A1. P.W.4, the then Officer of Indian Bank, Credit Department, Head Office has spoken about the accounts of the PJ Pipes and sanction accorded by the Board of the bank. P.W.5, the then Asst. General Manger, Indian Bank, Credit, Head Office, Chennai, has spoken about the credit note approve by A1. P.W.6, the then Assistant General Manager, Indian Bank, Mumbai, between June 1995 and May 1997 and P.W.7, the then Assistant General Manager, Indian Bank, Mumbai, between 1986 and 1990 have spoken about various communications of the bank for the grant of Letter of Credit and other facilities to PJ Pipes. P.W.8, the then Chairman and Managing Director, Vijaya Bank, has spoken about the board meeting of his bank. P.W.9, P.W10 and P.W.11, who were the then officials of Indian Bank, have spoken about the credit facilities extended to PJ pipes by the bank.

7. P.W.12, the then Deputy Director of Foreign Trade, Mumbai, has spoken about the cheques received from PJ pipes. P.W.13, the then Joint Commissioner, Income Tax, Mumbai, has spoken about income tax returns filed by PJ Pipes. P.W.14, who is a Chartered Accountant by profession has spoken about the verification of the books of account of PJ Pipes pursuant to the orders of Indian Bank and Vijaya Bank. P.W.15 , the then Deputy General Manager (Finance and Accounts), Oil and Natural Gas Corporation (ONGC) has spoken about the contract awarded to PJ Pipes and the payments made by ONGC to them. P.W.16, the then General Manager, ONGC, has spoken about the various transactions held between PJ Pipes and the cheques issued by ONGC to PJ Pipes. P.W.17, the then Chief Vigilance Officer, Indian Bank, Chennai has spoken about the complaint lodged by him against PJ Pipes. P.W.18, the then Chief Manager, ONGC, Mumbai, has spoken about the contracts awarded to A3. P.W.19, the then Sr. Manager, Indian Bank, Fort Branch, Mumbai, has spoken about the credit facility given to PJ Pipes after evaluation of the credit requirements and the outstanding in the account of PJ Pipes as on 27.01.1998. P.W.20, the then Dy. General Manager and Executive Secretary to the Board at the Head Officer of Indian Bank has spoken about the agenda prepared by him and the circulation of agenda to the board members. P.W.21, the then Marketing Manager of M/s.Saw Pipes Limited, Delhi, has spoken about the business dealings with PJ Pipes. P.W.22, the then Assistant General Manager, Fort Branch, Mumbai, has spoken about the Letter of Credits produced by PJ Pipes and the verification of Letter of Credits by him. P.W.23, the then Chief Manager, State Bank of India, Turneral Road, Mumbai, has spoken about the account maintained by PJ Pipes with his bank. P.W.24, the then General Manager, Indian Gum Industries Limited, Mumbai, has spoken about the establishment of Import Letter of Credit at the instance of PJ Pipes and the charges collected from PJ Pipes for the establishment of Import Letter of Credit.

8. P.W.25, the then Assistant General Manager, Indian Bank, Personnel Department, Head Office, Chennai, has spoken about the service particulars of A1 and A2. PW.26 , the then Chief Manager, Mumbai Fort Branch of Indian Bank, has spoken about the over dues and devolved Letter of Credits in the account of PJ Pipes. P.W.27, the then Sr. Manager, Mumbai Fort Branch of Indian Bank, has spoken about the accounts of PJ Pipes dealt with by him on behalf of the bank. PW.28, who was working in the Zonal Office, Indian Bank, Mumbai, has spoken about over dues and devolvement of letter of credits in the account of PJ Pipes. P.W.29, an Officer of Indian Bank, Industrial Revival Rehabilitation Department, Head Office of Indian Bank, has spoken about the note placed by him through the Asst. General Manager for confirmation of Executive Committee for approval and the approval granted by Zonal office. P.W.30, the then Manager, Indian Bank, Fort Branch, Mumbai, has spoken about the account of PJ Pipes dealt with by him on behalf of the bank until the confirmation of note by the committee and recommendation made by the Zonal Office on 15.11.1988 to the board.

9. P.W.31, the then Chief General Manager in the Department of Banking Supervision, Reserve Bank of India, Mumbai, has spoken about the inspection made by him into the books of account of PJ pipes and the report filed by him. PW.32, the then General Manager Technical, ONGC, has spoken about the contract awarded on PJ Pipes. P.W.33, the partner of M/s.Testwell Non Destructive Testing Services, Mumbai, which engaged in Industrial X-Ray of Critical Weldings and Castings, has spoken about the business transactions had with PJ Pipes. P.W.34, the then Sale Executive in M/s.Gaurav Containers Limited, Mumbai, which engaged in the manufacture of plastic containers, has spoken about the business transactions had with PJ Pipes. P.W.35, the then Joint Chief Officer, Reserve Bank of India, Chennai, has spoken about the inspection done by him in the Head Office of Indian Bank and the report submitted by him on Non Performing Assets of certain companies including PJ Pipes. P.W.36, the then Chief Manager, Indian Bank, Fort Branch, Mumbai, has spoken about the account of PJ Pipes dealt with by him. P.W.37, the then Manager, Finance and accounts, ONGC, Mumbai, has spoken about the various payments made to PJ Pipes. P.W.38, the Deputy Office Superintendent, Ministerial Staff, Sahara Airport, Mumbai, has spoken about the various imports made by PJ Pipes. P.W.39, a Partner of N.S.Bargava and Company, Chartered Accountants, has spoken about the verification made by him in respect of charges created by PJ Pipes in favour of banks on the directions of Indian Bank, Mumbai Branch and the report submitted by him in that regard. The Superintendent of Police who registered the FIR on the complaint given by P.W.17 was no more at the time trial. Therefore, the Inspector of Police,

BSFC, Bangalore who was well acquainted with the handwring and signature of the deceased Superintendent of Police was examined as P.W.40. He has spoken about the registration of the case by the Superintendent of Police and the investigation done by him. P.W.41, the Executive Director and Chairman cum Managing Director, Indian Bank between December, 2000 and June, 2005, has spoken about the discussion which he had with the officials of Indian Bank in respect of certain papers in the file and the sanction accorded by him for prosecution of A2 pursuant to the request made by the CBI.

10. When the above incriminating materials were put to the accused u/s.313 of Cr.P.C., A1 denied the same as false. His defence was a total denial. A1, A4 to A6 did not choose to examine any witness nor mark any document on his side, however, A2 examined on T.S.Raghavan as D.W.1 on his side and exhibited two documents as Exs.D.1 and D2.

11. Having considered all the above, the special court convicted A1 and A2 and sentenced them as detailed in the second paragraph of the judgment. A4 to A6 were acquitted by the special court from all the charges while charges against A3 stood abated. Challenging the conviction and sentence, A1 filed the instant appeal. As already stated, pending appeal, A1 died and, therefore, on getting leave, the wife of A1 continued this appeal.

12. The learned counsel appearing for the appellant by taking this court through the entire evidence placed on record would submit that the evidence brought on record were not sufficient to prove the guilt of the accused and without appreciating the evidence placed on record in a proper perspective, the court below convicted A1 while acquitting A4 to A6 (charge against A3 stood abated) who were, according to the prosecution, actually benefited.

13. The learned counsel would further submit that while determining the fine to be imposed on A1, trial court has not adverted to the provision in Section 16 of the Prevention of Corruption Act and imposed an exorbitant fine of Rs.10,00,000/- (Rupees Ten Lakhs only) for each proved charges and in all Rs.70,00,000/- (Rupees Seventy Lakhs only). It is the admitted fact that A1 in this case did not obtain any pecuniary advantage or valuable property in his favour and as already stated above, A3 and A4 to A6 in whose favour A1 and A2 said to have granted financial assistance were acquitted from all the charges and charge against A3 stood abated on his death. Therefore, the

learned counsel would submit that the fine imposed on A1 was not proportionate to the gravity of offence and the undisputed facts of the offences and as such the fine imposed on A1 is liable to be modified.

14. Per contra, the learned Special Public Prosecutor appearing for the respondent would submit that A1 who was the Executive Director, later on Chairman and Managing Director of Indian Bank abused his official position and extended huge bank finance to A3's company by flouting the rules and regulations of the bank and thereby caused huge loss to the bank despite objections raised by subordinate officers of the bank citing the rules and regulations of the bank. The trial court having taken into consideration the facts and circumstances of the case imposed a reasonable amount as fine which does not require any interference at the hands of this court.

15. This appeal has been filed against composite sentence of imprisonment as well as fine. Even though A1 died pending trial, as there is sentence of fine, appeal would not abate as per Section 394(2) of Cr.P.C. Now, a near relative of A1 namely, the wife obtained leave of this court to continue the appeal. In such circumstances, the appeal shall not abate.

16. In Ramesh v. State of Kearala, (2020) 3 SCC 45, the Honourable Supreme Court following its earlier judgment in Harman Singh v. State of H.P. (1975) 3 SCC 343 has held as under:-

> 15. Rejecting the above submission, this Court laid down that if by the judgment under appeal a sentence of fine is imposed either singularly or in conjunction with a sentence of imprisonment, the appeal against conviction would be an appeal from a sentence of fine within the meaning of Section 431. In para 10, the following was laid down: (Harnam Singh case [Harnam Singh v. State of H.P., (1975) 3 SCC 343 : 1974 SCC (Cri) 951] , SCC pp. 346-47)
>
> > "10. The narrow question which then requires to be considered is whether an appeal from a composite order of sentence combining the

> substantive imprisonment with fine is for the purposes of Section 431 not an appeal from a sentence of fine. It is true that an appeal from a composite order of sentence is ordinarily directed against both the substantive imprisonment and the fine. But, such an appeal does not for that reason cease to be an appeal from a sentence of fine. It is something more not less than an appeal from a sentence of fine only and it is significant that the parenthetical clause of Section 431 does not contain the word "only". To limit the operation of the exception contained in that clause so as to take away from its purview appeals directed both against imprisonment and fine is to read into the clause the word "only" which is not there and which, by no technique of interpretation may be read there. The plain meaning of Section 431 is that every criminal appeal abates on the death of the accused "except an appeal from a sentence of fine". The section for its application requires that the appeal must be directed to the sentence of fine and not that it must be directed to that sentence only. If by the judgment under appeal a sentence of fine is imposed either singularly or in conjunction with a sentence of imprisonment, the appeal against conviction would be an appeal from a sentence of fine within the meaning of Section 431. All that is necessary is that a sentence of fine should have been imposed on the accused and the appeal filed by him should involve the consideration of the validity of that sentence."

16. The above judgment categorically laid down that even if sentence of fine is imposed along with the sentence of imprisonment under Section 431, such appeal shall not abate. The similar expression,

> which was used in Section 431 i.e. "except an appeal from the sentence of fine" has been used in Section 394 CrPC. Thus, the appeal in the present case where the accused was sentenced for imprisonment as well as for fine has to be treated as an appeal against fine and was not to abate and the High Court did not commit any error in deciding the appeal on merits.

17. In so far as A1 and A2 are concerned, the trial court after having considered all the materials placed on record has come to a conclusion that the prosecution has proved the guilt of A1 in respect of charges 1, 3, 4, 7, 8, 11 and 13 and A2 in respect of 1, 2, 5, 6, 7, 8, 11 and 13 beyond reasonable doubts and acquitted them in respect of the other charges by giving benefit of doubt. This court on appreciating the evidence, both oral and documentary, carefully, found no reason to interfere with the same and this court is in full agreement with the findings of the learned trial court in this regard. So far as the sentence of imprisonment is concerned, as A1 died pending appeal, it cannot be enforced.

18. Coming to the legality in respect of quantum of fine imposed by the trial court, besides sentence of imprisonment, the trial court imposed a fine of Rs.10,00,000/- for each proved charges in all a sum of Rs.70,00,000/- as fine as detailed in paragraph 2 of the judgment. The main charge against A1 is that while he was a public servant committed criminal misconduct and by abusing his official position, he along with A2 favoured A3 to A6 to obtain pecuniary advantage without any public interest. However, there is no allegation that A1 obtained any valuable things or took pecuniary advantage while committing the offence. After trial, the trial court acquitted A4 to A6, who are the beneficiaries, and charge against A3 stood abated. In the above circumstances, the question that arise for consideration is whether the fine imposed on A1 is justifiable and the trial court did fail to exercise its power under Section 16 of the Prevention of Corruption Act, 1988 while imposing fine.

19. As rightly pointed out by the learned counsel for the appellant, under the Prevention of Corruption Act, 1988, in the matter of imposition of fine under sub-section (2) of Section 13, the legislatures have provided that the court while fixing the amount shall take into consideration the amount or the value of the property, which the accused person has obtained by committing the offence or where the conviction is for an offence

referred to in clause (e) of sub-section (1) of Section 13, the pecuniary resources or property for which the accused person is unable to account satisfactorily. Section 16 of the Prevention of Corruption Act, 1988 speaks of the matters to be taken into consideration for fixing fine which reads as under:-

> "16. Matters to be taken into consideration for fixing fine.—Where a sentence of fine is imposed under sub-section (2) of section 13 or section 14, the court is fixing the amount of the fine shall take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of section 13, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily."

20. In the instant case, admittedly, there is no finding given by the trial court that A1 had obtained pecuniary advantage or obtained any valuable property while committing the offence. In those circumstances, this court is of the considered view that imposing Rs.70,00,000/- as fine on A1 is highly excessive and imposing such huge amount as fine does not warrant in view of the undisputed facts of this case. While imposing fine, the trial court should have taken into consideration the nature of charges and the undisputed facts of the offence and the circumstances in which the offences were committed and the pecuniary advantage obtained by the accused person. Therefore, considering the circumstances, this court is of the view that the fine imposed by the trial court is required to be modified. This court has been informed that pursuant to the orders passed by this court on the petition filed by the deceased appellant seeking suspension of sentence, the deceased appellant paid a sum of Rs.2,00,000/- as part of a total fine imposed on him.

21. For the foregoing reasons, this court is of the view that the fine amounts imposed by the trial court under seven different charges are reduced as detailed below:-

Charge No.	Penal Provision under which convicted and sentenced	Quantum of Fine
1	Section 120-B r/w 420 of IPC, Section 5(2) r/w 5(1)(d) of The Prevention of Corruption Act, 1947 and Section 13(2) r/w 13(1)(d) of The Prevention of Corruption Act, 1988	Fine of Rs.10,00,000/- imposed by the trial court is reduced to Rs.20,000/-
3	Section 420 of IPC	Fine of Rs.10,00,000/- imposed by the trial court is reduced to Rs.30,000/-
4	Section 13(2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988	Fine of Rs.10,00,000/- imposed by the trial court is reduced to Rs.30,000/-
7	Section 13(2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988	Fine of Rs.10,00,000/- imposed by the trial court is reduced to Rs.30,000/-
8	Section 13(2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988	Fine of Rs.10,00,000/- imposed by the trial court is reduced to Rs.30,000/-
11	Section 13(2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988	Fine of Rs.10,00,000/- imposed by the trial court is reduced to Rs.30,000/-

Charge No.	Penal Provision under which convicted and sentenced	Quantum of Fine
13	Section 13(2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988	Fine of Rs.10,00,000/- imposed by the trial court is reduced to Rs.30,000/-

Thus, A1 is imposed with a total fine of Rs.2,00,000/- (Rupees Two Lakhs only) and the part of fine already paid by A1, shall be adjusted towards the fine imposed above.

In the result, this Criminal Appeal is allowed in part and the conviction and sentences of imprisonment stand confirmed and the sentences of fine imposed by the trial court stand modified and A1 is imposed with fine as indicated hereinabove and the amount of Rs.2,00,000/- already paid by the deceased appellant (A1), pursuant to the orders of this court dated 09.06.2009 in M.P.Nos.1 and 2 of 2009 in Crl.A.Nos.222 and 223 of 2009, is directed to be adjusted towards the fine imposed by this court in this judgment.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmk

To

1. The XI Additional Judge, Special Court for CBI Cases relating to Banks and Financial Institutions, Chennai

2. The Deputy Superintendent of Police, CBI, BS & FC Bangalore.

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

4. The Superintendent of Prison,
   Central Prison, Puzhal, Chennai.

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

+1cc to Mr.K.Srinivasan, Advocate, S.R.No.7238
+1cc to Mr.Sunder Mohan, Advocate, S.R.No.7637

Crl.A. No.223 of 2009

NMI(CO)
PM/02/03/2022