IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.RC.Nos.1266, 1283 & 1284 of 2019

Crl.RC.No.1266 of 2019

1.P.V.Rajah @ Varadharaj
2.V.Usha @ Usharani ... Petitioners

Versus

State Represented by
Inspector of Police,
Crime Branch CID,
Namakkal District ... Respondent

PRAYER: Criminal Revision has been filed under Sections 397 and 401 r/w Section 482 of the Code of Criminal Procedure to set aside the judgment in criminal appeal No.19 of 2019 passed by the learned Additional District and Sessions Judge, Namakkal dated 18.10.2019 confirming the judgment of the learned Chief Judicial Magistrate, Namakkal in CC.No.56 of 2008 dated

04.06.2019.

For Petitioners : Mr.N.Manoharan

For Respondent : Mr.A.Gopinath,
Government Advocate(crl.side)

Crl.RC.No.1283 of 2019

Sachithanandan ... Petitioner/A3

Versus

State Represented by
The Inspector of Police,
District Crime Branch CID,
Namakkal,
Namakkal District
crime No.1 of 2000 ... Respondent

PRAYER: Criminal Revision has been filed under Sections 397 r/w 401 of the Code of Criminal Procedure to call for the records in Crl.A.No.20 of 2019 dated 18.10.2019 on the file of the learned Additional District and Sessions Judge, Namakkal and confirmed in CC.No.56 of 2008 dated 04.06.2019 on the file of the learned Chief Judicial Magistrate, Namakkal and to set aside the same.

For Petitioner	:	Mr.R.Vivekananthan for Mr.K.T.S.Sivakumar
For Respondent	:	Mr.A.Gopinath, Government Advocate(crl.side)

Crl.RC.No.1284 of 2019

Kathirvelu ... Petitioner/A4

Versus

State Represented by
The Inspector of Police,
District Crime Branch CID,
Namakkal,
Namakkal District
crime No.1 of 2000 ... Respondent

PRAYER: Criminal Revision has been filed under Sections 397 r/w 401 of the Code of Criminal Procedure to call for the records in Crl.A.No.20 of 2019 dated 18.10.2019 on the file of the learned Additional District and Sessions Judge, Namakkal and confirmed in CC.No.56 of 2008 dated 04.06.2019 on the file of the learned Chief Judicial Magistrate, Namakkal and to set aside the same.

For Petitioner	:	Mr.R.Vivekananthan for Mr.K.T.S.Sivakumar
For Respondent	:	Mr.A.Gopinath, Government Advocate(crl.side)

COMMON ORDER

The criminal revision in Crl.RC.No.1266 of 2019 has been filed against the judgment in criminal appeal No.19 of 2019 passed by the learned Additional District and Sessions Judge, Namakkal dated 18.10.2019 confirming the judgment of the learned Chief Judicial Magistrate, Namakkal in CC.No.56 of 2008 dated 04.06.2019; the criminal revisions in Crl.RC.Nos.1283 & 1284 of 2019 have been filed against the judgment passed in Crl.A.No.20 of 2019 dated 18.10.2019 on the file of the learned Additional District and Sessions Judge, Namakkal which confirmed the judgment passed in CC.No.56 of 2008 dated 04.06.2019 on the file of the learned Chief Judicial Magistrate, Namakkal.

2. The case of the prosecution is that the Managing Director, State Industries Promotion Corporation of Tamilnadu Limited, No.19-A, Rukhmani Lakshmipathi Road, Egmore, Chennai-8 preferred a complaint on 21.12.1999

to the effect that the promoters of M/s.Sri Prasanna Vinayagar Textiles Private Limited, Komarapalayam by name (1) Thiru.R.Srinivasan, (2) Tmt.Usha and the Chief Executive (3) Thiru P.V. Raj @ Varadharaj had applied for the loan for Rs.100.00 lakhs for putting up their unit at SF.No.240/5, Vattamalai Main Road, Katheri Village, Salem District for the manufacture of cotton woven fabrics. The said company was having its registered office at No.6/261, Manikandan Illam, Gandhi Nagar, Pallipalayam Road, Komarapalayam. The Board of SIPCOT at its meeting held on 12.12.1996 sanctioned a term loan of Rs.100.00 lakhs to the company. The company accepted the terms and conditions of sanction and executed the security documents viz., Equitable Mortgage, Deed of Hypothecation on 20.02.1997 and all the fixed assets of the company had been mortgaged by way of security for the loan sanctioned. Apart from the security documents, the company had also offered collateral securities comprising of the properties stood in the name of the Directors of the company. At the request of the company, SIPCOT disbursed loan in instalments amounting to Rs.100.00 lakhs for acquisition of land, building and plant and machinery.

2.1 The further case of the prosecution is that as agreed by the company, they did not meet the commitments and defaulted in repayment. On 16.07.1999 at the review meeting held by SIPCOT, Tmt.V.Usha, Managing Director and Thiru.P.V.Raj, the Executive of the company confessed that they had purchased the machinery from CIMMCO, Gwalior and not from M/s.Sunrise Industries, Bangalore, as claimed by their invoices. Therefore, the Directors were instructed to settle the entire loan amount with interest immediately. In the review meeting, they pleaded guilty and promised to settle the entire term loan with interest within six months time. As they did not settle the amount as promised, a foreclosure and recall order was issued to the company and its Directors on 08.09.1999 and then mortgaged assets of the company was taken possession by SIPCOT on 19.09.1999 as per law. While taking inventory of the mortgaged assets of the company, it was found that certain mortgaged machinery of the company for the value considered for the disbursement of Rs.31.37 lakhs were illegally removed from the factory premises by the promoters of the company. Thus, with a view to cause monetary loss to SIPCOT and with a fraudulent and dishonest intention, deceived SIPCOT to sanction and disburse a sum of Rs.100.00 lakhs together with interest on the pretext for acquiring land, building, plant and machinery for the company M/s.Sri Prasanna Vinayagar Textiles Private Limited, which was promoted by the promoters of the company. Thus, they have committed various offences punishable in accordance with law.

3. The prosecution examined PW1 to PW47 and marked Ex.P1 to Ex.P291 and produced the material objects MO1 to MO5. On the side of the petitioners, no one was examined and marked Ex.D1. On perusal of oral and material evidence, the trial court found the petitioners guilty and convicted as follows:

(i) A1 was convicted for the offences under Sections 120(b), 468, 471, 420, 419, 424 of IPC, wherein under Sections 120(b), 468, 420, 419 of IPC sentenced to undergo three years simple imprisonment each section and to pay a fine of Rs.9,000/- each section, in default to undergo one month simple imprisonment; under Section 471 of IPC sentenced to undergo two years simple imprisonment and to pay a fine of Rs.9,000/-, in default to undergo one month simple imprisonment; under Section 424 of IPC sentenced to undergo two years simple imprisonment and to pay a fine of Rs.5,000/-, in default to undergo one month simple imprisonment.

(ii) A2 was convicted for the offences under Sections 120(b), 468, 471, 420, 419 of IPC, wherein under Sections 120(b), 468, 420, 419 of IPC sentenced to undergo three years simple imprisonment each section and to pay a fine of Rs.9,000/- each section, in default to undergo one month simple imprisonment; under Section 471 of IPC sentenced to undergo two years simple imprisonment and to pay a fine of Rs.9,000/-, in default to undergo one month simple imprisonment;

(iii) A3 was convicted for the offences under Sections 420 r/w 120(b), 419, 468, 471 r/w 109 of IPC, wherein under Sections 420 r/w 120(b), 468 of IPC sentenced to undergo three years simple imprisonment each section and to pay a fine of Rs.7,000/- each section, in default to undergo one month simple imprisonment; under Section 419 of IPC sentenced to undergo three years simple imprisonment and to pay a fine of Rs.6,000/-, in default to undergo one month simple imprisonment; under Section 471 r/w 109 of IPC sentenced to undergo two years simple imprisonment and to pay a fine of

Rs.5,000/-, in default to undergo one month simple imprisonment;

(iv) A4 was convicted for the offences under Sections 420 r/w 120(b), 419, 468, 471 r/w 109 of IPC, wherein under Sections 420 r/w 120(b), 468 of IPC sentenced to undergo three years simple imprisonment each section and to pay a fine of Rs.7,000/- each section, in default to undergo one month simple imprisonment; under Section 419 of IPC sentenced to undergo three years simple imprisonment and to pay a fine of Rs.6,000/-, in default to undergo one month simple imprisonment; under Section 471 r/w 109 of IPC sentenced to undergo two years simple imprisonment and to pay a fine of Rs.5,000/-, in default to undergo one month simple imprisonment. Aggrieved by the same, the petitioners preferred appeal and the appellate court dismissed the appeal and confirmed the conviction of the trial court.

4. The learned counsel for the petitioners/A1 & A2 in Crl.RC.No.1266 of 2019 submitted that the entire transactions said to have taken place on behalf of the company called Sri Prasanna Vinayagar Textiles

Private Limited, but the company is not at all arrayed as an accused. Without arraying the principal accused, the vicarious liability cannot be attributed to the Directors i.e. A1 and A2. In fact, most of the documents which are marked in support of the case of the prosecution were xerox copies. The original copies of those documents were not at all produced before the trial court. Those documents were not certified that they were copies of the original by the authorities concerned. Therefore, those documents cannot be looked into by the trial court.

4.1 He further submitted that the prosecution did not prove that one, Srinivasan is a fictitious person and PW24 only impersonated himself as the said Srinivasan for obtaining loan from SIPCOT. PW47-investigation officer deposed that he had seen the said Srinivasan in the house of the first accused often and denied that he did not live in the house of the first accused. Further, he deposed that the said Srinivasan did not sign in the loan application. Therefore, there is no question of impersonation. The crux of the allegation is that Simco Auto Looms machineries were purchased and operated instead of Sunrise Auto Looms Machineries and the Auto Looms sold alleged to have sold to the petitioners' company under invoices Exs.131, 132, 133 and 134. Therefore, A1 and A2 did not obtain loan by showing second hand Simco machineries and during the time of inspection only, Sunrise auto looms are used in the company. Therefore, there is no loss occurred to the SIPCOT and the entire allegations are also not proved by the prosecution.

4.2 He further submitted that in connected matter, this Court in Crl.RC.No.659 of 2019 filed by the petitioners herein, this Court dismissed the revision and aggrieved by the same, they preferred appeal before the Hon'ble Supreme Court of India in Crl.A.No.537 of 2022 and by order dated 01.04.2022, the Hon'ble Supreme Court of India reduced the sentence to six months rigorous imprisonment to run concurrently and ordered that the period already undergone shall be set off.

5. The learned counsel for the petitioners/A3 & A4 in Crl.RC.Nos.1283 & 1284 of 2019 submitted that there is no material to implicate the petitioners for conviction under Section 120(b) of IPC. The ingredients of conspiracy are that there should be an agreement between the

two persons, who are alleged to conspire and the said agreement should be for doing of all illegal acts or for doing, by illegal means, an act which by itself may not be illegal. However in the case on hand, 47 witnesses have been examined and none of the witnesses had spoken about specific allegations of the role played by the petitioners with regard to conspiracy. PW1 to PW3 deposed that the loan application of A1 and A2 was processed in the year 1996 by a team of officials and documents were scrutinised by legal department. The company property was inspected by the competent officials from SIPCOT. Only thereafter, the loan was sanctioned in favour of A1 and A2.

5.1 He further submitted that insofar the purchase of machinery, the petitioners verified the chartered accountant certificate for machineries and invoices and had sent report. Loan was sanctioned on 01.03.1997 and 30.04.1997. The loans were disbursed only on verification of documents, inspection report, bank statement and legal opinion. Whereas the third accused inspected the premises only on 31.10.1998. In fact, the third accused found irregularities and misappropriation of funds and lodged complaint on

21.12.1999. Therefore, there is no allegation as against the third and fourth accused to substantiate the charges as alleged by the prosecution. PW4 had sent report as against the fourth accused to the Managing Director, SIPCOT about their inspection and said report has not been placed before the trial court.

5.2 He further submitted that the loan application was filed on 15.07.1996. On receipt of the loan application, on 03.11.1996, the members of the screening committee conducted spot inspection on the A1 and A2's company. By the communication dated 30.11.1996, the screening committee recommended for sanctioning the loan in favour of A1 and A2. On 12.12.1996, after approval of the loan by the Board, sanctioned Rs.1,00,00,000/- and disbursed Rs.91,76,676/-, in which on 01.03.1997 the first instalment was disbursed to the tune of Rs.54,00,000/-. The second instalment of loan was disbursed to the tune of Rs.15.80 lakhs on 30.04.1997. The third accused had taken charge in operation department of SIPCOT only on 01.05.1997. Before that, he was working in a development department and he was no way connected with the operation department. Insofar as the fourth accused, he was transferred from account department and posted in incentive department on 09.04.1996 and as such he was also nothing to do with the loan transaction between the SIPCOT and A1 & A2. The third accused inspected the A1 and A2's company on 31.07.1997 and submitted inspection report which was marked as Ex.P41. In fact, trust receipt submitted by the first accused was clearly approved by the Managing Director, SIPCOT. Thereafter, the third disbursal of loan to the tune of Rs.26,00,000/- was approved by the Managing Director based on the trust receipt submitted by the first accused on 04.09.1997.

5.3 He further submitted that again on 29.11.1997, the third accused conducted inspection and submitted report, which was marked as Ex.P49. On 05.10.1998, further requisition was received for additional loan amount of Rs.40,00,000/-. However, the said request was rejected on the inspection report by the third accused. Subsequently, the third accused lodged complaint on 21.12.1999 as against A1 and A2 before the Superintendent of Police, Namakkal. Therefore, there is absolutely no material to convict the third and fourth accused for the offence punishable under Sections 420 r/w 120(b), 419, 468 and 471 r/w 109 of IPC.

6. The learned Government Advocate(crl.side) appearing for the respondent / police submitted that A1 and A2 with connivance of A3 and A4 who were officers of SIPCOT had prepared false documents which were marked as Exs.41, 42, 49, 59, 258, inspections reports prepared by the third accused to show that Sri Prasanna Vinayagar Textiles Private Limited company was having power loom machineries purchased from Sunrise industrials. After furnishing false documents, authorities of SIPCOT had issued Ex.P16 loan sanction letter and accordingly availed Rs.54,00,000/- under Ex.P24 by way of demand draft and availed Rs.22,02,046/- by way of demand draft and availed Rs.15,18,000/- under Ex.P28 by way of demand draft, totally A1 and A2 availed Rs.100,00,000/- including tax.

6.1 He further submitted that the loan disbursal amount is corroborated evidence of PW1. Thereafter, they failed to repay the said loan amount and thereby they gained Rs.100,00,000/- from SIPCOT by making false documents with having dishonest intention to defraud the availed loan amount. That apart while taking inventory of the mortgaged assets, certain mortgaged machinery of the company were illegally removed from the factory premises. It is also categorically proved by the prosecution by examining PW28 who deposed that he is running a workshop in the name and style of Palaniandavar in Coimbatore, thereby he purchased generator from the accused persons. Therefore, the prosecution proved the case beyond any doubt and the trial court rightly convicted the petitioners and confirmed by the first appellate court. Therefore, the conviction imposed on the petitioners does not require any interference by this Court.

7. Heard, Mr.N.Manoharan, the learned counsel for the petitioners in Crl.RC.No.1266 of 2019, Mr.R.Vivekananthan, the learned counsel for the petitioner in Crl.RC.Nos.1283 & 1284 of 2019 and Mr.A.Gopinath, Government Advocate(crl.side) appearing for the respondent / police.

8. There are totally four accused, in which the petitioners are arrayed as A1 to A4. A1 and A2 are Directors of M/s.Sri Prasanna Vinayagar Textiles Private Limited, Komarapalayam. A3 and A4 are Manager and Assistant Manager of the complainant-SIPCOT who disbursed the amount.

On perusal of records revealed that the second accused had applied for industrial loan to the tune of Rs.1,15,00,000/- to SIPCOT. The loan application was marked as Ex.P1, which was rejected by the communication dated 14.08.1996, which was marked as Ex.P5. Again, a representation was submitted to reconsider the loan application which was marked as Ex.P6. Accordingly, the first and second accused and one, Srinivasan had given consent letter for collateral security for sanctioning of loan. They also submitted valuation report and submitted bio-data of Director Mr.Srinivasan.

9. On verification of the documents by the screening committee of the SIPCOT, they forwarded the recommendation for sanction of loan. Accordingly, the loan was sanctioned in favour of A1 and A2 by the loan sanction letter, which was marked as Ex.P16 and Ex.P18, to the tune of Rs.1,00,00,000/- subject to the condition that collateral security should be given to the 50% of the loan. Accordingly, the first instalment of the loan was disbursed to the tune of Rs.54,00,000/- on 01.03.1997, which was marked as Ex.P24. The second instalment of the loan was disbursed to the tune of Rs.15,80,000/- on 30.04.1997 which was marked as Ex.P28. After disbursal

of the said amount, the Assistant Manager of SIPCOT had inspected the factory premises and submitted report, which was marked as Ex.P31.

10. Thereafter, A1 and A2 requested to disburse the loan amount to the tune of Rs.23,00,000/-. On the said request, the third accused inspected the premises and filed his inspector report which was marked as Ex.P41. It revealed that he categorically pointed out so many defects in the factories and just forwarded the report. Accordingly, he never recommended for any disbursal of loan. In fact, he pointed so many discrepancies and certain defects to be carried out by A1 and A2. On such report, the SIPCOT directed A1 and A2 to carry out the defects pointed out by the third accused. Thereafter, A1 and A2 demanded disbursal of another instalment towards value of machineries by the trust receipt which was marked as Ex.P45. Though the third accused pointed out defects on his inspection, the SIPCOT had disbursed another sum of Rs.26,00,000/- by way of demand draft which was marked as Ex.P46.

11. Again on 16.10.1997, A1 and A2 had demanded additional loan

amount of Rs.25,00,000/-. Subsequently, General Manager and Deputy General Manager along with Manager had inspected the company premises and found six more power looms and one additional building. Thereafter the accused were issued show cause notice. After receipt of explanation, the SIPCOT again disbursed loan amount to the tune of Rs.4,20,000/-. Further, by the letter dated 11.05.1998, the SIPCOT also granted permission to sanction additional loan. On the said direction, the third accused had inspected the premises and submitted his report which was marked as Ex.P49 dated 30.06.1998. On perusal of the inspection report, revealed that A1 and A2 failed to erect humidification plant and components of the same were kept at the factory site. They have informed that though they have purchased humidification plant during January, 1998, they have not erected plant so far due to the directors pre occupation with marketing tie up for their fabrics with Bangladesh. They have assured that they will be completing the erection of the plant before July 1998 and requested to disburse the eligible term loan and adjust the same towards the interest over dues.

12. Thus it is clear that the third accused never recommended for any

disbursal of loan amount. He just inspected the premises and submitted his report and also pointed out so many defects in the factory premises. Again A1 and A2 requested additional loan amount of Rs.40,00,000/-. Therefore, on 13.10.1998, A3 had inspected the premises. On the preliminary report, A1 and A2 had submitted required documents, which was placed before the screening committee of the SIPCOT and recommended for further loan. Accordingly, they were sanctioned loan of Rs.40,00,000/-. Finally, inspection report was submitted by A3 on 25.03.1999, which was marked as Ex.P59. On perusal of the said report also, revealed that the company have not erected humidification plant so far. Only based on the undertaking letter furnished by the company, the SIPCOT released eligible term loan to the tune of Rs.4.20 lakhs. Therefore, company was advised to complete the erection of humidification plant and furnish the report to SIPCOT immediately. The said report also does not recommend for disbursal of any loan amount, since only after report submitted by the screening committee and recommended for disbursal of loan. Therefore, A3 and A4 were nothing to do with the disbursal of any loan amount.

13. However, insofar as A1 and A2, they had created false document with dishonest intention to defraud the loan amount, thereby they committed forgery of documents and used the same as if they are original and dishonestly induced the officials of SIPCOT and availed loan. Thereafter, they defaulted the same for which they committed offence. They also had committed offence of impersonation through PW24-Srinivasan as if qualified engineer and then they had concealed valuable movable properties of the company from seizure of SIPCOT. Therefore, both the courts below rightly convicted A1 for the offences under Sections 120(b), 468, 471, 420, 419 & 424 of IPC and convicted A2 for the offences under Sections 120(b), 468, 471, 420 & 419 of IPC. However, both the courts below erroneously concluded that A3 and A4 also connived with A1 and A2 and submitted forged documents.

14. As discussed above, no documents were produced by A3 and A4. As per the inspection report submitted by A3, he never recommended for disbursal of any loan amount in favour of A1 and A2. Therefore, the prosecution failed to prove any of the charge as alleged in the charge against

A3 and A4.

15. In view of the above, the Criminal Revisions filed by A3 and A4 in Crl.RC.Nos.1283 & 1284 of 2019 are allowed and the judgment of conviction and sentence imposed by the learned Chief Judicial Magistrate, Namakkal in CC.No.56 of 2008 dated 04.06.2019, which was confirmed by the learned Additional District and Sessions Judge, Namakkal in Crl.A.No.20 of 2019 dated 18.10.2019 in respect of A3 & A4 for the offences under Sections 420 r/w 120(b), 419, 468, 471 r/w 109 of IPC is set aside. The petitioners / A3 & A4 are acquitted of all charges in CC.No.56 of 2008 on the file of the learned Chief Judicial Magistrate, Namakkal. Fine amount, if any paid, shall be refunded to the petitioners/ A3 & A4 forthwith and the bail bonds, if any executed, shall stand cancelled.

16. Insofar as A1 and A2, this Court finds no infirmity or illegality in the conviction by the courts below. However, in a connected matter in Crl.A.No.537 of 2022, the Hon'ble Supreme Court of India, considering the facts and circumstances of the case, reduced the sentence to six months

rigorous imprisonment to run concurrently and also ordered that the period already undergone shall be set off. As such, the judgment in criminal appeal No.19 of 2019 passed by the learned Additional District and Sessions Judge, Namakkal dated 18.10.2019 confirming the judgment of the learned Chief Judicial Magistrate, Namakkal in CC.No.56 of 2008 dated 04.06.2019 is modified as follows:

(i) The conviction rendered for the offences under Sections 120(b), 468, 471, 420, 419, 424 of IPC in respect of A1 and for the offences under Sections 120(b), 468, 471, 420, 419 of IPC in respect of A2 is confirmed.

(ii) The sentence of imprisonment imposed by the courts below is reduced to the period already undergone by the petitioners/A1 & A2.

(iii) The fine imposed by the courts below are hereby confirmed.

(iv) The petitioners/A1 & A2 are directed to be set at liberty forthwith, unless their custody are required in connection with any other case. The bail bond, if any executed by the petitioners, shall stand cancelled.

17. Accordingly, the criminal revision in Crl.RC.No.1266 of 2019 is

partly allowed.

12.10.2022

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
lok

G.K.ILANTHIRAIYAN. J,

lok

To
1.The learned Additional District and Sessions Judge,
Namakkal
2.The learned Chief Judicial Magistrate,
Namakkal
3.Inspector of Police,
Crime Branch CID,
Namakkal District
4.The Public Prosecutor,

Crl.RC.Nos.1266, 1283 & 1284 of 2019

12.10.2022