IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.10.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.Nos.730 and 734 of 2010

S.U.Shankar .. Appellant (A1) in Crl.A.Nos.730 of 2010

K.Balan .. Appellant (A2) in Crl.A.No.734 of 2010

Vs.

State, represented by
The Inspector of Police,
SPE/CBI/ACB, Chennai
R.C.No.19(A)/1996 .. Respondent in Crl.A.No.730 of 2010

State rep. by
Inspector of Police
SPE: CBI : ACB,
Chennai. .. Respondent in Crl.A.No.734 of 2010

Criminal Appeal Nos.730 and 734 of 2010 filed under Section 374(2) of the Code of Criminal Procedure read with Section 27 of the Prevention of Corruption Act, 1988, against the judgment dated 01.11.2010 made in C.C.No.20 of 1998 on the file of the XI Additional City Civil and Sessions Judge (CBI cases relating to Banks and Financial Institutions), Chennai.

For appellants : Mr.S.Karthikeyan in Crl.A.No.730 of 2010
Mr.R.Sathish Kumar, Legal Aid Counsel
in Crl.A.No.734 of 2010

For respondent: Mr.K.Srinivasan, Spl.P.P for CBI Cases

COMMON JUDGMENT

The appellant in Crl.A.No.730 of 2010 is arrayed as A1 and the appellant in Crl.A.No.734 of 2010 is arrayed as A2.

2. The respondent/CBI has registered a case in C.C.No.20 of 1998 against both the accused persons under Section 120-B read with Sections 420, 477-A IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. As per the charge-sheet filed by the respondent-CBI, A1 was working as Branch Manager of State Bank of Mysore, Thiruvanmiyur Branch, Chennai. A2 is the Proprietor of M/s.Balan and Co., and also M/s.Crown Marble and Company. A2 was having current account CQ163 C1114 respectively in State Bank of Mysore, Thiruvanmiyur Branch.

3. During 1991-92, both the accused persons have entered into criminal

conspiracy to do illegal act and in order to cheat the State Bank of Mysore, Thiruvanmiyur Branch, they have committed criminal misconduct. In pursuance of the criminal conspiracy, A1 fraudulently and dishonestly debited the local clearing account and without lodging any cheque while preparing the bogus voucher for debiting local clearing account and credited it to the account of A2 in his own handwriting and A1 fraudulently and dishonestly prepared the debit vouchers by showing false pictures and fraudulently and dishonestly credited into the account of A2. A2 also, knowing fully well that he was not having adequate funds in the above said two accounts, issued the cheques and in that way, 11 fictitious and unauthorised debits were made to local clearing account to the tune of Rs.11 lakhs, were made by A1 in pursuance of the said conspiracy and based on the aforesaid accounts of A2. A1 also allowed A2 to withdraw the amount from the said account knowing fully well that the above said account of A2 did not have adequate funds. In that way, both the accused have cheated the Bank, and therefore, based on the above said charge, the trial Court framed charges against both the accused as stated above.

4. In order to substantiate the charges framed against the accused, on the side of prosecution, totally P.Ws.1 to 12 were examined and Exs.P-1 to P-155 were marked.

5. On completion of examination of witnesses on the side of prosecution, incriminating circumstances were culled out from the evidence of the prosecution witnesses which were put to the accused and they have denied them as false.

6. On the side of defence, one witness was examined as D.W.1 and Exs.D1 to D4 were marked.

7. On completion of trial, and after hearing the arguments advanced on either side, the trial Court found the accused persons guilty of the charges and sentenced them and the details of conviction and sentence imposed on the appellants/A1 and A2 by the trial Court, are as below:

C.C.No.20 of 1998:-

Name and rank of accused persons	*Conviction under Section*	*Sentence imposed*	*Fine*
S.U.Shankar (A1)	120-B read with Section 420, 477-A - IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988	one year rigorous imprisonment	Rs.10,000/-, in default, to undergo simple imprisonment for three months
		one year rigorous	Rs.10,000/- in

Name and rank of accused persons	*Conviction under Section*	*Sentence imposed*	*Fine*
S.U.Shankar (A1)	420 IPC	imprisonment	default to undergo simple imprisonment for three months
S.U.Shankar (A1)	477-A IPC	one year rigorous imprisonment	Rs.10,000/- in default, to undergo simple imprisonment for three months
S.U.Shankar (A1)	13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988	one year rigorous imprisonment	Rs.10,000/- in default, to undergo simple imprisonment
K.Balan (A2)	120-B read with Section 420, 477-A - IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988	one year rigorous imprisonment	Rs.10,000/-, in default, to undergo simple imprisonment for three months
			Rs.10,000/- in

Name and rank of accused persons	*Conviction under Section*	*Sentence imposed*	*Fine*
K.Balan (A2)	420 IPC	one year rigorous imprisonment	default to undergo simple imprisonment for three months

8. Challenging the above said conviction and sentence, A1 has filed Crl.A.No.730 of 2010 and A2 has filed Crl.A.No.734 of 2010. Since both the appeals arise out of the same common judgment, both the appeals are taken up and heard together and they are disposed of by this common judgment.

9. Learned counsel for A1 submitted that the trial Court failed to consider the written arguments submitted by the learned counsel under Section 314 Cr.P.C. and the citations relied on by them before the trial Court. The trial Court failed to appreciate the evidence of the material witnesses in proper perspective and the cross-examination of the witnesses was not even considered by the trial Court.

10. The charge against A1 is that certain entries were not reflected in the Books of Accounts. Mere non-reflection of the entries cannot be the basis for

attributing malice or motive against A1. Even the evidence of P.W.1 and P.W.10 clearly shows that due to heavy work load or due to pressure of work, certain entries may be missing at the end of the day, but the same will be tallied or corrected at the end of the month. This fact has not been appreciated by the trial Court.

11. The trial Court totally ignored the evidence of P.Ws.5 and 10, especially during the cross-examination, the witnesses have admitted that in the normal practice, there are some entries which are inadvertently missing. The trial Court also failed to consider Ex.D-1 being the report of P.W.2 wherein it is seen that the bona-fide of A1 also shows hat A1 obtained documents to safeguard the interest of the Bank. Therefore, it is clearly shown that A1 was not acting against the interest of the Bank.

12. Learned counsel for A1 further contended that though the burden of proof of the accused is not that much heavy than that of the prosecution, the accused can discharge their burden through preponderance of probabilities and direct evidence is not necessary to prove their defence. Further, the sanctioning authority has not applied his mind while according sanction to prosecute the accused persons. Therefore, the evidence of P.W.1 is fatal to the case of the prosecution and on that score itself, A1 is entitled for acquittal.

13. While according the sanction based on the original file sent by the CBI, sanctioning authority has not properly considered them and only the sanctioning authority has not stated that while according sanction, he has seen the entire original records, which also is fatal to the case of the prosecution.

14. Learned counsel for A1 further submitted that the trial Court failed to consider the main aspects about the documents summoned by A1 to prove his bona-fide that he has sent the loan proposal to the Regional Office for approval, but the Bank replied that the said documents were destroyed, which cannot be accepted, because, as per Ex.D-5, the Bank's book of instruction that the documents summoned has to be maintained for a period ranging from ten to twenty years, whereas, the trial Court has stated in the judgment that the document has to be maintained only for five years, and therefore, it clearly shows that the trial Curt failed to consider the entire evidence and give effect to that. The documents summoned by A1 were deliberately with-held by him in order to apprise A1 and non-production of the documents is prejudicial to A1, which is fatal to the case of the prosecution. It clearly shows that the prosecution has failed to prove its case beyond reasonable doubt and the with-holding of the necessary documents by A1, leaves the Court to draw adverse inference against

the prosecution, whereas, the trial Court failed to draw adverse inference against the prosecution and when two views are possible, the view which is favourable to the accused has to be taken into consideration and on that score itself, A1 is entitled to get acquittal.

15. Learned counsel for A1 further submitted that all the transactions mentioned in the charge-sheet are purely loan transaction and the order passed by the Debts Recovery Tribunal (DRT) was marked as Ex.D-3, wherein the DRT held that it is loan transaction and further, the Tribunal considered the fact that it is bona-fide transaction and therefore, the DRT entertained the application and passed the recovery order. The Bank has no loss and the amount was subsequently recovered.

16. Learned counsel for A1 further submitted that A1 had sent the proposal for sanction of loan to M/s.Crown Marble Company and had admitted to the Regional Office for sanction. This is corroborated by the evidence of P.Ws.1, 2, 4, 7 and 9, but the trial Court has not discussed anything about the evidence of the said witnesses.

17. P.W.3 clearly admitted in his evidence that A1 had forwarded the

proposal to the Regional Office and pending sanction, and based on oral assurance given by his superior and also considering the urgency of the client's business requirements, the funds were released. This is in conformity with the Bank's instructions contained in its manual which was marked as Ex.D-5.

18. Learned counsel for A1 further submitted that the evidence of P.W.7 also clearly shows that releasing the funds in anticipation of the sanction of the prosecution, already sent, is the bona-fide conduct of the Branch Manager. He further submitted that the proposal sent can be established by the fact that the loan funds were sanctioned at a later date and released by the successor of A1. Ex.D-2 is the sanction communication later signed by the subsequent Manager of the State Bank of Mysore, Thiruvanmiyur Branch. The evidence of P.W.3 also corroborated the same. The trial Court failed to consider the evidence of the prosecution witnesses, more so, the official witnesses who are the higher officials and at one point of time, they were working as Branch Manager and some of the witnesses are successor of A1 and they have categorically stated that the normal practice adopted by the Bank and the sanction proposal sent to the Zonal/Head Office and in anticipation of the approval, they can meet out the requirements of the customers which does not amount to cheating the Bank. The trial Court failed to appreciate the evidence of the prosecution and the defence had erroneously

given a finding that A1 committed the charged offences and he was found guilty of the same, which warrants interference.

19. Learned counsel for A2 submitted that there was no sufficient evidence to prosecute A2 who is only the customer and A1 is the Branch Manager of the Bank and they had no conspiracy or intention to cheat the Bank. As the businessman, they used to send the cheques as the Branch Manager in anticipation of the approval from the Zonal/Head Office, as the case may be. He used to clear the cheques and A2 utilised the funds for his business transaction. Even the official witnesses have clearly admitted the normal practice adopted by the Bank and also the powers of the Branch Manager. A1 has not exceeded his power and A2 also has not misused his power.

20. It is further submitted that when once they have treated the balance amount as loan transaction and filed a case before the DRT, it is only purely a civil transaction and the Bank and A2 are only the debtor and creditor relationship and they can recover the amount in the manner known to law, which cannot be termed as misappropriation or cheating or conspiracy.

21. Learned counsel for A2 further submitted that there is no evidence to

show that A2 conspired with A1 and caused loss to the Bank. The evidence of the official witnesses clearly shows that in the normal course of business, the Bank would adopt the practice and since some entries were inadvertently omitted and since the approval sent by the Branch Manager of the Zonal/Head Office and awaiting the approval or in anticipation of the approval, clearing of the cheques will not amount to cheating or misappropriation. The prosecution failed to prove its case beyond reasonable doubt and the benefit of doubt should have been extended in favour of A2 and when two views are possible, the view which is favourable to the accused, has to be taken into consideration. The trial Court failed to appreciate the evidence and also failed to consider that it is only a mere loan transaction. Therefore, the conviction and sentence imposed by the trial Court against A2 is liable to be set aside and A2 may be acquitted of the charges.

22. Learned Special Public Prosecutor appearing for the respondent/CBI submitted that A1 was working as the Branch Manager in the State Bank of Mysore, Thiruvanmiyur Branch and during 1991-92, A2 as a Proprietor of M/s.Balan and Company and M/s.Crown Marble Company, was having the Current Account in the State Bank of Mysore, Thiruvanmiyur Branch, Chennai, where A1 was working as the Branch Manager. A2 entered into criminal conspiracy with A1 and without adequate funds, he used to receive the cheque and knowing fully

well that A1 is the Branch Manager, had honoured the cheque and credited the amount to his account and therefore, both A1 and A2 knowing fully well that the transaction is a fraudulent one and A1 fraudulently and dishonestly debited the Local Clearing Account even without lodging any cheque by preparing the bogus voucher for debiting the Loan Clearing Account and credited the same to A2's account in his own handwriting and A1 virtually controversially prepared the debit voucher by showing false particulars and fraudulently and dishonestly credited the amount into the account of A2. In that way, several facts have been introduced and unauthorised debits were made to the Local Clearing Account to the tune of Rs.11 lakhs. A1 and A2 have cheated the Bank by entering into the criminal conspiracy and mere filing of the case before the DRT or Civil Court will not absolve the criminal liability. A1 and A2 cunningly entered into the criminal conspiracy and cheated the Bank. However, subsequently fraud committed by both the accused came into light and therefore, a case was registered and investigation revealed that both of the accused have committed the charged offences.

23. In order to substantiate the case of the prosecution, 12 witnesses were examined and from the evidence of the above said witnesses, it is clear that during the relevant point of time, A1 was the Branch Manager of State Bank of

Mysore, Thiruvanmiyur Branch and A2 was the Proprietor of M/s.Balan and Co., and Crown Marble and Co., and having account with the above said Branch where A1 was working as Branch Manager. Further, the evidence clearly shows that during the relevant point of time, A1, without having any adequate funds, had the transaction in connivance with A2, and that A1 also, during the relevant period, and without knowing fully well that A2's Company account, there is no adequate fund and he cleared the cheques and vouchers and even without the cheque and voucher, transacted the account as it is bona-fide one. A1 went to the extent of removing all the cheques and without sending them to the clearing Branch of the Bank, kept the same in his residence, which clearly shows the intention of A1 and that the prosecution has proved its case beyond reasonable doubt and just because some of the documents summoned by the witnesses were destroyed and mere non-production of those documents will not be fatal to the case of the prosecution, when the transaction itself is not a bona-fide one and the accused persons cannot take advantage of the same and seek shelter of the same and again seek protection under the shelter of the same. Therefore, in those circumstances, there is no merit in the appeal and the same may be dismissed.

24. Heard both sides and perused the materials placed on record.

25. P.W.1 is the retired Chief General Manager of the State Bank of Mysore and he stated that he was the competent authority to take disciplinary action and after satisfying himself about the involvement of A1 in the mal-practices and on application of mind, he accorded sanction to prosecute A1. P.W.2 is the retired Deputy General Manager and he stated that while he was the Assistant General Manager in the Vigilance Department, he referred the complaints for investigation in respect of the offence committed by A1 and A2. He further stated that at the time of complaint, A1 was under suspension for irregularity committed in drafts and cheques purchased accounts of the State Bank of Mysore - General account of K.K.Nagar Branch. P.W.2 had spoken about the modalities of offence committed by A1 who transferred the fictitious balance of Rs.11 lakhs in the local clearing accounts to K.K.Nagar Branch. P.W.3 was the Chief Manager of the State Bank of Mysore and while he was working in Vigilance Department, he conducted investigation on the instructions of Chief Vigilance Office and Rs.58,07,300/- was un-reconciled at the Head Office level. He has deposed in detail about the transactions done by A1. He further deposed that A1, without sanction and without permission, passed credits to A2 for Rs.11 lakhs. In order to conceal the entries in local clearing account of State Bank of Mysore, Thiruvanmiyur Branch, A1 passed two entries to debit the K.K.Nagar Branch where he was transferred. P.W.4 was the Cashier of the State Bank of

Mysore and she has spoken about the local clearing transfer debit slip prepared by her and outward clearing scroll. She deposed in detail about the entries in the accounts. P.W.5 was the Assistant Manager of the State Bank of Mysore and he stated that for each day, there will be a outward clearing scroll containing the details of receipt of cheques at the end of the day and the amount of all the cheques would be mentioned. He also deposed that the credit vouchers were prepared and signed by A1. The initial of A1 is available in the cheques passed by A1 and A1 made summations for adjusting the local clearing account.

26. P.W.6 was the Assistant General Manager of the State Bank of Mysore and spoken about the debits and credits given to the accounts. P.W.7 is the Branch Manager of the State Bank of Mysore, Thiruvanmiyur and had spoken that during 1991-92, A1 was the Manager and he can sanction over-draft for an extent of Rs.5,000/-. The local clearing account is for clearing local cheques presented by customers of the Branch and the entries made in outward clearing scroll and statement is prepared and sent to the service Branch with the list of cheques and each day's clearance made by service Branch is sent to them in the form of statement of account by the service Branch. The Branch compares the local clearing account with the statement of service Branch and reconcile the same. He deposed that one debit voucher was prepared for the total amount in the outward

clearing scroll and no debit voucher was prepared for a particular instrument.

27. P.W.8 was a Clerk in the State Bank of Mysore and deposed that his job in the Thiruvanmiyur Branch is to receive the cheques and make entries in the outward clearing scroll, totalling the entire amount and prepare local clearing debit slip on the basis of the clearing scroll and only one debit slip was prepared for the one scroll and he had made entries thereto. P.W.9 was the Assistant Manager of the State Bank of Mysore and while he was working in Thiruvanmiyur Branch, he had made entry in ledger sheet and the debit slip was prepared and signed by A1. P.W.10 was the Assistant Manager of Currency Cell and he has spoken that while he worked as Accountant in Thiruvanmiyur Branch, A1 was the Manager and he turned hostile. P.W.11 was the retired Manager of the State Bank of Mysore and he deposed that while he was working in the Service Branch of the State Bank of Mysore, his duty was to collect the inward cheques and outward cheques for clearing, and the clearing was processed by RBI. The RBI used to send inward clearing statement to Service Branch-wise and they used to send statement along with cheques schedule to the Branches. P.W.12 was the investigating officer in this case and he registered the FIR on the complaint of Chief Vigilance Officer, State Bank of Mysore and he examined the witnesses and collected various documents and after obtaining the search warrant from Chief

Metropolitan Magistrate, he conducted a search at the residence of A1 and seized pass-book of A1. He recorded the statement of P.W.10 and after completion of investigation, he obtained sanction to prosecute A1 and filed charge sheet agianst both the accused persons.

28. From the evidence of the prosecution witnesses, the prosecution has proved that during the relevant point of time, A1 was the Branch Manager and it is not in dispute that A1 was the Branch Manager of the Bank and A2 was the Proprietor of M/s.Balan and Company and M/s.Crown Marble Company and was the account holder in the Bank. It is not in dispute that there was no transaction and the evidence of the prosecution witnesses and exhibits marked, clearly shows that A2 was having account in the Branch of the Bank where A1 was working.

29. The evidence of P.W.3 shows that when A1 was transferred to K.K.Nagar Branch, and the debit in the local clearing account of Thiruvanmiyur Branch was first given credit by debiting the general account of the State Bank of Mysore, K.K.Nagar Branch and the subsequent credit to local clearing account and thus, the account was settled in the Thiruvanmiyur Branch. Further, the debit in the local clearing account of Thiruvanmiyur Branch of Rs.69,07,300/- was given credit in Thiruvanmiyur Branch by debiting the same to the K.K.Nagar Branch

account. On fictitious credit, the cheque of A1 was honoured and it was found that Crown Marble and Co. has benefited Rs.1 lakh an Balan & Co. benefited Rs.10 lakhs and irregularity was committed by A1 in the local clearing account of the Branch. When A1 was transferred to K.K.Nagar Branch, he has transferred the debit amount in local clearing account of Thiruvanmiyur Branch to the General Account of K.K.Nagar Branch and after joining K.K.Nagar Branch, A1 has reversed the entry from State Bank of Mysore General account to local clearing account. Thus, the debit in local clearing account of Thiruvanmiyur Branch was transferred to local clearing account of K.K.Nagar Branch.

30. The evidence in entirety proves that there are 11 debit and credit vouchers and using the same, A1, without any instrument of cheque or demand draft, debited to the local clearing account of Thiruvanmiyur Branch and credited the amount to the account of A2, i.e. Crown Marble and Co. and Balan & Co., totalling Rs.11 lakhs and A2 was permitted by A1 to withdraw the entire amount of Rs.11 lakhs. As observed by the trial Court, regarding Destruction Register, petition under Section 91 Cr.P.C. was not filed for production.

31. The defence has taken a stand that the loan is secured. As several documents were recovered from A1, the stand that the loan is secured cannot be

countenanced at this stage. The other stand of the defence that it is a loan and therefore, in the DRT, money was realised. A1 and A2 were arrayed as defendants 1 and 3 before the DRT and therefore, the question of loan and recovery in DRT is not acceptable.

32. There is no quarrel over the proposition of law laid down by the Supreme Court, as relied on by the learned counsel for A1, reported in 2004 (10) SC 786 (Usman Mian Vs. State of Bihar). The facts in the case on hand, are distinguishable and hence, the principles therein would not apply to the case on hand. In this case, as already stated, A1 was the Branch Manager and A2 was the customer and all the documents seized clearly shows that even without adequate funds, the transactions had taken place. If adequate funds are available in the account of A2 and A1 cleared all the cheques and vouchers and fact remains that during the relevant point of time, the alleged transactions had taken place and without adequate funds, the transactions were made. In toto, the prosecution has proved that A1 has debited the local clearing account of Thiruvanmiyur Branch to the tune of Rs.11 lakhs and credited to the account of A2 and allowed withdrawal of the amount from the account of A2. The prosecution has ultimately proved that A1 and A2 conspired together and A1, by using his office as Manager of Thiruvanmiyur Branch, had given illegal credit to A2's account to the tune of

Rs.11 lakhs by debiting local clearing account of Thiruvanmiyur Branch and allowed A2 to withdraw Rs.11 lakhs from his account and caused wrongful loss to the Bank to the tune of Rs.11 lakhs and wrongful gain to A1 and A2.

33. Therefore, this Court finds that the prosecution has proved its case beyond reasonable doubt and merely there are some defects in the investigation, even assuming that certain defects are in the investigation, that may not be the sole ground to disbelieve the case of the prosecution. Mere non-production of certain documents which were already destroyed also, may not be a ground to disbelieve the evidence of the prosecution.

34. The defence witness did not state that A1 was not the Branch Manager and A2 was not having any account. The defence witness has not shown any evidence that during the relevant point of time, there was adequate funds in the accounts of A2 of the Bank. The defence has not produced any document to show that A1 got the approval or sanction order and based on that, he cleared the cheques. While the appellate court as final fact finding Court, while re-appreciating the evidence, finds that the prosecution has succeeded in its stand and the accused persons are not entitled for acquittal for the reasons stated above.

35. Though it is settled proposition of law that the accused can establish his defence by preponderance of probabilities, but the accused has not proved the defence, as the prosecution has proved its case beyond all reasonable doubts. The defence can always discharge its burden by preponderance of probabilities. In this case, this Court does not find any material to show that the defence has discharged its burden with preponderance of probabilities. When once the prosecution has proved that A1 as the Branch Manager of the Bank and A2 being the account holder in the Bank, during the relevant point of time, without any adequate funds, conspired with each other and fraudulently made the transactions as if A2 is the genuine customer and A1 has cleared all the cheques, he being the Manager at the relevant point of time.

36. Therefore, in the above stated facts and circumstances, this Court finds that the defence taken by the accused persons had not been established, which is not sufficient to escape from the criminal liability.

37. In this case, A1 is the Public Officer dealing with the money and without any authority, he had made the transactions with the private person, being A2 and it is for the accused persons to prove that there is no guilty mind on

them, which they failed to prove.

38. From the inception in the case on hand, A1 and A2 have conspired together to cheat the Bank, knowing fully well that enough funds were not available in the Bank Accounts of the customer, and despite the same, there was issuance of cheques and the Branch Manager of the Bank, without auditing the materials and without following the procedures, honoured the cheques, though no sufficient funds were available in the respective Account of the borrower, i.e. Krishna & Co. A1 and A2 should not only be charged / convicted in respect of the offences under the provisions of the IPC/Prevention of Corruption Act, they should also be charged for concealing the cheques in his personal capacity in order to commit fraud.

39. Thus, in the above facts and circumstances, and taking into account the oral and documentary evidence, this Court as appellate Court, being the final Court of fact-finding, while re-appreciating the evidence, also finds that the prosecution has proved its case beyond reasonable doubt and A1 and A2 have committed the charged offences and they are liable to be punished for the same, coupled with the fact that the evidence of the prosecution inspires the confidence of this Court.

40. It is clearly proved by the prosecution that A1 has admitted the offences committed by him, and though the confession by itself is not sufficient to convict both A1 and A2, the oral and documentary evidence in this case, have well been corroborated to convict the accused persons.

41. Further, in the facts and circumstances of the case on hand, the decision of the Supreme Court reported in 2004 (10) SCC 786 (Usman Mian and others Vs. State of Bihar) as relied on by the learned counsel for the appellants, as also the decision of the Supreme Court reported in 2019 (17) SCC 411 (Ram Lal Vs. State of Himachal Pradesh), as relied on by the learned Special Public Prosecutor, are distinguishable on facts herein, and hence, they are not applicable to the case on hand.

42. In fine, these criminal appeals are dismissed, confirming the conviction and sentence imposed on A1 and A2 by the trial Court. Since A1 and A2 are on bail, the trial Court is directed to take steps to secure their custody and commit them to prison to undergo the remaining period of sentence, if any. The period of sentence already undergone by A1 and A2 herein, if any, shall be set-off under Section 428 Cr.P.C.

43. In respect of the appellant (A2) in Crl.A.No.734 of 2010, the Legal Aid Counsel Mr.R.Sathish Kumar had appeared and this Court, while appreciating the service rendered by him, directs the Registry to forward a copy of this judgment to the Member Secretary, Tamil Nadu State Legal Services Authority, High Court Campus, Chennai-600 104, for payment of necessary fees as per the Rules in force.

20.10.2023

Index: Yes/no
Neutral Citation: Yes/no

Speaking Order: Yes/no
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To

1. The 11th Additional Judge, City Civil Court, Chennai.
2. The Special Public Prosecutor (CBI cases), High Court, Madras.
3. The Inspector of Police, Centrau Bureau of Investrigation,
   SPE/CBI/ACB, Chennai.
4. The Member Secretary, The Tamil Nadu State Legal Services Authority,
   High Court Campus, Chennai-600 104.

P. VELMURUGAN, J

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Pre-delivery common judgment in

Crl.A.Nos.730 and 734 of 2010

Judgment delivered on 20.10.2023