IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.10.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.Nos.12, 33 and 34 of 2011

S.U.Shankar	.. Appellant (A1) in Crl.A.No.12 of 2011
Shyam Cousic	.. Appellant (A4) in Crl.A.No.33 of 2011
M.S.Arun	.. Appellant (A2) in Crl.A.No.34 of 2011

Vs.

State, represented by the Inspector of Police, SPE/CBI/ACB, Chennai, R.C.No.20(A)/1996	.. Respondent in Crl.A.No.12 of 2011
State by: Inspector of Police, SPE: CBI: ACB, Chennai.	.. Respondent in Crl.A.No.33 of 2011
Inspector of Police, Central Bureau of Investigation, SPE: ACB, Chennai.	.. Respondent in Crl.A.No.34 of 2011

Criminal Appeal Nos.12, 33 and 34 of 2011 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 22.12.2010 made in C.C.No.37 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.K.Suresh Babu in Crl.A.No.33 of 2011

Mr.Prakash Goklaney in Crl.A.No.34 of 2011

Mr.S.Karthikeyan in Crl.A.No.12 of 2011

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

COMMON JUDGMENT

The prosecution has registered a case against the appellants/A1, A2 and A4 and remanded them to custody. The trial Court framed charges against these appellants and by judgment dated 22.12.2010, they were convicted and sentenced. Challenging the same, the accused persons have filed the respective criminal appeals arising out of C.C.No.37 of 1998 and trial was conducted and judgment of conviction and sentence was passed thereunder.

2. The details of conviction and sentence imposed on the appellants by the trial Court, are as below:

C.C.No.37 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	three years rigorous imprisonment	Rs.25,000/-, in default, to undergo simple imprisonment for three months
S.U.Shankar (A1)	420 IPC	three years rigorous imprisonment	Rs.25,000/- in default to undergo simple imprisonment for three months

Name and rank of accused persons	***Conviction under Section***	***Sentence imposed***	***Fine***
S.U.Shankar (A1)	477-A IPC	three years rigorous imprisonment	Rs.25,000/- 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	three years rigorous imprisonment	Rs.25,000/- in default, to undergo simple imprisonment three months
M.S.Arun (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	three years rigorous imprisonment	Rs.50,000/-, in default, to undergo simple imprisonment for three months
M.S.Arun (A2)	420 IPC	three years rigorous imprisonment	Rs.50,000/-, in default, to undergo simple imprisonment for three months
D.Ramanathan (A3)	120-B read with Section 420, 477-A IPC and Section 13(2) and 13(1)(d) of the Prvention of Corruption Act 477-A IPC	one year rigorous imprisonment	Rs.50,000/- in default, to undergo simple imprisonment for three months
			Rs.50,000/- in default, to

Name and rank of accused persons	***Conviction under Section***	***Sentence imposed***	***Fine***
D.Ramanathan (A3)	420 IPC	one year rigorous imprisonment	undergo simple imprisonment for three months
Shyam Cousic (A4)	Section 120-B read with Sections 420, 477-A IPC and Section 13(2) and 13(1)(d) of the Prevention of Corruption Act	three years rigorous imprisonment	Rs.50,000/- in default, to undergo simple imprisonment for three months
Shyam Cousic (A4)	Section 420 IPC	three years rigorous imprisonment	Rs.50,000/- in default, to undergo simple imprisonment for three months

3. The Investigating Officer, namely the Inspector of Police, SPE: CBI: ACB has filed charge sheet against the above appellants for the respective offences under Sections stated supra. The charge sheet reveals that:

(a) During the year 1991-92, all the appellants entered into criminal conspiracy to do illegal acts, namely to cheat the State Bank of Mysore by falsifying the records and by criminal misconduct at Chennai and other places and in pursuance of the said conspiracy, A2 to A4, in the capacity of Authorised

Signatories of M/s.Krishna and Co., issued various cheques between 01.05.1991 and 14.05.1992, knowing fully well that at the time of issuing the cheques, there was no sufficient funds in the Bank Account and they were issued fraudulently and dishonestly in pursuance of the conspiracy with A1, being the Branch Manager.

(b) A1, by misusing his official position as Branch Manager, and by illegal means, fraudulently and dishonestly had not given debit of the cheque amounts issued by A2 to A4 from the Current Account of M/s.Krishna and Co., and he had not made any entry in the cheque referred and cheque returned Register. Further, A1, fraudulently and dishonestly made false debit to the local clearing account, equivalent to the amount of cheques to be honoured and thereby, A1 set right the Books of Accounts of the Bank on those days and thereby prevented the other people to detect the fraud and thereby, A1, along with A2 to A4, caused wrongful loss to the tune of Rs.58,07,300/- and the corresponding wrongful gain and pecuniary advantage of Rs.58,07,300/- to themselves and thereby cheated the State Bank of Mysore, Thiruvanmiyur Branch and subsequently, in order to conceal the illegal act, A1, after his transfer to K.K.Nagar Branch, fraudulently and dishonestly transferred the outstanding amount of Rs.58,07,300/- along with Rs.11 lakhs from the local clearing account of Thiruvanmiyur Branch to K.K.Nagar Branch.

(c) After framing of charges, in order to prove the same, on the side of prosecution, P.Ws.1 to 14 were examined and Exs.P-1 to P-286 were marked.

(d) After completion of examination of the prosecution witnesses, incriminating materials were culled out from the evidence of the prosecution witnesses and when the same were questioned before all the accused persons, they have denied the same as false. On the side of defence, Exs.D-1 to D-5 were marked.

(e) On completion of trial and upon hearing the arguments advanced on either side, the trial Court found A1, A2 and A4 guilty of the charges and convicted and sentenced them as tabulated above. Challenging the said conviction and sentence, A1, A2 and A4 have filed the respective present Criminal Appeals.

4. While reiterating the case of the prosecution, learned counsel for A1 submitted that A1 was the Branch Manager of the State Bank of Mysore and he was transferred from Thiruvanmiyur Branch to K.K.Nagar Branch, wherein, he had fraudulently and dishonestly debited the amount in the local clearing account at K.K.Nagar Branch and the same was credited to the Thiruvanmiyur Branch in the general account. Therefore, A1 being a public servant, has abused his official position and by illegal means, with the connivance of A2 to A4, caused wrongful

loss to the State Bank of Mysore to the tune of Rs.58,07,300/- and therefore, A1 was charged for the offences under Sections 120-B read with Sections 420 and 477-A IPC, and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. Further, separate charges were also framed under Sections 420 and 477-A IPC and also under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act.

5. Learned counsel for A1 further submitted that the trial Court failed to consider the valid contentions raised on behalf of A1 and the same were filed in the form of written arguments as contemplated under Section 314 Cr.P.C. The citations relied on by the learned counsel were not considered/rejected by the trial Court, without proper appreciation of the facts and the same is perverse.

6. The learned counsel for A1 also contended that there is no evidence of conspiracy in this case. For proving the criminal conspiracy, direct evidence is not necessary and even though for proving the criminal conspiracy, direct evidence is necessary, then it will arise only based on attending circumstances, which may or may not prove otherwise. In the present case, the trial Court has not appreciated the evidence of material witnesses in proper perspective and further, the cross-examination of the witnesses was not even considered at all by the trial Court.

7. Learned counsel for A1 further contended that the charge against A1 is that certain entries were not reflected in the Books of Accounts and mere non-reflection of entries cannot be the basis for attributing malice or motive against the accused persons, that too, especially A1 herein. Further, in the evidence of P.W.6 and P.W.10, it is stated 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 would have been tallied/corrected at the end of the respective month of the financial year. This crucial aspect has not been appreciated by the trial Court. Further, the trial Court has also not considered Ex.P-263 being the report of P.W.2 and P.W.3, which proves the bona-fide of A1, and that A1 had obtained documents only to safeguard the interest of the Bank. A1 had discharged his burden through preponderance of probabilities and direct evidence is not necessary to prove the same.

8. Moreover, according to the learned counsel for A1, the sanction of prosecution to take prosecution is not in order. The evidence of P.W.1 is clear that the sanction order Ex.P-1 was given without any application of mind. As per Ex.D-5, only the Chief General Manager of the Bank is the competent authority to accord sanction for prosecuting an accused for serious offences. P.W.1, who was

the General Manager of the State Bank of Mysore (SBM), was subordinate to the Chief General Manager. Therefore, the General Manager did not have power to grant such a sanction to prosecute the accused persons for serious offences. Therefore, Ex.P-1 being the sanction order, which by itself is defective and hence, the same is fatal to the case of the prosecution.

9. Learned counsel for A1 further submitted that P.W.1 himself admitted that he has not seen the 'proposal sent and disposed register' as also the audit reports of the Bank. This clearly shows that P.W.1 accorded sanction without application of mind. Therefore, the finding of the trial Court relates to the defective sanction order and the same is also fatal to the case of the prosecution.

10. It is further submitted by the learned counsel for A1 that the trial Court failed to consider that A1 has sent the loan proposal to the Regional Office for approval, and he sent the documents only to prove his innocence, but the Bank had stated that the documents were destroyed and therefore, there is 'benefit of doubt' as to whether A1 has sent the proposal to the Regional Office or not, and also as to whether the Regional Office had approved the proposal or not. In the absence of the said documents, A1 may not be convicted for the above said charged offences. Though under Section 23 of the Prevention of Corruption Act,

the burden of proof shifts on the accused, but however, it is settled proposition of law that the basic foundations facts are to be proved by the prosecution and then only the burden would shift on the accused persons. It is not automatic that the defence has to prove its case. Even once the prosecution has proved the foundational fact, that A1 had committed the charged offences, then the burden would shift on A1 to discharge his burden. In this case, the prosecution has not proved the foundational facts, and therefore, there is no question of rebuttal of the presumption by the accused persons which were predominantly in the shoulders of A1.

11. It is also stated by the learned counsel for A1 that the transaction in the case on hand is purely a loan transaction only, and that the Recovery Certificate issued by the Debts Recovery Tribunal (DRT) was marked as Ex.D-3, wherein the DRT held that is is a loan transaction and further the Prevention of Corruption Act is very clear that it is only with regard to the bona-fide transaction, where there is no criminality involved, and the DRT can be approached. In the present case, the Bank had approached the DRT stating that it was only a loan transaction and the Bank ultimately succeeded in obtaining the Recovery Certificate from the DRT. This crucial aspect has not been considered by the trial Court.

12. Further, the learned counsel for A1 submitted that the sanctioning authority had issued Ex.D-5 and the sanctioning authority had also admitted in his evidence that for fraudulent transactions, DRT cannot be moved. Further, the trial Court failed to consider the fact that A1 has sent the proposal for sanction of loan to M/s.Krishna and Co., and the same was submitted to Regional Office for sanction and this could be verified only by going through the register showing the proposal sent by/at the concerned Branch level of the Bank showing the proposal received and disposed at the Regional Office level. This has been corroborated by the evidence of P.W.2, P.W.6, P.W.9, P.W.10 and P.W.13.

13. Further, according to the learned counsel for A1, there is no whisper in the impugned judgment of the trial Court in respect of the evidence of P.W.13, who, in his cross-examination, stated that pending sanction on the basis of the oral assurance given by his superior and also considering the urgency of the claim business requirements, the funds were released. It is in conformity with the Bank's instructions contained in its Manual.

14. The learned counsel for A1 also submitted that the trial Court has not considered the evidence of P.W.7, who has also stated in his evidence that

releasing the funds in anticipation of the sanction of the proposal already sent, is a bona-fide conduct of the Branch Manager. Further, A1 had recovered Rs.9.75 lakhs from one of the partners of Krishna & Co. and P.W.2 in his deposition, has stated that this action of A1 showed that he had acted as a 'prudent Manager', but the trial Court failed to consider the same. A1 had also recovered undated cheques amounting to the entire due of Rs.58,07,300/- from the Company, which are Ex.P-247 series. These were never presented by the Bank for encashment and the prosecution has failed to give satisfactory answer for the conduct of the Bank. If at all the document summoned by A1 had been produced before the trial Court, it would have clearly established the bona-fide character of A1.

15. Learned counsel for A1 also submitted that the powers conferred on the Branch Managers are discretionary powers in the nature of administrative instructions, which do not have the force of law. Mere violation of the administrative instructions, per-se, cannot be a ground to give rise to criminal prosecution. In Banking parlance, in order to maintain good relationship with the customers and also to improve the business of the Bank, the officials have to use their discretionary powers and can later obtain ratification or approval from the Regional Office. Moreover, mere negligence or over-sight to make certain entries in the Books of Accounts due to pressure of work, cannot give rise to criminal

prosecution in the absence of mens-rea.

16. It is further argued by learned counsel for A1 that material documents were not placed before the Court, as the same are vital to the case, but the trial Court ought to have drawn adverse inference that these documentary evidence, if produced, would even be adverse to the case of the prosecution, and thus, with-holding of the best evidence also leads to draw inference against the prosecution and A1 is entitled to get 'acquittal' on the ground of "benefit if doubt". Further, the trial Court also failed to consider the evidence of P.W.8, who was the Auditor who had conducted audit on 16.08.1991 at the Thiruvanmiyur Branch of the Bank and that he had looked into the SBM's General Account and Local Clearing Account of the Bank, besides other accounts and that he had issued a Certificate only after tallying the same with all the necessary accounts. He has also confirmed that the Audit Reports are permanent records and he also confirmed that he has not shown this Audit Report by the CBI during investigation.

17. Learned counsel for A1 also submitted that all the transactions in this case are genuine business transactions, in which there is no criminality or fraud involved. The trial Court failed to consider the plea that the prosecution has deliberately let-off the partners of M/s.Krishna & Co. and that the investigation

had been biased and documents are fabricated (especially Ex.P-3) to falsely implicate A1. Learned counsel further submitted that the defence of A1 was established through the defence witness D.W.1, who had categorically stated that the methods adopted by A1 were common practice in the Banks and that it could be treated only as a secured loan and there is no criminality attached to it. The learned counsel for A1 further submitted that it is well-settled in law that the defence witnesses are to be treated on par with the prosecution witnesses, which has not been taken into account by the trial Court.

18. Learned counsel for A1 also submitted that, it is not the case of the prosecution that A1 was monetarily benefited out of the said transaction. However, the trial Court held that A1 has gained wrongful and pecuniary advantage along with the other accused persons. The investigation so conducted is not clear with regard to the beneficiary or the benefits enjoyed by A1. It is also contended that the findings of the trial Court are devoid of merits and the prosecution has failed to prove the case as against A1 in the manner known to law through acceptable evidence. Therefore, the findings of the trial Court are erroneous, which warrants interference as far as A1 is concerned.

19. Learned counsel for A2 stated that the trial Court failed to appreciate

Ex.P-248 being the Memorandum of Understanding between M/s.Krishna & Co. and D.Ramanathan, CMD of Mercantile Maritime Agency Pvt. Ltd., which clearly indicates that A3 was to cause facility to be provided to the said M/s.Krishna & Co., apparently on the strength of relationship with the Bank. It was nobody's case that A2 had any relationship with the Bank or its Manager at any earlier point of time. The signatures of A3 was insisted upon on the cheques and the arrangement clearly points out to that and only inference is that A2 had no understanding on this aspect with the Bank and any arrangement was only through A3.

20. It is further submitted that A2 was never the beneficiary at any point of time and A2 is not the partner of the said Krishna & Co. at all, and he is not the account holder and is merely an authorised signatory and there is no iota of evidence to show in any manner that A2 was in any way benefited by any transaction under the Accounting transactions. The prosecution not having included the partners who might have been the sole beneficiary and the prosecution ought to have specifically proved the role of A2 as the beneficiary. P.Ws.2, 3 and 14 have clearly admitted in their cross-examination that the account had not been properly analysed. The prosecution has also not properly explained the transactions and unexplained debits in the accounts which comes

upto the tune of Rs.52,16,978/-. Added to this, a Fixed Deposit of Rs.9.75 lakhs surrendered, adds upto an amount larger than the claim of the Bank lie adding fuel to the fire. The absence of explanation on these aspects from the account is wholly fatal to the case of the prosecution. The prosecution has looked at the case only from one angle, i.e. about the alleged irregularities said to have been committed by A1 and it assumes the role of the accused persons in the same, but without analysing the fact that there is huge sum of money that has been siphoned-off from the account, which covers almost the entire claim of the Bank. Further, there is no evidence against A2 that, in order to cheat the Bank, he had committed criminal conspiracy with A1 and the other accused persons. The transaction is clearly the loan transaction and the amount over-due was such that the DRT would not have jurisdiction to conduct the matter. Therefore, it is clear that when once it is the loan transaction, and when they have filed the Recovery Certificate of the loan from the DRT, the criminal case would not lie. Even otherwise, there is no material to show that A2 entered into criminal conspiracy with the other accused persons and cheated the Bank. The evidence of P.Ws.2, 3 and 14 in their cross-examination, virtually admitted that during the investigation, they have not found anything incriminating against the partners during the investigation and he concedes that he has not found any materials connected to A2 with A1. Therefore, the prosecution has failed to prove its case "beyond reasonable doubt" and there is no connection between A1 and A2.

21. Further, learned counsel for A2 submitted that the trial Court failed to consider the evidence of P.W.3 who had clearly stated that along with A4, one Balakrishnan was also the partner of Krishna and Co., and he has also signed the cheques as an Authorised Signatory. P.W.3 stated that the said Balakrishnan is also the beneficiary of the transaction and Ex.P-263 supports of the same. The trial Court further failed to consider the fact that A4 was not the beneficiary and he was erroneously dragged as an accused and the prosecution has ignored the role of the said Balakrishnan. Moreover, the evidence of P.W.3 is clear that there is no material to connect A4 alone, without connecting the other partner, namely the said Balakrishnan and the prosecution has adopted 'pick and choose method', and therefore, the same benefit may be extended to A4 also.

22. Learned counsel for A4 further submitted that from the evidence of P.W.2, there is nothing to show the receipt of the Statement of Accounts by A4 and he admitted in his evidence that the other partner Balakrishnan was also one of the Authorised Signatory and however, P.W.14 investigating officer deposed that he has not come across any cheque signed by the said Balakrishnan in the investigation. The trial Court failed to consider the case of the prosecution that,

as there is no explanation that while Ex.P-263 mentions about 148 cheques concerned in this case, and the cheques referred to is only 189 cheques, but however, both Ex.P-263 and the final report state that the amount of loss is Rs.58,07,300/-. Therefore, it clearly shows that the prosecution had adopted only "pick and choose method" and the accused persons have been targeted and they have left the actual beneficiary like the said Balakrishnan. Ex.P-248 was exhibited in five pages, numbered consecutively and does not bear the signature of A4 and in the 5th page therein, there is a stamp paper signature of A4. A4 is being brought in as a partner of the said Mercantile Maritime Agency Pvt. Ltd., and the export agency. The recitals in Ex.P-248 show that Mercantile Maritime Agency Pvt. Ltd., is not a party therein. The trial Court failed to consider all these aspects and also failed to appreciate the evidence of P.Ws.2 and 3 and erroneously convicted A4.

23. It is stated that pending these criminal appeals, A3 died and hence, the charge(s) as against him stood abated.

24. Learned Special Public Prosecutor appearing for the respondent/CBI submitted that A1 was working as Branch Manager in State Bank of Mysore, Thiruvanmiyur Branch. As a Branch Manager, and in order to accommodate

M/s.Krishna and Co., and their partners, which was the account holder, the Transfer Debit Voucher marked as Ex.P-268 series, were all prepared by A1 and the same were made false by A1. In that way, all the cheques were prepared and signed by A1. These vouchers are pertaining to dishonoured cheques. All the credit and debit entries relate to credit and debit vouchers which were prepared by A1 for the account of Krishna & Co., and the transfer of the amounts were made and passed by A1 and even the witnesses have clearly proved the hand-writing of A1. The Cashier was working in the Thiruvanmiyur Branch during the relevant period when A1 was working as the Branch Manager, and he had also clearly identified the handwriting of A1 and all the Bank officials have clearly stated the relevant transaction and irregularities committed by A1. All the related cheque leaves were recovered from the residence of A1. Moreover, A1 has also not satisfactorily given any explanation as to why all the cheques were in his residence. He has not rebutted the presumption under Section 20 of the Prevention of Corruption Act.

25. Learned Special Public Prosecutor further submitted that admittedly, A4 was one of the partners of M/s.Krishna & Co., and so, A2 to A4, with the connivance of A1, and also in order to cheat the Bank even without any adequate funds in their account, issued the cheques and A1 also, knowing fully well that A2

to A4 have adequate funds and cleared the same and in order to conceal the same, the cheques were removed and kept in their residence. The prosecution has proved the case "beyond reasonable doubt" and the prosecution has also proved the foundational fact that at the relevant point of time, A1 was the Branch Manager and A2 to A4 are account holders and they have also actively participated in the transaction with Krishna & Co., knowing fully well that they do not have adequate funds, conspired with A1 and made the transaction up to the tune of Rs.58,07,300/-. Therefore, the trial Court had rightly appreciated the evidence on record and convicted the accused persons herein. Further, the modus-operandi adopted by all the accused clearly show that they have cheated and caused loss to the Bank and therefore, as a public servant/Branch Manager, A1 had committed the offence under the Prevention of Corruption Act. The prosecution had proved all the charges framed against the accused persons and the trial Court had also appreciated the same in proper perspective and found that the appellants have committed the charged offences and thereby, the trial Court convicted them and sentenced them as stated supra. There are no merits in the appeals and there is no perversity in appreciation of the evidence.

26. The learned Special Public Prosecutor further submitted that as the appellate Court is a fact finding Court, the appellate Court can re-appreciate the

evidence on record and the prosecution has produced all the materials and the trial Court has rightly appreciated that no materials were with-held and the documents sent for by the appellants were out of the limitation period and framed and destroyed and there are no materials to show that in order to bring the materials, the Bank has adopted the norms and procedures and even the valuable documents which were marked as exhibits, would clearly show that the appellants have committed the charged offences. Further, mere filing the case for recovery of the amount, will not take away the offences committed by the appellants. They have admitted that despite knowing the fact that they do not have adequate funds in the account, they had issued the cheques, which were honoured with the connivance of A1. Therefore, loss was caused to the Bank and therefore, the Bank has filed Recovery proceedings as claimed before the DRT and since they have enjoyed the benefits of the Bank, which were treated as loan and the Recovery Certificate was also issued by the DRT, it does not mean that the appellants have not committed any of the offences. Even mere payment of subsequent amount of realisation of the amount also, cannot take away the offences. At the first instance, if the intention of the appellants is dishonest, knowing fully well that they do not maintain proper accounts and have also not maintained adequate funds, despite that, they have honoured the cheques and therefore, the accused persons have committed the offences alleged against them. The trial Court has rightly appreciated the same and that there are no merits in the present Criminal Appeals.

27. Heard both sides and perused the materials available on record.

28. The case of the prosecution is that during 1991-92, A1 to A4 entered into criminal conspiracy to do illegal acts to cheat the State Bank of Mysore by falsifying the records and by criminal misconduct at Chennai and other places, and in pursuance of the conspiracy, A2 to A4, in the capacity of Authorised Signatories of M/s.Krishna & Co., issued various cheques between 01.05.1991 and 14.05.1992, knowing fully well that, at the time of issuing the cheques, there were no sufficient funds in the account and they were issued fraudulently and dishonestly in pursuance of the conspiracy with A1 being the Branch Manager of the Bank.

29. Further case of the prosecution is that A1, by abusing his official position as Branch Manager and by illegal means, fraudulently and dishonestly did not debit the cheque amounts issued by A2 to A4 from the current account of M/s.Krishna & Co., and he did not make any entry in the "cheque referred and cheque return Register". On the other hand, A1 had made false debits to the local

clearing account equivalent to the cheque amounts to be honoured and thereby, A1 set right the Books of Accounts of the Bank on those days and prevented other people to detect the fraud, and thereby, A1 along with A2 to A4, caused wrongful loss to the tune of Rs.58,07,300/- and corresponding wrongful gain and pecuniary advantage of Rs.58,07,300/- to themselves and thereby, they have cheated the State Bank of Mysore, Thiruvanmiyur Branch and subsequently, in order to conceal the illegal act, A1, after his transfer to K.K.Nagar Branch, fraudulently and dishonestly transferred the outstanding amount of Rs.58,07,300/- along with Rs.11 lakhs from the local clearing account of Thiruvanmiyur Branch to K.K.Nagar Branch. Therefore, necessary sanction order to prosecute A1 was obtained from the competent authority and A1 to A4 were accordingly charge-sheeted and tried before the trial Court, leading to conviction and sentence as set out above.

30. P.W.1 is the sanctioning authority and he had accorded sanction to prosecute A1. P.W.2 is the DGM of the State Bank of Mysore and while working in Vigilance Department, on 06.03.1996, Vigilance Officer referred complaints for investigation against A1 and partners of M/s.Krishna & Co. and also against some other persons. The said complaint was addressed to CBI, which is marked as Ex.P-2. Though the evidence of P.W.2 clearly shows that the entry was found to

be suspicious and A1 was contacted and he admitted that the entry was made by him to accommodate Balan and Co., Krishna & Co. and Crown Marble and Co. A1 volunteered the entire details of irregular transactions he had done in the Books of Thiruvanmiyur and K.K.Nagar Branch of the Bank. A3 was a valued customer of Thiruvanmiyur Branch of the Bank and he had deposited to the tune of Rs.40 lakhs and he has also introduced the partnership firm Krishna & Co. on 02.07.1990 and Krishna & Co., and Maritime India Mercantile Export Agency entered into a Memorandum of Understanding on 05.07.1990. As per the agreement, A2 being the son-in-law of one Vijayalakshmi, and A3 and A4 are to operate the account of Krishna & Co., on behalf of the firm, Krishna & Co. started issuing the cheques without maintaining the balance in the current account. The cheques were drawn mostly in favour of Madras Dock Labour Board and Madras General Workers Pool. A1 honoured all the cheques drawn by Krishna & Co. that were received in clearing and the total amount of these cheques were debited to the local clearing account of the Branch instead of Krishna & Co. Further, A1 prepared transfer debit slips and debited the local clearing account and the cheques were not returned, but kept in personal custody of A1. As the cheques were not returned, the Collecting Bank presumed that the cheques were honoured and credited to the payee's account. Thus, according to the prosecution, from June 1991 to May 1992, 148 cheques amounting to

Rs.58,07,300/- got accumulated and held by A1 to the debit of local clearing account and the account became inflated and all the 148 cheques were not routed through Krishna & Co. The Memorandum of Understanding between Krishna & Co. and Maritime India Mercantile Agency, was terminated. All the 148 cheques totalling Rs.58,07,300/- were held by A1 in his personal capacity at his residence.

31. Further, A1 handed over all the cheques to the investigating officer under acknowledgement on 03.03.1996. A2 has taken certain unilateral acts as though to take acknowledgement from the Company for the liabilities and handed over all the documents to one Rukmangathan. Moreover, the total amount of irregularities committed at Thiruvanmiyur Branch in the local clearing account was Rs.69,07,300/-. A1 was transferred to K.K.Nagar Branch and in order to conceal the irregularities in local clearing account of Thiruvanmiyur Branch, A1 transferred the liability to K.K.Nagar Branch and closed the local clearing account liability of Thiruvanmiyur Branch. Furthermore, A1 transferred the irregularities to the State Bank of Mysore's General Account to K.K.Nagar Branch and after going to K.K.Nagar Branch, A1 committed similar irregularities in the local clearing account of K.K.Nagar Branch from the General Account.

32. It is the stand of the prosecution that during June 1993, A1 raised a debit to the Head Office, which was scheduled for Rs.69,07,300/- and that the liability of the Madras Main Branch and Service Branch was closed. Thus, the original entry became un-reconciled entry, outstanding in the Books of Accounts of the Head Office. However, it is the stand of the prosecution that A1 has no authority to give so much accommodation to the parties and A1 has not reported the matter to the Controlling Authority. Thus, it is clear that A1 attended the transactions by himself by committing such irregularities and he raised spurious debits to the local clearing account and the State Bank of Mysore's General Account.

33. Thus, it is crystal clear that A1 has retained all the cheques in his personal custody only to suppress the fraud and to prevent the detection of fraud. A1 obtained acknowledgement of debt from A2 and A3. A1 obtained 11 undated cheques for the amount of liability drawn on Indian Bank, Royapettah Branch. A1 further obtained fixed deposit receipts to the tune of Rs.9.7 lakhs from Krishna & Co., lying in Thiruvanmiyur and K.K.Nagar Branch and State Bank of Hyderabad, Second Line Beach, Chennai.

34. It is conspicuously clear that all the cheques were signed by A2 and A3

based on the Memorandum of Understanding during the relevant period of time. Further, as far as A4 and A2 are concerned, they were aware that 148 cheques were given, that too, when there was no balance in the account and in the Statement of Accounts, the cheques were not mentioned having passed through the account.

35. The prosecution case is further strengthened through the evidence of P.W.3 Chief Manager, Mysore Branch, State Bank of Mysore, who conducted investigation for Rs.58,07,300/- being an un-reconciled amount in the Head Office account. During investigation conducted by him, he found a voucher for Rs.11 lakhs at K.K.Nagar Branch and when A1 was contacted, A1 informed about the total amount of fraud of Rs.69,07,300/-, out of which, Rs.11 lakhs pertain to Balan & Co., and Crown Marble & Co., and Rs.58,07,300/- pertains to Krishna & Co. Furthermore, A1 accepted the fraud and gave a letter (Ex.P-3), dated 03.03.1996 to him. Ex.P-4 is the account opening form of Krishna & Co. Further, the specimen signature card of Krishna & Co. is Ex.P-5. The letters from Krishna & Co. were marked as Ex.P-6 and Ex.P-7. As per Ex.P-6, A2 and A3 were authorised to operate the account. The certified copy of the Statement of Accounts is Ex.P-8, from which, it is clear that there are irregularities in the cheque-amounts. There are 148 cheques amounting to Rs.58,07,300/-, which

represents the total amount of irregularities committed by A1. When the cheques issued by Krishna & Co. dated 07.06.1991 to 14.05.1992 came up for clearing, they were retained at the Branch, though there were no funds in the account and debited to the local clearing account, instead of Krishna & Co.'s account. Since the cheques were not returned for clearing, the collecting Bank credited the amount to their payee's account. Further, A1, in collusion with the other accused persons, manipulated the local clearing account and gave undue advantage to the accused persons and caused loss to the Bank.

36. It is all the more necessary to notice that various cheques were issued by Krishna & Co., and debit-slips relating to the cheques are Ex.P-9 to Ex.P-20 and Ex.P-21, apart from other cheques having been not cleared.

37. From the oral and documentary evidence, it is made clear by the prosecution that the amount(s) was/were debited to the local clearing account, instead of debiting the same into Krishna & Co.'s account, and necessary credit/debit was/were made in the Books of Accounts. The prosecution further relied on the fictitious debit of Rs.1 lakh, which was added to the local clearing account.

38. It is further relied on by the prosecution that some of the documents marked before the trial Court mainly relates to Balan & Co.'s cheques being Ex.P-228 and Ex.P-229, transfer debit slip Ex.P-230, etc., all of which pertains to the debit that was done in the local clearing account instead of drawer's account. Furthermore, it is stated by the prosecution through the evidence of P.W.3 that mainly the cheques / transfer debit slips etc., and the corresponding transfer of these instruments relate to fictitious credit slip being Ex.P-244 , and the same were credited to local clearing account, instead of party's account.

39. It is the further contention of the prosecution through learned Special Public Prosecutor that the ledger extract of Krishna & Co. from 05.09.1990 to 28.10.1992 instead of party's account. It is further alleged by the learned Special Public Prosecutor that the confession letter of A1 was marked as Ex.P-246, from which it is crystal clear that A1 informed that the accommodated Krishna & Co.'s transactions relate to an extent of Rs.58,07,300/- and that over 11 undated cheques / Ex.P-247 series totally amounts to Rs.58,07,300/-. It is the case of the prosecution that the cheques were ultimately signed by A2 and A3. It is also stated by the prosecution that the Memorandum of Understanding is Ex.P-248 and the certificate issued by A2 and A3 is Ex.P-249 and the Memorandum of Understanding was even extended by A2 and A3 in Ex.P-250.

40. Thus, it is made clear by the prosecution that the letter of Krishna & Co., to the concerned Branch account of the Bank, pertains to the authorised signatories and signatures being Ex.P-251 and Ex.P-252. It is thus quite clear that the ledger extract of local clearing account is Ex.P-253 and the inward clearing list from the Reserve Bank of India through Service Branch Account from 06.06.1991 to 08.05.1992, is Ex.P-254.

41. Moreover, the circular of procedures for clearing by the Head Office of the Bank is Ex.P-255 and the reversal credits to the General Account dated 30.05.1992 were for Rs.53,99,300/-, which are Ex.P-256 series. The schedule of credit to the General Account, dated 25.05.1992, as relied on by the prosecution, was for Rs.69,07,300/- which was marked as Ex.P-257. Further, the transfer debit voucher, dated 29.04.1992 is Ex.P-258, which was for Rs.53,99,300/-.

42. Further, it is clear from the records that the transfer debit voucher dated 30.05.1992 relates to the transactions for Rs.69,07,300/- and the same is marked as Ex.P-260. The transfer debit voucher dated 25.07.1992, was also for Rs.69,07.300/-, which is Ex.P.261. Thus, Ex.P-258 to Ex.P-261 are the evidence for operating the General Account pertaining to the Bank under dispute.

43. Thus, it is clear from the above discussion that out of 190 cheques, 148 cheques amounted to Rs.58,07,300/-, which were not routed through Krishna & Co.'s Account, and the same were debited to local clearing account and that, 148 cheques were personally possessed by A1, which were handed over to P.W.3 on 03.03.1996 and its acknowledgement is Ex.P-262.

44. Furthermore, P.W.4, who was Senior Deputy Chief Accounts Officer, Madras Dock Labour Board, had stated in his evidence that he had furnished the details of cheques received from Krishna & Co. during February 1991 to May 1992 and he had also furnished the details through Ex.P-264 (letters) dated 06.08.1996.

45. Further, Shift Supervisor of Chennai Port Trust, namely P.W.5 had stated in his deposition that he was only working as Clerk in the Madras Dock Labour Board and he was the person who maintained the Bill Register from 1990 to 1991.

46. P.W.6, namely Jothi Prasath, who was the Assistant Manager of the Zonal Office, State Bank of Mysore, Chennai, had deposed in his evidence that he

was working as Accountant in Thiruvanmiyur Branch and A1 was the Branch Manager till 1992 and subsequently, one Udaya Chandar Joshi was the Branch Manager.

47. P.W.7 (S.Manikandan), Assistant General Manager, State Bank of Mysore had stated that from 1996 to 1997, he worked as Branch Manager at K.K.Nagar Branch, along with A1 and the local clearing voucher(s) pertaining to Rs.69,07,300/- is Ex.P-261. Furthermore, on 25.07.1992, the local clearing account was debited with Rs.69,07,300/- and the corresponding credit was given to General Account in favour of Thiruvanmiyur Branch and that, a particular debit was outstanding in K.K.Nagar Branch in the local clearing account. Thereafter, three debits were raised through General Account and one debit dated 16.04.1993 was for Rs.18,60,600/- and the same was marked before the trial Court as Ex.265. Another debit dated 17.04.1993 for Rs.39,46,700/-, is marked as Ex.P-266. The further debit dated 29.04.1993 was for Rs.11 lakhs in the General Account and the same is marked as Ex.P-269. These three debits totally comes to Rs.69,07,300/- and they were transferred from Thiruvanmiyur to K.K.Nagar Branch.

48. P.W.8 (V.Gopalakrishnan), who was the retired Manager, State Bank

of Mysore, had deposed that while he was working as Manager in Service Branch during 1996, his duty was to collect the inward cheques and outward cheques for clearing. These cheques were stated to have been processed through RBI and the RBI will send the inward clearing statement Bank-wise to the Service Branch, bank-wise. The cheques of Krishna & Co. reflected in Column No.3 of Ex.P-8, were received in clearance, which appears in Ex.P-254.

49. P.W.9 (Jayanthi Premkumar) who was the Cashier-cum-Clerk of the Thiruvanmiyur Branch, stated in her evidence that during the relevant period, A1 was the Branch Manager and she can identify the writings and signature of A1 and her duty was only handling transfer debit vouchers and the purpose is to mention the list of unpaid inward clearing cheques that were returned to Service Branch of the Bank. She further stated in her evidence that 57 transfer debit vouchers from 1991 to 1992, except the vouchers dated 08.08.1991, 21.09.1991, 04.11.1991 and 08.11.1991 and the remaining vouchers, bear the signature of A1 and some of these bear the hand-writing of A1. At this juncture, it is worthwhile to mention that the prosecution has clearly proved that the transfer vouchers, marked as exhibit(s) before the trial Court, had been prepared and signed by A1.

50. The Assistant Manager of the State Bank of Mysore of the Chennai

Whites Road Branch, i.e. P.W.10 Sri Kumar, had stated in his evidence that while he was working in Thiruvanmiyur Branch, the said Krishna & Co. was the Account Holder and the investigation officer had examined him with respect to transfer clearing debit vouchers, ledger sheets of Krishna & Co. and the cheque-referred-and-returned Register. Moreover, the transfer debit vouchers, marked in Ex.P-268 series, were all prepared by him and the same were passed by A1. Thus, it is clear that there was connivance of A1 with some of the prosecution witnesses and all the referred credit and debit vouchers were only prepared by A1 exclusively for the account of M/s.Krishna & Co. Therefore, from the evidence of P.W.10, the prosecution has proved its case that the credit/debit vouchers were prepared only by A1 for the account of Krishna & Co. It is also made clear by the prosecution through the evidence of P.W.10 that the respective credit/debit vouchers of the respective Bank Branches, were only in the handwritings of A1, which were passed by him.

51. P.W.11 (Saraswathi) who was the Junior Assistant of the Madras Dock Labour Board, had deposed before the trial Court that her duty was to maintain the ledgers including the personal turnover register under the General Pool Worker's Scheme, and Krishna & Co. was a shipping agent, for which they had to pay wages, levy, night allowance, etc., to the Dock Labour Board and the copy of

the ledger was marked as Ex.P-278 which pertains to Krishna & Co.

52. To top it all, P.W12 R.Rajamanickam who was the retired Accounts Officer of the Madras Port Trust, had deposed that while he was working as Accounts Officer in the Madras Port Trust, the said Krishna & Co. was doing the service as Clearing Agent, registered with the Port Trust and he was maintaining the Current Account with the Madras Port Trust regarding payment of harbour dues, demurrage and crane charges. It is further deposed by him that the clearing agents had to give payments to Port Trust by cheque/cash, along with challan. The daily receipt of amount in cash/cheques to the credit of Revenue, was in Ex.P-279 (of page Nos.21 and 51 therein). Further, in page 21 of Ex.P-279 under Challan No.000442, Krishna & Co. had deposited cheque bearing No.013246, dated 19.04.1991 for Rs.20,000/- and the cheque amount after realisation would have to be credited only to the party's Current Account at page No.51 of Ex.P-279, challan No.007455 and also that Krishna & Co. had deposited cheque bearing No.012134, dated 15.03.1991 for Rs.14,000/-. The certificate dated 22.10.1996 issued by him for taking the extract of cash register of Port Trust, shows that the above cheques were realised and the certificate therein was marked as Ex.P-280.

53. P.W.13 Sundararaman, Deputy Manager of the State Bank of Mysore has in his deposition stated that when he took charge of Thiruvanmiyur Branch, the said Krishna & Co. was having Current Account in the Branch and that the cheques payable by Thiruvanmiyur Branch are to be received from the Service Branch of State Bank of Mysore with the computer sheet listing all cheque numbers, amount etc. Soon after the Branch receives the list from the Service Branch, the cheques are verified with the computer list with acknowledgement being sent to the Service Branch. The said cheques were accounted in the respective accounts and if the funds are sufficient, the debits would be given in the account and if funds are not sufficient, the cheques would be returned to the Service Branch with the cheque-return-memo. The Branch of the Bank maintained the cheque-return-register bearing the details of dishonoured cheques being entered.

54. Further, Ex.P-21 is the transfer debit voucher of the State Bank of Mysore, Thiruvanmiyur Branch for debiting the local clearing account and that 12 cheques were issued for an amount of Rs.5,00,500/-. On receipt of Ex.P-21 being the transfer debit dated 07.06.1991 for Rs.5,00,500/-, the Branch has to debit the amount in the account of Krishna & Co. and if there are no funds, the entry will have to be made in the cheque-return-register. In Ex.P-245 being the Statement

of Accounts, Exs.P.9 to Ex.P-20 have not been entered and in the cheque-return-register being Ex.P-269, the said Ex.P-9 to Ex.P-20 cheques are not shown. Ex.P-35 is the transfer debit voucher for Rs.72,800/- for two cheques, marked as Exs.P-33 and 34, on receipt of which, the concerned Branch has to debit the amount in the account of Krishna & Co. and if there are no sufficient funds, the entry should be made in the cheque-return-register. In this context, it is to be noted that Ex.P-245 being the Statement of Accounts, the cheques/Exs.P-33 and Ex.P-34 were not shown.

55. Moreover, it is clear from the evidence of P.W.13 that the entries were made without even entering the same in the appropriate Register and without even intimation to the appropriate authorities, and thus, it is proved by the prosecution that A1 and the Branch Manager, in order to accommodate, took advantage with A2 to A4 and thus, it is evident that the accused persons have committed the offence under dispute, in connivance with each other.

56. It is clear from the evidence of P.W.14 Chandrasekaran being the Inspector of Police, CBI, ACB, Chennai, that he registered the FIR in this case as against A1 to A4 and also the partners of Krishna & Co. and also one Balakrishnan.

57. Therefore, P.W.14 investigating officer has clearly spoken about the investigation being done by them and also the sanction accorded from the appropriate authority to prosecute the accused persons herein and examined the witness(es) and collected the relevant materials and marked by the prosecution.

58. Thus, from all the above evidence of the prosecution, it could be inferred that the prosecution has proved that A1 was working as Manager of the State Bank of Mysore, Thiruvanmiyur Branch. A2 to A4 are the Account Operators of Krishna & Co. All the accused persons have conspired together and issued cheques to the Dock Labour Board and Madras General Pool Workers Scheme, without debiting the account of Krishna & Co., in which there are no sufficient funds and the cheques were debited to the local clearing account of the Branch of the Bank under dispute. The amount was debited to local clearing account of the Branch and when A1 was transferred to K.K.Nagar Branch, the further accounts of Krishna & Co. were dealt with by A1 illegally so as to adjust the audit in the local clearing account.

59. Thus, virtually A1 credited the local clearing account of Thiruvanmiyur Branch by debiting the general account of K.K.Nagar Branch, after assuming the

charge in K.K.Nagar Branch of the State Bank of Mysore and A1 created false schedules and credited the General Account of the State Bank of Mysore and debited the local clearing account of K.K.Nagar Branch and the matter did not come to be known and the Bank, due to the concealment of the amount in the local clearing account. When the Head Office found three schedules credited by A1 were un-reconciled, and investigation was ordered and during which A1 was asked to explain the said facts and on complaint, a case was registered against A1 to A4 for conspiracy, cheating and misconduct.

60. Admittedly, all the cheques were issued in favour of the Dock Labour Board and Madras General Pool Workers Scheme without any amount in the account of Krishna & Co. All the materials including oral and documentary evidence had clearly proved that A1 honoured cheques without debiting the amount of Krishna & Co., in which there were no sufficient funds and they were debited to the local clearing account of the Branch of the Bank. The cheques were kept in the personal custody of A1 for five years and which were not even shown in the account of the Krishna & Co. with regard to Rs.58 lakhs during 1991, in which period, the said Rs.58 lakhs is a very valuable/large amount. The actual loss to the Bank is Rs.58,07,300/-. There was interest loss on this amount to the Bank and there was no commission taxed on this amount. The loss is thus

estimated at Rs.58,07,300/- including interest and commission, and the loss that was caused to the Branch of the Bank, was more than the amount that was arrived at. Had the transfer of account to K.K.Nagar Branch been bona-fide, the cheques under dispute should have been available in the relevant Bank Branch records, but on the contrary, the cheques were available in the personal capacity of A1, who conspired with A2 to A4 and misappropriated the amounts under dispute.

61. In the above facts and circumstances and the submissions made by the learned counsel for the appellants/A1 to A4 and the learned Special Public Prosecutor, it is clear that the transfer of the account to K.K.Nagar Branch of the Bank is not bona-fide and the cheques were not available in the Bank records and on the contrary, the cheques were available in personal custody of A1 and thus, it proves the conspiracy of A1 with A2 to A4.

62. It is also worth-mentioning here to note that before the Debts Recovery Tribunal (DRT) also, a case was filed against A1 and others. Initially, the Chief General Manager alone had the power to accord sanction and remove the Managers from service in the respective cadre/grade. Subsequently, as per Bank's relevant Rules, the General Managers are also authorised to accord

sanction and remove the officers in the respective cadre/grade, from service.

63. It is to be further stated in the above context that the case having been filed before the DRT alone will not absolve the offences committed by A1 at the inception in conspiracy with A2 to A4.

64. Regarding sanction to take action or arrest the accused persons, the prosecution has proved that, initially the Chief General Manager (CGM) of the State Bank of Mysore was the sanctioning authority and the CGM has the power to retain/remove the accused persons from service in the respective cadre/grade. Subsequently, the General Manager of the respective Bank, were also authorised to accord sanction and remove the charged accused persons from service in the cadre of Manager. In the case on hand, the General Manager is the sanctioning authority, i.e. P.W.1, and as per the circular/Rules/Standing Orders etc., the power is vested with P.W.1 and therefore, P.W.1 herein is the appropriate authority to sanction the prosecution of the accused persons herein and therefore, the contentions raised by the learned counsel appearing for A1 to A4 in this regard, cannot be countenanced.

65. Therefore, from all the materials available on record and more

particularly, from the evidence of P.Ws. 1 to 4 and the relevant discussed/exhibited documents, it is clearly proved by the prosecution that A1, while working as Branch Manager in Thiruvanmiyur Branch, even without the availability of funds in Krishna & Co., honoured the cheques under dispute in favour of Krishna & Co., knowing fully well that there are no sufficient funds in Krishna & Co. and the money had not been credited/debited from Krishna & Co. Thus, it is clearly proved prima-facie that even without the debit of amount from the account of Krishna & Co., the cheques were honoured in advance, which clearly shows that the Bank transactions and records during the relevant period, shows that in the said Krishna & Co., there were no sufficient funds to meet out the cheques issued by the said Krishna & Co. Furthermore, A1 had kept the cheques under dispute with him in his personal capacity, after he honoured the same in the personal capacity, even though he was transferred from Thiruvanmiyur Branch to K.K.Nagar Branch. A1 had created a scheme and also concealed all the cheques, which clearly proves the intention of A1 to A4 with regard to borrowing of money, knowing fully well that they did not have any adequate funds in the Books of Accounts of K.K.Nagar Branch and despite the fact that they were going to issue cheques which were honoured by A1 in his official capacity as the Branch Manager of the branch under dispute, all the accused persons conspired and caused loss to the Bank.

66. Thus, from the above narration of facts and circumstances and also taking into consideration the submissions made on either side, coupled with perusal of records, it is clearly proved by the prosecution that all the accused persons have conspired together and committed the charged offences, thereby, they caused loss to the Bank.

67. The trial Court has rightly appreciated the oral and documentary evidence to convict the accused persons based on the fact that the defence case is not acceptable. Though they have stated that they have treated the transactions as loan account and also the fact that for recovery of money, a case was also filed before the DRT and therefore, there is no criminal liability even though they have committed fraud, thereby, the accused persons herein have rightly been convicted by the trial Court, have caused loss to the Bank, even though the transactions could utmost be treated as loan, inspite of the fact that the money lost can be recovered from the proceedings before the DRT.

68. From the inception in the case on hand, A1 to A4 have conspired together to cheat the Bank, knowing fully well that enough funds are 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 not available in the respective Account of the borrower, i.e. Kriishna & Co. A1 to A4 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.

69. 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 to A4 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.

70. 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 A1, A2 and A4 herein, the oral and documentary evidence in this case, have well been corroborated to convict the accused persons.

71. 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.

72. In fine, all these criminal appeals are dismissed, confirming the conviction and sentence imposed on A1, A2 and A4 by the trial Court. Since A1, A2 and A4 are on bail, the trial Court is directed to secure their custody and commit them to prison. The period of sentence already undergone by A1, A2 and A4 herein, if any, shall be set-off under Section 428 Cr.P.C. The charge(s) framed against A3 stood abated, as he died pending these criminal appeals.

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, Central Bureau of Investigation,
SPE/CBI/ACB, Chennai.

P. VELMURUGAN, J

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Pre-delivery common judgment in

Crl.A.Nos.12, 33 and 34 of 2011

Judgment delivered on 20.10.2023