IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:30.01.2023

PRONOUNCED ON:28.04.2023

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.A.No.176 of 2011

1. M/s.Hope Trading and Marketting Private Limited,
   No.14, Ekambareswarar Agraharam,
   Chennai – 600 079,
   represented by its Managing Director,
   Ambalal Jain
   (The Company is now not in existence)

2. Ambalal Jain ... Appellants

Vs.

The State represented by
The Deputy Superintendent of Police,
Special Police Establishment,
Anti Corruption Branch,
Shastri Bhavan,
Third Floor,
Haddows Road,
Chennai. ... Respondent

Prayer:

Criminal Appeal filed under Sections 374 and 380 Cr.P.C., to call for the entire records pertaining to C.C.No.84 of 1997 on the file of the learned Special Judge for CBI Cases, (XI Additional) Chennai and allow this appeal preferred by the appellants and set aside the order dated 28.02.2011 passed by the learned Special Judge for CBI cases, (XI Additional) Chennai in C.C.No.84 of 1997 and direct to refund of the fine amount paid by the appellants and discharge the sureties executed for suspension of sentence.

For Appellants : Mr.V.S.Venkatesh

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI cases

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JUDGEMENT

This Criminal Appeal has been filed against the order dated 28.02.2011 passed in C.C.No.84 of 1997 on the file of the learned XI Additional Special Judge for CBI Cases, Chennai.

2. The respondent police originally registered a case against A2 and A3 who are the appellants herein and A1, A4 to A17 in RC.No.20 of 1992 dated 29.05.1992, CBI ACB, Chennai and after investigation, the Deputy Superintendent of Police, CBI, Chennai has filed the charge sheet against A1 to A17 before the learned Principal City Civil and Sessions Court, Chennai. The learned Principal Sessions Judge, Chennai had taken the charge sheet on file in C.C.No.222 of 1992 and after completing the formalities and made over the same to the V Additional City Civil Court, Chennai for disposal. Subsequently, after formation of CBI Court, this case was transfered to the Special Court exclusively triable for CBI Cases, Chennai. The CBI Court has taken the case on file and renumbered as C.C.No.84 of 1997. Meanwhile, A4 to A17 have filed the Criminal Original Petitions before this Court for quashing the proceedings as against them. Subsequently, A4 to A17 were discharged from the case vide order of this Court dated 15.09.1997 passed in Crl.R.C.Nos.865 and 866 of 1995 and the Hon'ble Supreme Court has also confirmed the same in Crl.Appeal Nos.899 and 900 of 2001 vide order dated 08.04.2009. Subsequently, charges were framed as against A1 to A3. The first accused was the Branch Manager, Indian Bank, Velacherry Branch, Chennai

and the second accused was the private Company and the third accused, who was the Managing Director of the said Company. A3 Company was engaged in buying and selling stainless steel materials purchased from Steel Authority of India, Salem. A4 to A17 were private individuals closely related to A3. After discharging A4 to A17, the trial court framed charges against A1 to A3 for the offence under Section 120(B) read with 420 IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. The trial court framed charges against A2 and A3, who are the appellants herein, for the offence under Section 420 IPC and against A1 for the offence under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act. Now, A2 and A3 have filed the present Criminal Appeal.

3. In order to substantiate the charges framed against the appellants, on the side of the prosecution totally 15 witnesses were examined as P.W.1 to P.W.15 and 151 documents were marked as Ex.P1 to P151. However, no material object was exhibited.

4. After completing the examination of the prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the accused by questioning under Section 313 Cr.P.C. However, the accused A1 to A3 denied the same as false and pleaded not guilty. On the side of the defence, one witness was examined. The third accused himself was examined as D.W.1 and 60 documents were marked as Ex.D1 to Ex.D60.

5. On conclusion of trial after hearing the arguments advanced on either side and also considering the materials, A1 to A3 were found guilty for the charged offences. A1 was convicted and sentenced to undergo three years Rigorous Imprisonment and to pay fine of Rs.50,000/- in default to undergo Simple Imprisonment for three months for the offence under Section 120(B) read with 420 IPC and 13(2) read with 420 IPC and 13(1)(d) of Prevention of Corruption Act. Further, he was convicted and sentenced to undergo three years Rigorous Imprisonment and to pay fine of Rs.50,000/- in default to undergo Simple Imprisonment for three months for the offence under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act. A2 is the private

Company was convicted for the offence under Section 120-B read with 420 IPC and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, sentenced to pay fine of Rs.10,000/- in default, to issue attachment and sale warrant under Section 421 Cr.P.C., Further, A2 was convicted and sentenced to pay fine of Rs.10,000/- in default to order of attachment and sale warrant for the offence under Section 120-B read with 420 IPC and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act. Further A2 was convicted for the offence under Section 420 IPC and A2 being the Company was fined Rs.10,000/- in default, issue attachment and sale warrant. A3 was convicted and sentenced to undergo one year Rigorous Imprisonment and to pay fine of Rs.40,000/- in default to undergo Simple Imprisonment for three months for the offence under Section 120(B) read with 420 IPC and 13(2) read with 13(1)(d) of Prevention of Corruption Act. Further A3 was convicted and sentenced to undergo Rigorous Imprisonment for one year and to pay fine of Rs.40,000/- in default to undergo Simple Imprisonment for three months for the offence under Section 420 IPC. Aggrieved over the same, A2 and A3 have filed the present Criminal Appeal before this Court.

6. It is the specific case of the prosecution is that during June 1991 to October 1991, A1 to A3 entered into a criminal conspiracy to cheat the Indian Bank, Velachery Branch as well as Steel Authority of India. The first accused, the Branch Manager of the abovesaid Bank fraudulently and dishonestly by abusing his official position as a public servant, by corrupt or illegal means, had issued five Bank guarantees valid for one year to a total sum of Rs.4.45 Crores on behalf of the second accused Company in favour of Steel Authority of India Limited, Madras without collecting the service charges cum Commission to the tune of Rs.8.10 Lakhs and without making necessary entries relating to the issuance of Bank Guarantee Register, Day Book and General Ledger of the Bank without preparing debit and credit vouchers and enabled the second accused Company to lift stocks from the Steel Authority of India Limited, Madras and further the first accused allowed the second accused Company to carry on kite flying operations with the active connivance and assistance of the third accused and 14 other persons knowing fully well that the cheques were issued by the third accused and other persons, without sufficient funds in their accounts and that the second accused/Company is not at all enjoying any such facility of purchase of the cheque with the Bank. The

first accused with conspiracy, purchased those cheques and credited the same to the account of the second accused/Company and facilitated to honour the cheques issued by the second accused/Company in favour of Steel Authority of India Limited. Further, the cheques issued by the third accused and 14 others were returned unpaid and therefore A1 to A3 caused wrongful loss to the tune of Rs.57,243,72.74/- in the matter of cheque purchased and Rs.3,23,32,458.20/- by invoking Bank Guarantee without any public interest. Therefore, A1 to A3 committed offences punishable under Section 120-B read with 420 IPC and Section 13(2) read with 13(1)(d) of Prevention of the Corruption Act, 1988.

7. The learned counsel for the appellants submitted that A4 to A17 were discharged from the case vide order of this Court dated 15.09.1997 passed in Crl.R.C.Nos.865 and 866 of 1995 and the Hon'ble Supreme Court has also confirmed the same in Crl.Appeal Nos.899 and 900 of 2001, vide judgment dated 08.04.2009. In spite of the same, the trial Court convicted the appellants on the strength of transaction alleged to have been done by A4 to A17 as seen by a mere perusal of the depositions of P.Ws.2 to 9 and P.W.11. Further the exhibits relied upon by the witnesses P.W.2 to P.W.9 are all xerox copies and

not certified as per Banker's Book and the Indian Evidence Act. The witnesses have categorically admitted in their cross examination that they do not know anything about the case in which they are adducing evidence and they had merely handed over the documents to the investigating officer as per his request. Neither of these persons had done any transaction in the said case nor they were aware anything about the case pertaining to C.C.No.84 of 1997. P.W.1 was the successor of the first accused, as the Branch Manager of Indian Bank, Velachery Branch and he has spoken about the transaction and the procedures adopted by the Bank, but he has spoken about the temporary things only. He was not aware of the actual transactions. P.W.1 has also admitted that as per Ex.P-50, outstanding liability by invoking the Bank Guarantees as on 02.07.1992 is Rs.2,88,53,182.20/-. The total amount paid to Steel Authority of India Limited, by invoking the Bank Guarantee is Rs.3,23,32,458.20/-. The Bank had realized Rs.80,00,000/- by way of consent sale and the payments made by the second accused/Company after July 1992 are not revealed in Ex.P50. Further, he would submit that Ex.D33, the defaulted Bank Guarantee does not reveal non-payment of commission by the second accused/Company, without which, it is a mystery as to how the Bank would effect payments towards the invoked Bank guarantees. If this Commission amount had not been collected by A1 as alleged by the prosecution and the authorities have not chosen to collect commission charges, since they had already collected the same and that is why they have not collected any Bank commission charges towards Bank guarantees issued in favour of the second accused/Company while regularizing the defaulted Bank guarantees.

8. The prosecution has further alleged that there was no record in the Bank to prove that the Bank Guarantee commission was collected from A2/ Company. The prosecution has not let in evidence from any of its witnesses P.Ws.1 to 15 that no Bank Guarantee commission was collected from A2/ Company. However, during cross examination of P.W.1, who has not stated in his deposition that no Bank Guarantee commission was collected from A2/ Company. P.W.1 has categorically admitted in his cross examination that when the Bank guarantees were invoked by the Steel Authority of India Limited, its entire stocks were taken possession and kept under lock and key of the Bank and that the head office instructed P.W.1, the successor of the first

accused to release the amount specified in the Bank guarantees Ex.P35 to 38 as demanded by the Steel Authority of India Limited. The documents produced before the Court in Ex.P5 which is a ledger sheet pertaining to Current Account No.286 of A2/Company for the period 23.06.1991 to 23.10.1991 show that there was a balance of Rs.57,24,363.74/- only and it does not reveal any un-cleared cheques as alleged by the prosecution. Further, right from the inception till date, the second accused/Company represented by its Managing Director, A3 have been victimized by the action initiated by the Bank and their business had come to grinding halt for no fault of theirs and all their properties and stocks were taken over by the Bank and sold by way of auction and thereby, A2 is no longer in existence and A3 is practically in the streets. There is no mala-fide or criminal intention on the part of A3 and he has not committed any offence so as to attract the ingredients of conspiracy and cheating. The trial court failed to appreciate the oral and documentary evidence and erroneously convicted the appellants herein for the charged offences. Further, the trial court failed to consider the fact that regarding the evidence let in by the prosecution regarding the dishonour of cheques, no question was put before the witness in the cross-examination to establish that the dishonored cheques were not returned to A2 and A3 and A2/Company had no knowledge of the returned cheques. The trial court erroneously held that A1 issued Bank guarantees to Steel Authority of India to a tune of Rs.4.5 crores and the Bank, on detection of this had taken steps to recover the amount. The trial court failed to consider the oral and documentary evidence and the prevailing practice adopted by the Bank and erroneously convicted the appellants which warrants interference of the Court.

9. Learned Mr.K.Srinivasan, Special Public Prosecutor for CBI Cases, appearing for the respondent submitted that the investigation in this case was restricted for the period from 23.06.1991 to 23.10.1991, since the account of the second accused Company was operated only for a period of four months. There was no application preferred by the second accused Company for issuance of Bank guarantees and no Commission was collected from the second/accused Company to the tune of Rs.8.10 lakhs, due to which, loss was caused to the Bank. Further, he would submit that the first accused has no power to issue Bank Guarantee worth about more than Rs.10,000/-. The first accused crossed his limit and he has no authority to issue the Bank Guarantee

worth above Rs.10,000/-. P.W.1 who is the successor of the first accused, has clearly deposed that for issuance of the Bank Guarantee, the customer has to make an application along with financial statement to the Bank along with financial statements and also the details of securities to offer. During 1991-1992, Scale II Branch Manager was authorized to issue Bank guarantees up to Rs.10,000/-. If it is above Rs.10,000/- the same has to be forwarded to the higher authorities. During 1991-1992, the Bank guarantees above Rs.40 lakhs are to be sanctioned by the Head Office and the Regional Officer and Zonal office has no power. While issuing Bank Guarantee, the branch office has to collect margin money, counter Guarantee from the customer and the commission as per circular and the mortgage of the collateral securities. The Bank Guarantee has to be submitted in the prescribed form and signed by two officials of the branch and the same has to be numbered and entered in the Bank Guarantee issue register. Then the debit and credit voucher have to be prepared and the same be entered in the Day Book of the branch. The commission is to be credited to the income of the branch. The branch has to mention the same in the Weekly Returns in the Assets and Liabilities Statement. None of these procedures have been adopted in the case of second accused /Company during the relevant period. He further submitted that from the evidence of P.W.1, it is proved that the first accused has not followed any of the procedures to facilitate the second accused/Company for issuing the Bank Guarantee to the Steel Authority of India Limited. P.Ws,2 to 9 and 11 have clearly deposed about the procedures to be followed by the Bank and during the relevant period, the first accused had committed default of the entire procedures, in order to favour the second and the third accused. The prosecution has proved its case that the second and third accused availed the Bank Guarantee facilities over and above the power of the branch. During the relevant period, the Bank has no power to issue Bank Guarantee worth above Rs.10,000/-, moreso, the first accused has no authority to issue Bank Guarantee more than Rs.10,000/-. From all the documents, it is clearly proved that there was a transaction of Bank Guarantee in favour of the Steel Authority of India Limited. None of the documents had been produced to show that the first accused has got power to issue the Bank Guarantee and none of the documents have been produced to show that he followed the procedures of the Bank.

10. A4 to A17 were discharged from the case by this Court and the Hon'ble Supreme Court, at the first instance, even before framing of charges, found that there were no materials available against them and they have no knowledge about the connivance of A1 to A3. Subsequently, the trial court framed charges as against the appellants. The prosecution has examined 15 witnesses to prove the charges and marked 151 documents and from those documents, the prosecution has proved the foundational fact that A1 and A2 entered into a criminal conspiracy and they cheated the Bank and caused loss to the Bank. The other accused only issued the cheques and they are discharged from the case, and hence, the contention for the learned counsel for the appellants that these appellants are also automatically entitled to discharge from the case on the ground of other accused, is not acceptable. The trial court rightly appreciated the evidence based on the oral and documentary evidence and convicted A2 and A3,, who are the appellants herein and also the first accused who is a public servant and he, without any authority and with the connivance of A2 and A3, caused loss to the Bank. Prosecution has proved its case beyond all reasonable doubts and the trial Court has rightly appreciated the entire evidence and convicted the appellants as stated above. There is no

merit in the appeal and the same is liable to be dismissed.

11. Heard the learned counsel appearing for the appellants and the learned Special Public Prosecutor appearing for the respondent and perused the materials available on record.

12. The first accused was the Branch Manager, Indian Bank, Velacherry Branch, Chennai, the second accused was the private Company and the third accused was the Managing Director of A2 Company, which was engaged in buying and selling stainless steel materials purchased from Steel Authority of India, Salem. It is not in dispute that there was transaction between the appellants and the Indian Bank, Velacherry Branch. It is not in dispute that the first accused was working as Branch Manager in the said Bank during the relevant point of time. The oral and documentary evidence clearly show that there was a transaction regarding the issuance of Bank guarantees and the cheque credit facilities, which is beyond the power and authority of the Branch as well as the first accused. When the abovesaid Bank come to the knowledge about the irregularities and illegalities committed by the Branch Manager,

complaint was filed before the respondent Police. The respondent Police, after investigation, laid a charge sheet. A4 to A17 were discharged from the case, vide order of this Court dated 15.09.1997 passed in Crl.R.C.Nos.865 and 866 of 1995 and the Hon'ble Supreme Court has also confirmed the same in Crl.Appeal Nos.899 and 900 of 2001, vide order dated 08.04.2009. Subsequently, charges were framed as against A1 to A3. The main defence taken by the appellants is that since the other accused were discharged from the case and for the very same transaction, these appellants alone cannot be convicted.

12. The case of the prosecution is that the first accused has issued Bank Guarantee in favour of the second accused/Company without any power/authority and the first accused has issued the Bank Guarantee bearing No.6 of 1992 for Rs.150 Lakhs on 22.06.1991 itself, ie., even before the second accused/Company opened an account with Indian Bank, Velacherry Branch. In this case, as already stated, A1 was working as Bank Manager in the said Branch and had issued the Bank Guarantee worth about more that Rs.10,000/- in favour of the second accused/Company, in which the third accused was the

Director of the A2 Company. Since the first accused, without having any power or authority, issued Bank guarantees in favour of A2/Company, which itself shows the conduct of the parties. The prosecution has proved from the oral and documentary evidence that five guarantees which issued in favour of A2/ Company favouring Steel Authority of India Limited, were exceeds the power of the Branch as well as A1. Further allegation is that even without getting any commission or deducting the Commission amount, the Bank Guarantee was issued. A1 has not collected any Commission from the A2/Company for issuance of Bank Guarantee. If at all Commission was not collected, subsequently, the Bank officials would have taken steps to collect the Commission even at the time of realizing in other modes. From a reading of evidence of P.W.1, who is a Branch Manager of the said Bank , who is also the successor of A1, has clearly spoken about the procedures adopted by the Bank during the issuance of Bank Guarantee. In this case, the Branch Manager has no power or authority to issue Bank Guarantee worth above Rs.10,000/-. There is no document available to show that the first accused obtained approval from the Head Office or competent authority to issue Bank guarantees and also to honour cheques. None of the documents were filed by the defence to show that

A1 has got power to issue Bank guarantees and got approval from the competent authority and also he got approval to avail the facility. The oral and documentary evidence clearly show that that the prosecution has proved that A1, without any power or authority, allowed the A2/Company to avail the facilities of Bank Guarantee and also without adequate funds to honour the cheque. From the oral and documentary evidence, the prosecution has proved that A1/Company opened the account with Indian Bank , Velachery Branch on 23.06.1991 whereas, the specimen signature card for opening an account was given on 20.07.1991. On 23.06.1991, A3 has given the requisition to open the account, but there is no requisition made by A2/Company for issuance of Bank Guarantee. Further, it is proved that A1 is the Manager of the said Bank at the relevant point of time and he has got the power to issue Bank Guarantee worth up to Rs.10,000/- only. No document has been produced to show that the Head Office of the Bank has sanctioned power for issuing the Bank Guarantee for more than Rs.10,000/-. In this case, the first Bank Guarantee for Rs.1.50 lakhs was issued on 23.06.1991 ie., the date on which the account was opened. Therefore, it is clearly proved that there was a conspiracy between A1 and A3 in opening the account in the Bank and the issuance of Bank Guarantee.

Further, it is proved that totally five Bank guarantees were issued by A1 without any authority and the same were not signed by the Second Officer and further, there was no collection of other charges for issuing the Bank guarantees. None of the Bank procedures have been adopted by the appellants. Therefore, appellants cannot be treated as innocent persons and they know very well about the procedures for availing the Bank guarantees, but they entered into conspiracy to cheat the Bank, in order to avoid the Steel Authority of India Limited by invoking Bank Guarantee. A1 knowing fully well that the branch in which A1 was working as branch manager has no authority to issue Bank guarantees for more than Rs.10,000/- and also without having adequate funds, A1 has issued cheques in favour of other creditors, namely in this case, Steel Authority of India Limited. The third accused was the Managing Director and knowing fully well that the Bank has no power and authority to issue Bank Guarantee, with the connivance of A1, he was permitted for issuance of Bank guarantees.

13. The appellate Court is the final court of fact finding. It has to re-appreciate and revisit the entire evidence and give independent finding. Considering the facts and circumstances of the case, the prosecution has proved its case beyond all reasonable doubt. This Court does not find any perversity or any reason to interfere with the judgment of the trial court and there is no merit in the appeal and the appeal is liable to be dismissed. Accordingly the Criminal appeal is dismissed, confirming the conviction and sentence imposed on the appellants by the trial court. Since the appellants are on bail, the trial court is directed to take steps to secure the custody of the accused to undergo the remaining period of sentence, if any.

28.04.2023

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Index:Yes/No
Speaking Order: Yes/No
Neutral Citation: Yes/No

To

1. The Special Judge for CBI Cases, (XI Additional) Chennai

2. The Special Public Prosecutor for CBI cases, High Court, Madras.

P.VELMURUGAN, J.

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