IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.08.2023	Pronounced on : 14.09.2023

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Criminal Appeal Nos.621, 664, 688 and 704 of 2011

Crl.A.No.621 of 2011

R.Ravi ... Appellant/Accused No.1

/versus/

Inspector of Police,
CBI, ACB, Chennai. ... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 of Cr.P.C., pleased to admit the appeal and call for the records from the Trial Court in C.C.No.24 of 1999 on the file of XI Additional Special Judge for CBI cases, Chennai, dated 30.09.2011 and to set aside the conviction and sentence passed in C.C.No.24 of 1999 on the file of XI Additional Special Judge for CBI cases, Chennai,

For Appellant : Mr.L.V.Rohith
For Mr.V.Krishnakumar

For Respondent : Mr.K.Srinivasan, Senior Counsel
Special Public Prosecutor (C.B.I).

Crl.A.No.664 of 2011

S.Ramkumar ... Appellant/Accused No.6

/versus/

State Rep.by
The Inspector of Police,
Special Police Establishment,
Anti Corruption Branch,
Central Bureau of Investigation,
Chennai.
III Floor, Sasthiri Bhavan,
Haddows Road,
Nungambakkam,
Chennai-600 006.
(RC.No.15(A)/1997 ... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 (2) of Cr.P.C. r/w 27 of Prevention of Corruption Act, 1988., pleased to admit the appeal and call for the records from the Trial Court in C.C.No.24 of 1999 on the file of XI Additional City Civil & Sessions Judge (CBI cases relating to Banks and Financial Institution), Chennai, hear the Counsel for appellant/accused No.6 and to set aside the conviction and sentence passed in C.C.No.24 of 1999, dated 30.09.2011 by the Learned XI Additional City Civil & Sessions Judge (CBI Cases relating to Banks and Financial Institution), Chennai.

For Appellant : Mr.S.Ashok Kumar, Senior Counsel
For Mr.C.M.Krishnakumar

For Respondent : Mr.K.Srinivasan, Senior Counsel
Special Public Prosecutor (C.B.I).

Crl.A.No.688 of 2011

S.Latha (died)

1.V.Shantharaman
S/o.G.Venkataraman

2.Karthik Krishna
S/o.V.Shantharaman

[Amended as per order in Crl.M.P.No.1568 of 2022
in Crl.O.P.No.3381 of 2022 in Crl.A.No.688/2011]
... Appellants/Accused No.4 & 5

/versus/

State by,
Inspector of Police,
CBI, ACB, Chennai.
(RC.No.15(a)/1997 ... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 (2) of Cr.P.C. r/w 27 of Prevention of Corruption Act, 1988., pleased to admit the appeal and call for the records from the Trial Court in C.C.No.24 of 1999 on the file of XI Additional City Civil & Sessions Judge (CBI cases relating to Banks and Financial Institution), Chennai, hear the Counsel for appellant/accused Nos4 & 5 and to set aside the conviction and sentence passed in C.C.No.24 of 1999, dated 30.09.2011 by the Learned XI Additional City Civil & Sessions Judge (CBI Cases relating to Banks and Financial Institution), Chennai.

For Appellants : Mr.S.Ashok Kumar, Senior Counsel,
for Mr.A.Sasidharan

For Respondent : Mr.K.Srinivasan, Senior Counsel
Special Public Prosecutor (C.B.I).

Crl.A.No.704 of 2011

1.K.Ananthi

2.Kasirajan ... Appellants/Accused No.2 & 3

/versus/

State Rep.by
The Inspector of Police,
Special Police Establishment,
Anti Corruption Branch,
Central Bureau of Investigation,
Chennai.
III Floor, Sasthri Bhavan,
Haddows Road,
Nungambakkam,
Chennai-600 006.
(RC.No.15(A)/1997 ... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 (2) of Cr.P.C. r/w 27 of Prevention of Corruption Act, 1988., pleased to admit the appeal and call for the records from the Trial Court in C.C.No.24 of 1999 on the file of XI Additional City Civil & Sessions Judge (CBI cases relating to Banks and Financial Institution), Chennai, hear the Counsel for appellant/accused Nos.2 & 3 and to set aside the conviction and sentence passed in C.C.No.24 of 1999, dated 30.09.2011 by the Learned XI Additional City Civil & Sessions Judge (CBI Cases relating to Banks and Financial Institution), Chennai.

For Appellant : Mr.Muralidharan

For Respondent : Mr.K.Srinivasan, Senior Counsel
Special Public Prosecutor (C.B.I).

COMMON JUDGMENT

These batch of Criminal Appeals filed by the convicts, arrayed as accused 1 to 6 in C.C.No.24 of 1999, on the file of XI Additional City Civil and Sessions Judge (CBI cases relating to Banks and Financial Institutions), Chennai.

2. The crux of the case in brief is that, Mrs.Ananthi (A-2) Proprietrix of M/s.Ananthi Exports, Chennai, opened a Current Account bearing No:2730 in Andhra Bank, Mylapore Branch, on 11/11/1995 in the name of her firm M/s.Ananthi Exports. For opening the account, A-3 her husband Kasirajan and A-6 S.Ram Kumar, a Chartered Accountant by Profession assisted her. The account was opened when P.W-3 Mr.Sathiyanarayanan was the Branch Manager of Mylapore Branch. After opening the Current Account, A-2 Ananthi submitted application for Packing Credit Loan (Ex.P-4) along with Project Report (Ex.P-5) prepared by A-6. The property Statement of A-2 and her husband A-3 were submitted to show their creditworthiness. On resignation of P.W-3, Ravi (A-1) succeeded him and assumed office on 05/12/1995. The loan application of A-2 was further processed by A-1 and on his recommendation the letter of sanction dated 30/12/1995 issued by

M.N.Ravichandran, Asst.General Manager, Central Office. In Ex.P-26 the letter of sanction, it is stating that the proposal dated 07/12/1995 of M/s.Ananthi Export, (Export of cashew kernels) represented by its Prop. Mrs.Ananthi sanctioned for Packing Credit limit upto Rs.20 lakhs and Foreign Bill Purchase (FBP) limit upto Rs.25 lakhs. A-3 the husband of A-2 and C.S.Selvam were mentioned as the co-obligants/guarantors for the loan. The property of C.S.Selvam worth Rs 46 lakhs taken as collateral security.

3. In the letter of sanction, (Ex.P-26), it is also specifically stated, i) P.C and FBP limit should be released only on lodgement of LC's from reputed Bank; ii). 5% cut-back on FBP’s to be deposited as suggested by the Branch; and iii). The Packing credit to be released by Demand Draft in favour of the suppliers. Contrary to these conditions, as packing credit a sum of Rs.19.91 lakhs released by A-1 to the account of M/s.Ananthi Exports. A-2, in turn diverted the money for her and her husband’s personal use instead of using it for business purpose. A sum of Rs.14,50,000/- was withdrawn by A2 through self cheque. To clear the personal loans of A-3, cheque in the name of S.Latha (A-4) for Rs.1 lakh and a cheque favouring her firm M/s.M.K.K Agencies for Rs.6 lakhs were issued. For Selvam (P.W-7) who offered his property as collateral security Rs.1,90,000/- paid through cheque drawn in the name of

P.W-8 a land broker, who arranged for the security. Ananthi (A-2) issued cheques in the name of M/s.Multi media and M/s.K.P.M Enterprises, firms run by friends of her cousin Mr.Pursuhothaman Babu (PW-11). These cheques were encashed and the money was given back to A-2, the drawer of the cheques. A-6 was paid for his contribution to get the loan by using his influence with the bank Manager and for diverting the funds through the account opened in the name of A-4 at Allahabad Bank, Adyar Branch which was introduced by A-6.

4. A-6 gave a false certificate that as per the books of accounts maintained by M/s Ananthi Exports, the capital introduced by Ananthi (A-2) is Rs.8.13 lakhs'. At the time of availing loan A-2 produced false documents and declared that she has order from foreign buyers. LC from Singapore Company was produced to the Andhra Bank, Mylapore Branch. Based on the LC, the loan limit was fixed. Later, A-1 did not carried out the shipment as found in the LC. After diversion of fund, no further interest was shown by A-2 for repayment of the loan.

5. By June 1996, the irregularity in the matter of loan sanctioned to M/s.Ananthi Exports came to light and Andhra Bank officials were on the pursuit of recovery of the loan amount from A-2. Meanwhile, based on reliable information, Mr.Lourdes Anandan, Inspector of Police, SPE/ CBI Chennai registered a regular case in RC No 15(A)/1997 on 13/03/1997 and took up the investigation. The residence of A-1, A2& A-3 (wife and husband), A-4 and A-5 (wife and husband) were searched and certain incriminating materials connected with the loan transaction disclosing the attempt by A-1 through others to collect the due were recovered.

6. The trial Court, after considering the evidence held that the accused persons A-1 to A-6 in pursuant to the conspiracy had cheated Andhra Bank. Without any business activity, by abusing his position as Manager A-1 released packing credit limit to a tune of Rs.19.91 lakhs to A-2. The said money instead of being used for business purpose, siphoned through A-3 to A-6. Therefore, sentenced A-1 to A-6 as below:-

Rank and Name of the accused	***Section under which convicted***	***Period of Sentence***
A-1 Ravi	Section 120 (b) r/w 420 of I.P.C and 13(2) r/w 13(1) (d) of P.C.Act.	To undergo one year R.I and to pay fine of Rs.20,000/- in default S.I for three months.
	Section 13(2) r/w 13(1)(d) of P.C Act	To undergo one year R.I and to pay fine of Rs.5,000/-, in default S.I for three months.
A-2: K.Ananthi	Section 120(b) r/w 420 of I.P.C and 13(2) r/w 13(1)(d) of P.C. Act	To undergo one year S.I and to pay fine of Rs.20,000/- in default S.I for three months.

Rank and Name of the accused	***Section under which convicted***	***Period of Sentence***
	Section 420 of I.P.C	To undergo one year S.I and to pay fine of Rs.5,000/- in default S.I for three months
A-3: Kasirajan (Husband of A-2)	Section 120 (b) r/w 420 of I.P.C and 13(2) r/w 13(1) (d) of P.C.Act.	To undergo one year R.I and to pay fine of Rs.20,000/- in default S.I for three months.
A-4: S.Latha (Prop:M.K.K.Agencies)	Section 120(b) r/w 420 of I.P.C and 13(2) r/w 13(1)(d) of P.C. Act	To undergo one year S.I and to pay fine of Rs.20,000/- in default S.I for three months.
A-5; Santharaman, Husband of A-5	Section 120 (b) r/w 420 of I.P.C and 13(2) r/w 13(1) (d) of P.C.Act.	To undergo one year R.I and to pay fine of Rs.20,000/- in default S.I for three months.
A-6: Ram Kumar, Chartered Accountant	Section 120 (b) r/w 420 of I.P.C and 13(2) r/w 13(1) (d) of P.C.Act.	To undergo one year R.I and to pay fine of Rs.20,000/- in default S.I for three months.

The period of sentence ordered to run concurrently. The sentence already undergone by the accused ordered to be set off under Section 428 of Cr.P.C.

7. **Crl.A.No.621/2011:-**

The first accused R.Ravi, who is the appellant challenges the trial court judgment for not appreciating the evidence properly qua to the charges framed against him. According to the charge the conspiracy to cheat the Andhra Bank, Mylapore Branch commenced when the Current Account No: 2730 was opened by A-2 in the name of M/s.Ananthi Exports on 11/11/1995 with the help of A-3 and A-6. The appellant took charge of Mylapore Branch by succeeding PW-3 only on 05/12/1995. P.W-3 admits in his evidence that he permitted to open the account and made endorsement that " Please open current account', on the Account Opening Form Ex.P-2. On her request, one of the customer named Krishnamoorthy introduced A-2 to open the Current Account. He received the Package Credit loan application from A-2 along with Project Report and property statements (Ex.P-4 to Ex.P-7). The application along with loan documents with covering letter Ex P-8 were submitted to the Bank on 30/11/1995.

8. After assuming charge on 5th December 1995, as a Manager, based on the documents produced by A-2, forwarded the loan application to Zonal Office with note, 'we recommend for sanction of the facility sought for 'Please refer covering letter'. The covering letter dated 30/11/1995 of M/s Ananthi Exports is marked as Ex P-8. In this letter A-2 has explained about the project and the proposal narrated the line of credit sought, furnished details about the guarantor and the collateral security willing to offer. Therefore, the Learned Counsel for the appellant (A-1) submitted that, when the loan application was submitted by A-2, he was not the Manager of the Branch. He processed the pending application and being satisfied with the details furnished by the borrower, forwarded it to the Zonal Office for necessary action with the recommendation.

9. The project report was prepared by A-6 and submitted by A-2, the future projection of the project and the value of the collateral security which was worth about Rs.46 lakhs as per the valuation report Ex.P-24 and the legal opinion about the title of the property offered as collateral security does not indicate any sign of doubt. As per the banking norms and procedures, these documents and the L.C produced were taken into consideration for sanctioning loan. A-1 as branch manager had processed the application in discharge of his duty and no evidence to prove that there was meeting of mind between the borrower and the bank officials to do any illegal act or legal act by illegal means.

10. The loan sanction letter Ex.P-26 was issued by the Asst.General Manager Ravichandran on 30/12/1995. Prior to that, the bank officials including Ravichandran met on 27/12/1995 and took the decision to consider the loan request on certain conditions. Those conditions were handwritten on the side of Ex.P-21 and also reflected in Ex.P-26. On obtaining oral instruction from Ravichandran, the first part of P.C loan of Rs.3 lakhs released to A-2 on 28/12/1995 and same is noted by A-1 in Ex.P-28. Advance payment of P.C in anticipation of regular sanction is permissible and Ex.D-5, Circular of the Bank instructs officials not to delay the process of proposals. A-1 along with his successor in office (PW-5) made all attempts to recover the money. They invited legal notice from A-4 and A-5 alleging that, coercive steps been adopted for recovery of A-2's loan. P.W-5 had deposed about the genuine attempts made by A-1 to recover the loan.

11. Contending that, after due efforts, the loan due was recovered by proceeding against the collateral security. The departmental enquiry initiated against A-1 ended in exoneration (Ex.D-1). There is no loss to the Bank or to any person. The charge for conspiracy lack evidence and is not made out. There was no abuse of official position or any pecuniary gain obtained by this petitioner or any other person. Therefore, sought for acquittal by setting aside the trial Court judgment.

12. To buttress his submissions, the Learned Counsel for the appellant relied upon the following judgments:-

1. ***Praveen @Sonu -vs- The State of Haryana***

reported in ***2021 SCC OnLine SC 1184.***

2. ***N.Raghavender -vs-State of Andhra Pradesh, C.B.I*** reported in ***SCC OnLine SC 1232.***

3. ***T.S.R.Subramanian and others -vs- Union of India & Others*** reported in ***(2013) 15 SCC 732.***

13. Crl.A.No.704/2011

This Criminal Appeal is preferred by K.Ananthi (A-2) the borrower and her husband Kasirajan (A-3). The judgment of the trial Court dated 30.09.2011 is impugned on the ground that, the trial Court completely ignored the evidence of Ex.D-1 to Ex.D-4 adduced by the defence. The trial Court conclusion that, there was no business activity by A-2 is due to omission of appreciating the evidence of P.W.16 properly, who is the son of the landlord under whom the accused took the property in lease and running her business in the name of M/s.Ananthi Exports. In the cross examination, P.W-16 had admitted that, A-2 had taken their property on lease for processing cashew kernels. The trial Court failed to note the perjury committed by P.W-3 and P.W-6. The first Investigating Officer P.W-28 admit that, there was a cashew processing unit of first accused at Kadampulliyur. While so, the trial Court observation that, without factory or commercial activity, she received loan is factually incorrect.

The second Investigating Officer admits that, the Letter of Credit is genuine. On 31/07/1996, the second accused remitted Rs.1.71 lakhs which is the money realised on export of cashew nuts. This would establish that the second accused genuinely doing cashew export business and the loan was availed only to meet out the business expenditures. The delay in shipment may be termed as breach of contact and not a reason to launch prosecution for cheating or conspiracy.

14. The Learned Counsel for these appellants submitted that, in the appraisal format, the endorsement made by A-1 in writing exclusively marked as Ex.D-11 through D.W-5. The trial Court failed to take note of the endorsement which says A-2 had already paid Rs.7 lakhs to procure cashew hence require loan. The bonafide of these appellants to do business in cashew nuts though established through material evidences, the trial Court was unwilling to accept the evidence and convicted A-2 for cheating and A-2 and A-3 for conspiracy, though there is no evidence for meeting of mind to do any illegal act or legal act by illegal means.

15. DRT proceedings was initiated for recovery before the filing of Final Report. The amount due is settled by proceeding against the third party property given as collateral security. This indicates two facts: One the bank is not at loss and the money lended is recovered. Two, the property offered as collateral security is genuine and the owner of the property who gave collateral security is also genuine. None of the Officers working at Mylapore Branch of Andhra Bank during the relevant point of time were investigated by CBI. The loan application of A-2 was received and forwarded to Zonal Officer 12/07/1996 for consideration. The trial Court failed to consider that there was no complaint from the Andhra Bank as admitted by Investigating Officer. However, the trial Court has erroneously stated that the matter came to light in the year 1997 when Manager Margasahayam (PW-6) gave complaint. This is a wrong observation made by the trial Court. The report of Margasahayam marked as Ex.P-59 is dated 12/07/1996. It is not addressed to Police. In fact, in this report Margasahayam had observed that, 7 to 10 days time may be given to the borrower to settle the amount. In case, if they fail, the bank may resort to legal action and police complaint. The F.I.R Ex.P.97 dated 13/03/1997 came to be registered on reliable information and not on the complaint of P.W-6 Margasahayam as stated by the trial Court.

16. The Learned Counsel appearing for these appellants submitted that, the evidence of D.W-1 and P.W-16 are evidence that the accused A-2 had been procuring cashew from local dealers for her export. She had enter into lease for the land in which the processing unit established. The Unit had been visited by the Bank officials and also made record for their visit. Therefore, the trial Court on the erroneous presumption that M/s.Ananthi Exports is a dormant Unit not involved in any commercial activities had come to the wrong conclusion that, there was sharing of illegal intention between the accused and A-2 to cheated the bank. The ingredients for these offences are not made out through the prosecution witnesses so they may be acquittal.

17. Crl.A.No.688/2011

The first appellant S.Latha (A-4) and the second appellant V.Shantharaman (A-5) are wife and husband. For sharing the loan amount with A-2 which is meant for packing credit, they both were held guilty. According to these appellant, they are falsely prosecuted and convicted though there is no ingredients for offence of conspiracy or cheating against them. The letters of A-5 addressed to A-3 marked as Ex.P.90 (series) is no way relevant to the loan sanctioned by Andhra Bank to A-2. Nothing incriminating against A-5 for conspiracy found in these letters. The letters to A-3 requesting to repay the loan amount advanced to him been wrongly understood by the trial Court as if A-5 induced and aided A-2 to commit fraud on the Bank. The finding against these appellants is based on inadmissible and irrelevant documents, hence is liable to be set aside.

18. These appellants are no way involved in the process of loan. They received back their money without knowing that A-2 and A-3 are repaying their dues from the loan amount availed by A-2 for different purpose. There is no meeting of mind between these appellants (A-4 and A-5) for committing any illegal act. Just because from the Packing Credit loan amount the third accused cleared his past debt, these appellants cannot be mulched with criminal liability. If Ananthi and Kasirajan (A2 and A3) had defaulted in repayment of the loan amount, it is a breach of contract followed by civil consequence. These two appellants who received money from A-2 and A-3 as return of loan cannot be prosecuted and not a proof for sharing dishonest intention. Ex.P.90 series is the proof for past debt. The receipt of money from the debtor is not an offence to attract offence of conspiracy and cheating. The recipient of the money cannot be expected to check the source of money. After a long delay and protraction, when the debtor has came forward to repay the money, no creditor will refuse to receive the money.

19. Even if the contention of prosecution is accepted that, there was diversion of loan amount by A-2 for such diversion, only the borrower is responsible and not the persons who receives the money from the accused as a result of such diversion. Even according to the prosecution, the loan amount been withdrawn and paid to several persons but only these two appellants are prosecuted. The pick and choose method adopted by the IO is purely out of malice.

20. Under the guise of enquiry, the bank officials entered the house of the petitioner and forcible obtained Ex.P-57 from A-5. Against their action of high handedness A-5 gave a complaint, Ex.P-56 to the Superior Officers of Andhra Bank. Being infuriated, the case was registered against A-5 and his wife A-4 soon thereafter to harass these petitioners.

21. The recovery of unregistered sale deed executed by A-4 as Power of attorney of Chakrapani Padayachi (father of A-3) in favour of PW-22 (the brother in law of A-1) is no way an incriminating piece of evidence to prove conspiracy between this appellant and others. This deed was in fact obtained to secure the money from A-2 and A-3 to repay the Andhra Bank.

22. <u>Crl.A.No.664/2011</u>

Ram Kumar (A-6) the appellant, is a Chartered Accountant by profession. The trial Court held him as a part of the conspiracy team which in connivance with the public servant viz., A-1, cheated the Andhra Bank Mylapore Branch in the matter relating to the loan advanced in the name of M/sAnanthi Exports. His role in the transaction is disclosed substantially from his own mouth by gracing the witness box as D.W-5. In his appeal, it is contended that, the evidence of P.W-3 and P.W-6 are doubtful. In the Account Opening form at Allahabad Bank, Adyar Branch in the name of M.K.K.Agencies, he introduced A-4. There is no illegality in introducing a customer to the bank. A-4 and A-5 are not unknown persons to him. He gathered information from A-2 and prepared the draft Project Report in the CMA format of RBI. The loan application and project report were given to P.W.3 the then Manager of Allahabad Bank and he made some correction and filed up Ex.P-2. All the writings in Ex.P-2 except the signature of A-2 at the bottom were done by PW-3. The report was given by him only on being satisfied that A-2 has business and she gave the inputs for the certificate regarding the capital infused. He on request of PW-3 accompanied PW-3 along with A-1 to inspect the field at Kadampulliyur. For his professional service he received remuneration from A-5 Santharaman on the instruction of A-3

Kasirajan. He did not know what happened after the sanction of loan. For rendering professional service he received remuneration. Merely because the remuneration paid from the loan money sanctioned to A-2, he cannot be held responsibility for the default in payment by the borrower subsequently.

23. Reply by the Special Public Prosecutor for CBI/Respondent:-

The learned Senior Counsel for the respondent submitted that the final report specifically mentions nine points which link the accused and make the chain of conspiracy complete. The trial Court has dealt each one in detail and arrived at the conclusion that these appellants were privy to the scheme of conspiracy. For aiding A-2 to obtain unlawful gain knowingly these accused are liable to be punished for the offence of criminal conspiracy. The second Accused, who had dishonestly induced the Andhra Bank to sanction loan is liable for the substantive offence of cheating. The account opening form of M/s.Ananthi Exports in Andhra Bank is Ex.P-2 dated 11/11/1995. The loan application Ex P-4 is undated. The appraisal format which is part of Ex.P-4 also undated. At the end of the application A-2 had written *"We recommend for sanction of the facility sought for. Please refer the covering letter"*. A-6 who mounted the witness box and examined as DW-5 admits that he gave the project report Ex.P.5. In the project report A-2 is shown as Proprietrix and A-3 as Chief Executive. The landed property of A-3 offered as property of co-obligant/guarantor was already been offered as security to Federal Bank for the loan availed by M/s.Naga International which has become NPA. Suppressing the charge created on the property, A-3 offered this property as security. The L.C produced by A-2 was procured paying commission to P.W-12 Govindaraj Proprietor of M/s Liberty Exports. For arranging fake L.C, out of the loan money, A-2 had paid Rs.45,000/- and Rs.31,000/- through cheques Ex.P-50 and Ex.P-51.

24. P.W-6, who succeeded A-1 as the Manager of the Branch, on inspection of the business site and the processing unit site of M/s.Ananthi Exports found that, the period of L.C created likely to expire. No stock available in the premises of M/s.Ananthi Exports. The loan amount of Rs.19.91 lakhs released were not utilised for procuring cashew for onward shipment, but diverted. During the enquiry, A-2 & A-3 admitted that, they along with A-6 Chartered Accountant designed to avail loan on the pretext of cashew export and for which arranged third party collateral security for commission through land broker. To draw the loan amount and disburse it for other purpose, A-6 arranged to open a Account in Allahabad Bank, Adyar Branch in the name of

M/s M.K.K. Agencies, Prop.S.Latha (A-4) on 15/12/1995. The account was introduced by A-6. A-1 already a known person to A-6 after receiving kickback made possible to get the loan amount release without any verification of stock or other particulars with the help of A-1.

25. The Learned Special Public Prosecutor for C.B.I/Learned Counsel for the Respondent, rely on the evidence of PW-6, his report Ex.P.59 and the letter of A-2 (Ex.P-60) wherein, she has admitted the diversion of the fund and given an undertaking to repay the loan amount within 30-45 days and prayed to defer criminal action, the letter of A-4 (Ex.P-61) admitting the receipt of Rs.8,00,000/ from M/s.Ananthi Exports and promise to repay Rs.5,00,000/- within 15- 20 days and submitted that, the dishonest intention of A-1 to make his superior officer at Zonal Office of the Andhra Bank to believe that the applicant M/s.Ananthi Exports is a valuable customer worth lending loan, had made a misleading statement in his recommendatory letter dated 07/12/1995 marked as Ex.P-10, that she (A-2 Ananthi) has enough experience in the line of (cashew export) activity explained in the proposal. They intend to export cashew kernels to Singapore. Whereas, in the project report Ex.P-5 prepared by A-6, it is stated that, operation of the export will be under the expert supervision of former Assistant Director of Exports Inspection Agency by name

Mr.K.Thirunarayanaswamy. The countries for export are European Countries. A-6 mislead the Bank through his recommendatory letter dated 07/12/1995 marked as Ex.P-10, saying that Mrs.Ananthi has expertise in the field and have commitment from the Local dealers for supply and order from foreign company to buy. This proves his involvement in the conspiracy and dishonest intention to induce his superior officers to clear the proposal and sanction of loan.

26. Neither at the Company address in Chennai nor in the address at Kadampuliyur near Cuddalore A-2 was really carrying on her business activity. The loan amount released were used to clear the personal debts and other expenses. The L.C produced for getting loan expired without any shipment to the buyer. However the loan amount disbursed and diverted to A-3 to A-6 and also to others, since others are innocent recipients, except A-4 and A-6, they alone are prosecuted since they were not only recipients of the money, but they received it as reward for their dubious design conceived and executed successfully to cheat the Andhra Bank.

27. The Learned Senior Counsel for the respondent also relying upon the incriminating materials recovered from the premises of A-3 and A-5, submitted that the nexus between A-1 to A-5 clearly exposed through Ex.P-93 which is an unregistered, undated sale deed in respect of a property in the name of the Chakarapani Padaiyachi, who is the father of A-3 and father in law of A2. As per the recital of this deed, the property of Chakkarapani is sold through his power Agent Latha (A-4) W/o.Santharam (A-5) to T.Ragavan (PW 22) who is the brother in law of A-1. This according to the explanation given by PW-22, was taken as security to clear the loan of A-2.

28. The learned counsel for the respondent submitted that the entire act of fraud devised by the accused 1 to 6, to get over from the financial crisis faced by A-5, who had advanced loan to A-3 few years ago and unable to recover. A-6 a common friend of the other accused and being a Chartered Accountant had aided them in documentation and also by using his clout with P.W.3 and A-1 just opened the current account in the name of M/s.Ananthi Export gave loan application with project report. With the help of A-1 got the loan paper processed and made A-1 to release Rs.3 lakhs even before the letter of sanction issued by the Zonal Office. A-1 did not care to ensure the money released for P.C is utilised for the said purpose. Therefore, prayed for confirmation of the trial court judgment.

29. Heard the Learned Counsel for the appellants and Learned Special Public Prosecutor for the respondent/C.B.I. Records perused.

30. The undisputed facts are, the Bank Account in the name of M/s.Ananthi Exports was opened when PW-3 was the Branch Manager. The loan application Ex.P-4 was also given during his tenure. However, P.W-3 did not take any decision regarding the loan application. It was A-1, who had recommended and forwarded the proposal. The perusal of Ex.P-4 proposal, we find two important notings made by A-1. They are:-

> "*13. Present request: Party in procuring raw materials from locally and intends to export against confirmed orders/LC on DP. Already they have paid about Rs.7.00 lacs for procuring stocks. The activity in merchant export. To execute the export order they require PC/FBP limit of Rs.25.00 lacs.*"

> *"2. Branch Recommendations*
> *We recommend for sanction of the facility sought for.*
> *Please refer covering letter"*

31. In Ex.P-9 letter dated 07/12/1995, while forwarding the proposal received from M/s.Ananthi Exports A-1 recorded his view about the proposal as below:-

> *"The borrower has already invested stocks worth Rs.7.00 lacs towards procurement of stocks. Initially they had already made ground work to obtain export orders from Singapore. Upon confirmation for export of materials, they will be getting confirmed LC's in their favour from the buyers. Mr.Kasirajan is already in the line of activity and through their contacts, they are confident of achieving exports worth Rs.4.00 crores in the first year itself. Apart from that they have recruited consultant for the export activities. They have opened their current A/C with us and their dealings are satisfactory. Though not of much activity at this stage, they are confident of achieving their projected turnover once the export limit is sanctioned."*

32. A-1 to justify his recommendation for Rs.25 lakhs P.C limit and Rs.25 lakhs, Foreign Bills Purchase limits has made further observation about the applicant that, the party are financially sound and they have the background in this line of activity backed by sufficient collateral security. As a matter of fact, none of the above statement of A-1 is true or supported by documents. A-1 had not even verified whether the property of the co-obligant A-3 offered as collateral security is free from encumbrance or whether A-2 and A-3 have any real experience in the field. Their own proposal mentions the name of one Thirunarayanasamy as field expert whom they will take for supervision and admittedly A-2 is a new comer, A-1 had made a false and misleading statement about the borrower, so as to get the sanction from Zonal Office without hurdle. This is a clear evidence for abuse of the official position to obtain pecuniary advantage by a public servant for himself or for other, which is the required ingredient for the offence under section 13(2) r/w 13(1)(d) of PC Act.

33. It is the contention of the Learned Counsel appearing for A-1, that the loan application was submitted when PW-3 was the Manager and was under process when A-1 took full charge of the Bank. Till his retirement, PW-3 was handling the loan file. The Learned Counsel also rely upon PW-6 statement in Ex.D-1 (the Domestic Enquiry proceedings), where he had declared that, there was no fault or negligence on the part of the bank or any of the officers in conducting the Accounts. In this aspect it is to be noted that PW-6 Margasahayam succeed the office of the Manager, Mylapore Branch after A-1. No doubt his evidence indicates that A-1 had accompanied the bank team when they made attempt to recover the loan from A-2 and as a consequence, A-2 had caused notice to the Bank officials including A-1 alleging harassment under the guise of demanding repayment of loan. However, Ex P-93 recovered from A-1 during the house search and the evidence of the co accused A-6 who voluntarily come forward to give evidence and examined as D.W-5, had deposed that A-1 and P.W-6 used to come to his house regularly telling that A-2, had not honoured the commitments on exports. I had no idea what happened after the loan was sanctioned. A-6 had also made an inculpatory statement in his deposition that for PW-3 (Sathiyanarayanan-former Manager) he paid Rs.20,000/- by way of cheque drawn in the name of Jayashree wife of PW-3, as professional charges he rendered in respect of the proposal of M/s Ananthi Exports. A-6 has also admit that PW-3 after retirement assumed practise as Chartered Accountant and shared the office space with him for nearly 6 months. As per the terms of the loan sanction letter Ex P-26, A-1 had the responsibility of disbursing the loan only to supplier by way of cheques in the name of the suppliers. In gross violation of this condition, he had permitted A-2 to draw money through self cheques. Even the cheques and pay orders in the name of third parties were not for procurement of cashew. The entire loan amount of Rs.19.91 lakhs been disbursed as below:-

Date of release	***Name of the party on whom DD/PO issued***	***Amount in Rs.***	***Encashment details***
30.12.1995	M.K.K.Agencies	2 lakhs	Bank of Baroda MRC Nagar
30.12.1995	S.Latha	1 lakh	Indian Bank, Madhavaram
02.01.1996	K.Ananthi (Self)	0.5 lakh	Through cheque
09.01.1996	Liberty Exports	0.76	-do-
23.02.1996	K.P.M. Enterprises	1 lakh	Through cheque
03.01.1996	M.K.K.Agencies	6 lakhs	Allahabad Bank,Adyar
03.01.1996	K.P.M.Enterprises	2 lakhs	Indian Bank. Adhithanar Salai Chennai
03.01.1996	Multimedia	2 lakhs	-do-
03.01.1996	Chakrapani Padayachi	4.5 lakhs	SBI, Manapet, Cuddalore
31.03.1996	M.C.Raja	0.15 lakhs Cash	
	Total	19.91 lakhs	

34. P.W-7 Selvam the co-obligator/guarantor, who had offered his property as collateral security for the loan advanced to M/s.Ananthi Exports, P.W-8 R.Rajini Muthaiah land broker who facilitated for getting the property of Chinnapaiyan father of P.W-7 as collateral security, P.W-9 Kothandaraman, who helped A-2 to encash the pay order issued in the name of M.K.K.Agencies on the request of Babu (P.W-11) proves without doubt the diversion of loan amount dishonestly. The testimony of P.W-11 is regarding encashment of Pay orders/cheques drawn in the name of M/s.Multimedia and M/s.K.P.M.Enterprises. The evidence of P.W-12 Govindaraj, of M/s.Liberty Exports, who arranged the L.C they all admits receiving pecuniary advantage as commission from A-2 these evidence implicates A-1 to A-6 in the crime of cheating the Andhra Bank. The meeting of mind to do the illegal act is well proved through the evidences referred above.

35. The Trial Court has convicted A-2 for the substantive offence of cheating and all other accused including A-2 for the charge of conspiracy. The conspiracy is a chain and each of the accused provide the link, the late entry of A-1 or his attempt to recover the loan cannot be a ground for exonerating him from the offence of conspiracy. At the most his exoneration from departmental enquiry may be a ground for acquitting him from the substantive offence under section 13(1)(d) of P.C Act if it is on same set of facts. In this case, no documentary proof provided by A-1 to show he was exonerated from all charges in the domestic enquiry and the charges were based on same set of fact. Further, Ex.D-8 which is the letter of Andhra Bank dated 06/07/2000 intimating the Counsel representing the Bank in the suit filed against M/s.Ananthi Exports for recovery of debt that, the loan amount fully paid on 14/09/2000. Again the attempt to recover the loan obtained by A-2 in connivance with other accused playing fraud on the Bank may be a ground for mitigating the sentence but cannot be a ground for acquittal. The trial Court has taken into consideration all these facts and imposed the minimum sentence prescribed under the Act.

Taking into consideration that, A-2 and A-4 are ladies, the trial Court has sentenced them to undergo one year simple imprisonment only.

36. In view of the above facts and reasoning, this Court finds no ground to interfere in the well considered judgment of the trial Court both on conviction as well as sentence.

37. Hence, these ***Criminal Appeals are dismissed.*** The conviction and sentence passed in C.C.No.24 of 1999 on the file of XI Additional Special Judge for CBI cases, Chennai, is hereby confirmed. The trial Court is directed to secure the appellants/accused and commit them to prison to undergo the remaining period of sentence. The period already undergone by the accused shall be set off under Section 428 of Cr.P.C.

14.09.2023

Index :Yes/No.
Internet :Yes/No.
Speaking order/non speaking order
bsm

Copy to:-
1.The XI Additional City Civil & Sessions Judge CBI Cases, Relating to Banks and Financial Institution, Chennai.
2. The Inspector of Police,
CBI, ACB, Chennai.
3. The Inspector of Police,
Special Police Establishment,
Anti Corruption Branch, Central Bureau of Investigation,
Chennai. III Floor, Sasthiri Bhavan,
Haddows Road, Nungambakkam,
Chennai-600 006.
4. The Special Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN,J.

bsm

Pre delivery common Judgment made in
Criminal Appeal Nos.621, 664, 688 and 704 of 2011

14.09.2023