IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	24.01.2023
Pronounced on	:	09.06.2023

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Revision Case Nos.183, 249 and 386 of 2018

In Crl.RC.No.183 of 2018

1. M/s.Soft Bank Microsystems Pvt. Ltd.
   Rep. by S.Sivasubramanian
   At G-2, Ashwametha Apartments,
   121, Velacherry Guindy Main Road,
   Guindy, Chennai – 600 032

2. S.Sivasubramanian .... Appellants

Vs.

State by Inspector of Police
Central Bureau of Investigation
SPE/EOW, Chennai
(RC.No.7/S/2010) ... Respondent

Prayer: Criminal Revision Case filed under Section 397 read with 401 of Criminal Procedure Code, praying to set aside the Judgment in Crl.A.No.105 of 2017 dated 29.01.2018 of learned XV Additional Sessions Judge, Chennai, confirmed the Judgment of learned Additional Chief Metropolitan Magistrate (CBI Cases), Egmore at Allikulam, Chennai – 600 003 dated 10.04.2017 in C.C.No.3766 of 2011 and call for the records and acquit the petitioner.

For Petitioners : Mr.P.Wilson
Senior Advocate for
M/s.P.Wilson Associates for 1st petitioner

: Mr.S.Prabhakaran
Senior Advocate for 2nd petitioner

For Respondent : Mr.K.Srinivasan
Spl. Public Prosecutor for CBI Cases

In Crl.RC.No.386 of 2018

R.Ramachandran ... Petitioner/Appellant/A3

Vs.

State rep. by
Inspector of Police
Central Bureau of Investigation
Special Crime Branch
Raj Bhavan, Besant Nagar
Chennai – 600 090 ... Respondent

Prayer: Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code, praying to set aside the Judgment dated 29.01.2018 made in Crl.A.No.107 of 2017 on the file of the XV Additional Sessions Judge, Chennai, confirming the Judgment dated 10.04.2017 made in C.C.No.3766 of 2011 on the file of the Additional Chief Metropolitan Magistrate, Egmore at Allikulam, Chennai.

For Petitioner : Mr.S.Ramachandran

For Respondent : Mr.K.Srinivasan
Spl. Public Prosecutor for
CBI Cases

In Crl.RC.No.249 of 2018

P.Kishore ... Petitioner/Appellant/A4

Vs.

State represented by
Inspector of Police
Central Bureau of Investigation-EOW
Chennai ... Respondent

Prayer: Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code, praying to set aside the conviction and sentence imposed by the learned Additional Chief Metropolitan Magistrate at Chennai passed in C.C.No.3766 of 2011 Judgment dated 10.04.2017 and the Judgment passed in Criminal Appeal No.110 of 2017 dated 29.01.2018 confirming the conviction and sentence by the XV Additional Sessions Judge, Chennai.

For Petitioner : Mr.T.Saikrishnan

For Respondent : Mr.K.Srinivasan
Spl. Public Prosecutor for
CBI Cases

COMMON ORDER

The Criminal Revision Cases have been filed to set aside the conviction and sentence imposed by the learned Additional Chief Metropolitan Magistrate, Chennai, in C.C.No.3766 of 2011 dated 10.04.2017 and confirmed by the learned XV Additional Sessions Judge, Chennai in Criminal Appeal Nos.105, 107 and 110 of 2017 dated 29.01.2018.

2. The respondent Police registered a case against the petitioners in Crime No.7/S/2010 for the offences under Sections 120-B, 420, 467, 468, 471 IPC and after investigation, they laid charge sheet against the accused before the Additional Chief Metropolitan Magistrate, Chennai. The learned Additional Chief Metropolitan Magistrate had taken the charge sheet on file in C.C.No.3766 of 2011 and after completing the formalities, framed the charges for the offence under Section 420 IPC as against A1; for the offences under Sections 120-B read with 420, 467, 468, 471 read with 467 IPC and substantive offences under Sections 420, 467, 468, 471 read with 467 IPC as against A2 and A3; for the offences under Sections 120-B read with 420, 467, 468, 471 read with 467 IPC

and substantive offences under Sections 420, 471 read with 467 IPC as against A4.

3. After framing the charges and completing the formalities, in order to prove the case of the prosecution, during trial, on the side of the prosecution, totally 42 witnesses were examined as P.W.1 to P.W.42 and 137 documents were marked as Ex.P.1 to Ex.P.137. However, no material object was exhibited.

4. After completing the examination of the prosecution witnesses, incriminating circumstances were culled out from the evidence of the prosecution witnesses which were put before the accused by questioning under Section 313 Cr.P.C. However, the accused denied the same as false and pleaded not guilty. On the side of the defence, 4 witnesses were examined as D.W.1 to D.W.4 and 9 documents were marked as Ex.D.1 to Ex.D.9.

5. On conclusion of trial, after hearing the arguments advanced on either side and considering the materials, the trial Court found the

accused guilty of the offences and convicted and sentenced them as below;

(i) A1 was convicted for the offence under Section 420 IPC.

(ii) A2 and A3 were convicted for the offences under Sections 120-B read with 420, 467, 468, 471 read with 467 IPC and substantive offences under Sections 420, 467, 468, 471 read with 467 IPC.

(iii) A4 was convicted for the offences under Sections 120-B read with 420, 467, 468, 471 read with 467 IPC and substantive offences under Sections 420, 471 read with 467 IPC.

(iv) A1 was sentenced to pay a fine of Rs.20,000/- for the offence under Section 420 IPC and since A1 is a company, no imprisonment was imposed. The A1/ company was represented by A2 and A4 and therefore, both A2 and A4 were directed to pay the fine of Rs.20,000/-.

(v) A2 to A4 were sentenced to undergo 6 months Rigorous Imprisonment each with fine amount of Rs.2,000/- each for the offence under Sections 120-B read with 420, 467, 468, 471 read with 467 IPC. In default of payment of fine, to undergo simple imprisonment for a further period of 3 weeks each.

(vi) A2 to A4 were sentenced to undergo 3 years Rigorous Imprisonment with fine amount of Rs.1,000/- each for the offence under Section 420 IPC. In default of payment of fine, to undergo simple imprisonment for a further period of 3 weeks, each.

(vii) A2 and A3 were sentenced to undergo 3 years Rigorous Imprisonment with fine amount of Rs.1,000/- for the offence under Sections 467 IPC. In default of payment of fine, to undergo simple imprisonment for a further period of 3 weeks each.

(viii) A2 and A3 were sentenced to undergo 3 years Rigorous Imprisonment with fine amount of Rs.1,000/- for the offence under Section 468 IPC. In default of payment of fine, to undergo simple imprisonment for a further period of 3 weeks each.

(ix) A2 to A4 were further sentenced to undergo 3 years Rigorous Imprisonment with fine amount of Rs.1,000/- for the offence under Section 471 read with 467 IPC. In default of payment of fine, to undergo simple imprisonment for a further period of 3 weeks.

6. Aggrieved by the said Judgment of conviction and sentence, the accused filed appeals before the Principal Sessions Judge, Chennai. The appeal filed by the A1 and A2 was taken on file in Crl.A.No.105 of 2007,

the appeal filed by A3 was taken on file in Crl.A.No.107 of 2017 and the appeal filed by A4 was taken on file in Crl.A.No.110 of 2017 and all the said three appeals were made over to the XV Additional Sessions Judge, Chennai. Since all the appeals arose out of a same Judgment made in C.C.No.3766 of 2011 dated 10.04.2017, the learned XV Additional Sessions Judge, after hearing the arguments advanced on either side, delivered a common Judgment and dismissed the appeals and confirmed the conviction and sentence passed by the trial Court.

7. Challenging the said Judgment of conviction and sentence passed by the lower appellate Court, all the accused have filed the present revisions before this Court, in which, A1 and A2 have filed Crl.RC.No.183 of 2018, A3 has filed Crl.RC.No.249 of 2018 and A4 has filed Crl.RC.No.386 of 2018.

8. Since all the revisions arise out of a common Judgment delivered by the learned XV Additional Sessions Judge, Chennai, dated 29.01.2018, all the revisions are taken up and heard together and disposed of by way of this common Order. For better understanding, the

petitioners are referred to as per their rank before the trial Court.

9. The specific case of the prosecution is that A1 is a Company by name M/s. Soft Bank Micro Systems Ltd. A2 and A4 are the Directors of A1/company. A3 had mortgaged his property for the loan secured by A1/ company. A1/company had availed cash credit facility for Rs.150 lakhs and Bank guarantee of Rs.50 lakhs in the Punjab National Bank, Purasaiwakkam Branch, for which, A3 had mortgaged his property value of Rs.401.90 lakhs. Later A1/company availed enhanced cash credit limit of Rs.1.5 Crores to Rs.2 Crores on 18.01.2008 and subsequently, from Rs.2 Crores to Rs.2.70 Crores. In November 2006, A3 joined as Director in M/s.R.M.K.S. Minerals Pvt. Ltd. and got released the original title deeds relating to the said property, which was already mortgaged with Bharath Overseas Bank, Anna Nagar Branch, Chennai, out of the amount given by the Director of RMKS Minerals Pvt. Ltd. mortgaged the same property as collateral security and deposited original title deeds with State Bank of India, for availing packing credit facility to the tune of Rs.7 Crores by M/s.R.M.K.S. Minerals Pvt. Ltd. Further, A2 and A4 opened a bank account in different banks and diverted the cash credit loan through

that accounts and various accounts belonged to their employees and that A2 forged the signature of A4 in cheques on 23 instances and used those cheques to withdraw money and A2 also opened an account with Punjab National Bank, Mylapore Branch in the name of M/s.S.K. Enterprises, by forging the signature of A4 for diverting loan amount of A1/company and thereby, all the accused together have caused wrongful loss to the Punjab National Bank to the tune of Rs.374 Crores and thereby, committed offences under Sections 120-B, 420, 467, 468 and 471 of IPC.

10. The learned counsel for A1 and A2 submitted that A1 and A2 have not committed any forgery and they had no knowledge about the forgery at the time when the alleged forged documents were deposited with Punjab National Bank and no case was made out against A1 and A2 for the offence under Section 471 IPC. Therefore, they have not committed offence under Section 420 IPC. The A1/company was genuinely doing business and they have not cheated the Bank. The loan was sanctioned based on the performance of the Company. Even the prosecution witness P.W.40 has deposed that the report of A1/company and its Directors were satisfactory and the report had been marked as

Ex.P.107. The A1/company repaid the loan when it became Non Performing Asset(NPA). Even thereafter also, A1/company paid a sum of Rs.2.03 Crores. It at all A1 and A2 had any intention to cheat the Bank, there is no necessity to repay the loan amount. Further, there is no proof to show that the documents Exs.P.54, P.55 and P.56 were collected from the Standard Chartered Bank. Even the investigating Officer has failed to seize the alleged forged documents from the custody of Punjab National Bank and the original documents from the Standard Chartered Bank in the presence of independent persons and by keeping separate identification marks in those respective documents and that the documents have also not been seized under Seizure Mahazars. Therefore, it is doubtful as to whether the documents were really recovered from the Bank by the Investigating Officer and which set of documents were recovered from which Bank and whether they are forged one and that the case of forgery is made only on the basis of presumption and assumption and there is no proof to attract the offence under Section 120-B IPC. The prosecution has not proved any conspiracy between the accused that in order to cheat the Bank only they entered into criminal conspiracy. A2 and A4 were not aware of the alleged forgery. There is no material evidence to show that either A2 or A4 were involved in the offence of forgery. Therefore, none of the ingredients of any of the charges framed against them were made out. The trial Court failed to appreciate the evidence that A1/company is a genuine borrower and that A2 and A4 never involved in the offence of forgery and they never had any intention to cheat the Bank and no documentary evidence was produced to prove the same. The trial Court failed to appreciate the same and erroneously convicted A1 and A2 for the above said charged offences and convicted them as stated above. In the absence of any direct evidence to show that A1 and A2 involved in the charged offences and the ingredients of the alleged offences were made out, based on presumption and assumption the conviction is unwarranted. Therefore, A1 and A2 filed an appeal before the XV Additional Sessions Judge in C.A.No.105 of 2017 and the learned Sessions Judge also failed to re-appreciate the entire evidence as final Court of fact finding and simply endorsed the views of the trial Court and erroneously dismissed the appeal and confirmed the Judgment of conviction and sentence passed against them by the trial Court, which warrants interference. The learned counsel placed reliance on the Judgments of the Hon'ble Supreme Court as follows:-

1. *Parveen @ Sonu Vs. State of Haryana (2021 SCC online SC 1184)*
2. *Ram Sharan Chaturvedi Vs. State of Madhya Pradesh (2022 SCC Online SC 1080)*
3. *Shiela Sebastian Vs. R.Jawaharaj & Another (2018 (7) SCC 581)*
4. *State of Uttar Pradesh Vs. Wasif Haider and others (2019 2 SCC 303)*
5. *Amit Kapoor Vs. Ramesh Chander and Another (2012 9 SCC 460) and*
6. *State of Madhya Pradesh Vs. Sheetla Sahai and others (2009 8 SCC 617)*

11. The learned counsel for A3 submitted that there was delay in lodging the complaint and there was no plausible explanation for the delay in filing the complaint. The unexplained delay is fatal to the case of the prosecution. Further he submitted that there were two different complaints in two different dates which were lodged for the same set of facts by two different officers, which creates serious doubt on the prosecution case. Even as per the evidence of P.W.1, A3 is the Director of A1/company and as per the certificate of incorporation, A3 is not the

Director of A1/company. A perusal of Ex.P.60 and Ex.P.61 reveals that A3 is not a Director of A1/company. The official witnesses of the Bank have also agreed that the Bank should have received certificate of incorporation of A1/company, Memorandum of Association, Articles of Association and annual report of the said Company. But the official witnesses of the Bank have stated nothing about receipt of those documents. Ex.P.60 and Ex.P.61 clearly reveals that A3 did not pledge his property with the Punjab National Bank as security for the purpose of loan availed by A1/company. A3 is not a borrower and not responsible for the loan borrowed by A1/company. There are material contradictions in the evidence of P.W.1 to P.W.3 with regard to the property, documents and security alleged to have been offered by them. Further, the Bank also filed a case before the Debt Recovery Tribunal (DRT) for recovery of the money. The DRT has not stated that it is forged document and considered it as debt and also issued Certificate of Recovery. The Investigating Officer after investigation had come to know that A3 was not a Director of A1/company. The documents which were collected from the Assistant Registrar of Companies and Commercial Tax Department clearly show that A3 is no way connected with A1/company. Even the prosecution witness viz., P.W.42 has not seized any of the documents of A1/company like Articles of Association, Memorandum of Association and Annual Report from the Bank which shows that A3 was not shown as a Director of A1 company. Even as per Ex.P.105, it can be seen that A2 and A4 were authorized to sign jointly in all the documents relating to opening of the Current Account with Punjab National Bank and the account would be operated by them jointly. Further, Ex.P.106 being the Board of Resolution of A1/company, was not signed by A3. Even in the loan application which was submitted on behalf of A1/company on 12.05.2006, the signatures of A2 and A4 alone were found and that the signature of A3 was found no where in the loan application. So A2 and A4 in collusion with the Bank officials, had an intent to defraud and grab A3's property, since A3 had approached A2 and A4 to redeem the mortgage, created with the Indian Overseas Bank and A2 and A4 had given a false promise and they have taken the xerox copy of the documents and created forged documents in collusion with the officials of the Punjab National Bank and foisted a false case against A3. Even the Investigating Officer himself admitted that as per the material evidence collected from the Registrar of Companies and Commercial Tax Officers, A3 is no way connected with the case. Mere production of documents before the Court does not mean that it has been proved by the prosecution and the prosecution has to prove its case beyond all reasonable doubts to show that A3 entered into criminal conspiracy and forged the documents in order to cheat the Bank. Even though two sets of documents were collected by the Investigating Officer, admittedly no recovery mahazar was prepared and the documents were not recovered through any mahazar by keeping them separately in order to show as to which are all the documents recovered from which Bank and which is a forged one and which one is original. A3 never pledged any documents in two different banks in two different times. Actually, he mortgaged the property only with the original documents, which was from the Standard Chartered Bank alone and he has never been either Director of A1/ company or stood as a guarantor or he never deposited his title deeds to secure loan. As already stated, A2 and A4 forged his signatures and they also created the documents as if, A3 deposited the title deeds and he stood as guarantor for his loan. Therefore, the prosecution failed to prove its case beyond all reasonable doubts, whereas the trial Court failed to appreciate the entire evidence and wrongly convicted the petitioner and unfortunately, the appellate Court also failed to re appreciate the entire evidence and simply endorsed the views of the trial Court which warrants interference by this Court.

12. The learned counsel for A4 submitted that initially the property owned by A3 situated at Block-AA, 155 (New No.16), 3rd Avenue, Anna Nagar West, Chennai-40, was mortgaged by A3 with the Indian Overseas Bank by A3 in the year 2001 for obtaining loan for M/s. Pioneer Agencies. The said mortgage with the Indian Overseas Bank was redeemed only on 05.12.2007 and the mortgage with the Punjab National Bank was made by A3 in the year 2006. The document which was mortgaged with the Indian Overseas Bank was later on deposited with the State Bank of India in the year 2007 for availing loan for M/s.R.M.K.S. Minerals Pvt. Ltd. Even in the evidence of P.W.15, who is the Manager of Indian Overseas Bank, he has deposed that in their Bank, they will not apply Encumbrance Certificate before accepting the mortgage and they did not register the mortgage said to have been created by A3 before the Sub Registrar Officer. He also admitted that there is a possibility of depositing the forged documents due to non registration of equitable

mortgage. The above said evidence shows that the property mortgaged with the Indian Overseas Bank is not a registered one and therefore, when the mortgage was made with the Panjab National Bank, it was verified by the Panjab National Bank, however, due to the above said fact, it does not show the reflection of previous mortgage with the Indian Overseas Bank. Also, the documents mortgaged with the Panjab National Bank are genuine, whereas after redeeming the document by A3 from the Indian Overseas Bank, it was deposited with the State Bank of India in the year 2007. However, the State Bank of India was not able to view the previous mortgage in the Panjab National Bank due to the fact that the Encumbrance Certificate and other documents mortgaged with the State Bank of India are fake. Otherwise, the Punjab National Bank mortgage, which is registered with the Sub Registrar Office, would definitely reflect in the search report of the State Bank of India and as such, the State Bank of India, winning before the DRT in respect of the property against the Panjab National Bank, would not give determination that the documents mortgaged with the State Bank of India are original because the DRT has never sent both the documents for Forensic verification by recovering the same from Bank both Punjab National Bank and State

Bank of India. The evidence of P.W.28/the Sub Registrar in identifying the original documents cannot be taken into consideration due to the fact that he is not an author or maker of such document and as such, without any Forensic report in respect of the forged documents, the opinion given by the Sub Registrar cannot be taken into consideration and if the opinion of the Sub Registrar is taken into consideration, then the opinion of the Investigating Officer that A4 is not involved in the forgery, also be taken into consideration. Ex.P.105 and Ex.P.106/the Minutes of the Meeting of A1/company proves that A3 signed as Director and the agreement of guarantee submitted to the Bank was also signed by him in his capacity as the Director of A1/company. In fact, A3 signed the said documents as Director of A1/company due to the fact that on the Minutes of the Meeting/Ex.P.105 and Ex.P.106, held by the Board of the Directors of A1/company, held on 17.05.2006 and 22.05.2006, A3 was inducted as one of the Directors and in that, A2 and A4 have signed as the Directors. Even in Form-32, the name of A3 is mentioned as Director and he was appointed as Director on 30.04.2006 itself. Therefore, merely the name of A3 was not shown as Director of A1/company with the Registrar of Companies, it cannot be said that he has not acted as a Director. At any point of time, they can carry out the name of A3 as newly added Director within a stipulated time and the said delay cannot be made out as a reason for drawing inference as against A4. Even the officials of the Bank were also aware of the fact that the name of A3 was not registered with the Registrar of Companies and inspite of the same, the Bank approved the loan, whereas P.W.6 in his evidence stated that all the documents produced with the Bank are verified by them with their Panel Advocates and only thereafter, the loan will be sanctioned. In the present case also, on verification by the Panel Advocates and also by the Bank officials, the loan was sanctioned. Now, only to save the loan dues due to the State Bank of India, the Investigating Agency has falsely roped in A4 in this case and wantonly avoided to recover the Minutes of the Meeting, even though it is available. Therefore, there is no fair investigation on the part of the investigating Officer and there is no material to show that A4 forged the documents before mortgaging the same with the Panjab National Bank. A4 was completely unaware of the forged documents, because if A4 was at the inception of depositing title deeds by A3 before the Panjab National Bank known, it is forged, then definitely A4 would not have mortgaged his own property as an additional security to the

Punjab national Bank, which is marked as Ex.P.31 and the same has been sold out by the Punjab National Bank subsequently. But, the trial Court as well as the appellate Court had drawn inference as against A4. He also submitted that A4 is an innocent and he has not involved in any of the charged offences. The Investigating Officer also during evidence deposed that there is no role of A4 in forging the documents and also the signature of A4 in any of the forged documents does not tally with the specimen signature of his admitted documents and the same is also observed in the Judgment of the appellate Court. Therefore, A4 has not committed any offence, much less, the charged offences. The learned counsel for A4 also placed reliance on the Judgments of the Hon'ble Supreme Court as follows;

> *1.Shiela Sebastian Vs. R.Jawaharaj & Another (2018 (7) SCC 581)*
> *2.Mohammed Ibrahim & Others Vs. State of Bihar and Another (2009 8 SCC 751) and*
> *3.Mir Nagvi Askari Vs. CBI (2009 15 SCC 643)*

13. Mr. K.Srinivasan, the learned Special Public Prosecutor for

CBI cases, supported the case of the prosecution and prayed to confirm the Judgment of conviction and sentenced of the Courts below.

14. Heard both sides and perused the materials available o record.

15. Admittedly, A1 is a Company, A2 and A4 are the Directors of A1/company. Though it is alleged that A3 was also one of the Directors of A1/company, the documents show that A3 was not a Director of A1/ Company. Even though he has certain documents with authorised signatory, none of the documents of A1/Company like Article of Association, Memorandum of Association and in any of the Annual Report, it was shown that A3 was also one of the Directors of A1/ company. In order to substantiate the same, the Registrar of Companies concerned was also examined as P.W.24 and he has clearly stated that the Certificate of Registration was not shown that A3 was also one of the Directors of A1/company.

14. On a perusal of the materials available on record and oral and documentary evidence, it is proved that A2 and A4 had availed loan in

the name of A1/company from the Punjab National Bank, for which A3 stood as guarantor and he also deposited the title deeds of his property for collateral security and he has also mortgaged his property by way of depositing the title deeds for the loan secured by A2 and A4, for and on behalf of A1/Company. It is also proved that A3 also deposited his property documents with SBI for availing loan for M/s.R.M.K.S Minerals Pvt Ltd. and earlier, A3 deposited the original title deeds of the same property with Bharath Overseas Bank and the said loan was realized and the original documents were released from the Bharath Overseas Bank and A3 deposited his title deeds with State Bank of India subsequently, and they have also diverted the funds. The evidence of P.Ws.5, 7, 19, 31, 33 and 38 clearly prove about the diversion of funds by the accused persons. The amount was not repaid and the same was proved by the evidence of P.W.40. Even the evidence of defence witnesses D.W.1 and D.W.2 also proved the prosecution case. Even though subsequently the amount was repaid, subsequent repayment of the amount will not absolve the accused persons from criminal liability. Admittedly A1 is a company namely M/s. Soft Bank Micr Systems Pvt. Ltd. Even though A3 was not a Director of A1/Company, he was shown as one of the Directors of the

Company for availing loan only for misleading the Bank. The case of the prosecution is that A1/company borrowed money from Punjab National Bank and towards the said borrowal, A3 gave his property situated at Block-AA, 155 (New No.16), 3rd Avenue, Anna Ngar West, Chennai-40 as collateral security by depositing the title deeds. Subsequently, it was found that the documents pertaining to the same property were also deposited with the State Bank of India by A3 as security for the loan borrowed by M/s.R.M.K.S. Minerals Pvt. Ltd. and it was found that the documents deposited with the Punjab National Bank were forged one and A3 was not a Director of A1 company. But it was falsely represented as if, A3 was one of the Directors of A1/company. The application was submitted before the Punjab National Bank as if, A3 was one of the Directors of A1/company and thereby, the Punjab National Bank was cheated and put them to loss. The Assistant Registrar of Companies was examined as P.W.24 and in his evidence he has clearly stated that A2 and A4 alone are the Directors of A1/company. The Certificate of Incorporation, Memorandum of Association, Articles of Association and other related documents marked before the trial Court clearly show that A2 and A4 alone are the Directors of A1/company, whereas in the loan application which was given before the Punjab National Bank, A3 is shown as one of the Directors of A1/ company. The evidence of P.W.24 was corroborated by the evidence of P.W.35 and P.W.36. A2 and A4 alone are the Directors of A1/company and they have mislead the Bank and availed loan. The loan application was marked as Ex.P.101 and the Minutes of the meeting of the Board of Directors of A1/company were marked as Ex.P.105 and 106, which shows that A2 and A4 are the Directors of A1/company. The balance sheet of the Bank is marked as Ex.P.107 in which A3 has signed as authorized signatory. Scientific expert was examined as P.W.41 and from his report, Ex.P.116 to Ex.P.121, it is seen that A3 has signed in all the loan papers. Even though A3 was not a Director of A1/company, in order to cheat the Bank, he was shown as one of the Directors of the company. As already stated, the related documents in the Registrar of Companies do not show that A3 was not one of the Directors of A1/ company and only in the Minutes, he is shown as a Director in order to get loan and thereby, for cheating the Bank he was shown one of the Directors of A1/company. Therefore, all the accused persons conspired together in order to cheat the Bank. A3 has deposited the forged documents before the Punjab National Bank, which were marked as Exs.P.39 to P.41 and P.W.49 in collusion with the other accused and also with some of the Bank officials. Even the Sub Registrar of Anna Nagar who was examined as P.W.28, has clearly deposed that Exs.P.39 to P.41 and P.49 are the forged documents. The original of the above said documents were recovered from the Bank after comparison of both the documents and the Sub Registrar has also clearly stated that the documents which are produced before the Punjab National Bank are all forged ones.

15. The brother of A3 was examined as P.W.23 who has also clearly stated that Exs.P.54, Ex.P.50 and P.51 were recovered from different Banks, whereas the purchaser of the property from the State Bank of India, Shri Mohanlal Bisani (P.W.26) pledged the documents which are the genuine documents. He has also identified the signature of A3 and he has also clearly identified the signatures in Exs.P.54, 55, 51 and he has stated that the documents are genuine one.

16. P.W.23 is none other than the brother of A3 who was also party to the documents in Ex.P.50 and P.51 and he has also identified his

signature in those documents and from his evidence, it is clear that the documents recovered from the State Bank of India are genuine documents. Further, he has also deposed that Ex.P.39, Ex.P.40 and Ex.P.41 are all forged documents and he is the best person to speak about the earlier documents, in which also, he was party to the documents. He has clearly identified the forged documents.

17. From the official witnesses, Bank officials, Sub Registrar, Registrar of the Companies and further from the expert opinion, the prosecution has proved its case beyond all reasonable doubts that the accused A1 to A4 have committed the charged offences. The trial Court rightly appreciated the entire evidence and found that they have committed the charged offences and thereby, convicted and sentenced them as stated above. Thereafter, while they approached the lower appellate Court, the lower appellate Court also, as a final Court of fact finding, re-appreciated the entire evidence and independently gave findings that all the accused have committed the charged offences.

18. As a revisional Court, the scope of the revision is very limited.

Once the trial Court and the appellate Court as a fact finding Courts, have given findings regarding the facts to show that A1 to A4 have entered into criminal conspiracy and forged certain documents and cheated the Bank and that the documents recovered from the Punjab Nationa Bank were not genuine documents.

19. From the evidence of the own brother of A3, namely P.W.23 and the Sub Registrar of the Registration Department and also from the evidence of the expert who examined the documents, it is clearly proved that the documents recovered from the State Bank of India were the genuine documents and the documents recovered from the Punjab National Bank are not genuine ones and in order to cheat the Punjab National Bank, all the accused persons have entered into criminal conspiracy and forged the documents and availed loan facility. Since both the Courts below, from the oral and documentary evidence, came to the conclusion that all the accused persons have committed the charged offences, as a revisional Court, this Court cannot sit in the arm chair of the appellate Court and re- appreciate and re-visit the findings of the Courts below. While going through the entire materials, this Court does

not find any perversity in appreciation of the evidence by the Courts below.

20. The main contention raised by the learned counsel for A1 to A4 is that the documents were not recovered through mahazar by keeping them separately and thereby, the prosecution has not proved as to which of the documents were recovered from the Punjab National Bank and which of the documents were recovered from the State Bank of India. Since the documents were not recovered through recovery mahazar, there is every possibility of the documents getting mixed up with other documents. Therefore, there is a doubt as to which of the documents are genuine and which of the documents are forged ones and therefore, the benefit of doubt should be extended to and in favour of A1 to A4.

21. A careful perusal of the records shows that A1 is a Company and from the evidence of P.W.24, it is clear that A2 and A4 alone were the Directors of A1-Company and that A3 was not a Director of A1/Company. Though the other accused have stated that A3 is also one of the Directors and the Minutes of the meeting also showed the same, the

Minutes of the Meeting is not a proof of document to show that A3 was also a Director of A1/Company. The Memorandum of Association, Articles of Association and Annual Report are the authenticated documents and Certificate of Registration would also prove as to who are all the Directors of a Company. If any other Director was subsequently inducted or any Director resigned from the position, the same have to be duly intimated to the Registrar of the Companies and the same has to be incorporated, whereas till the date of filing of the application herein, no such official communication was given to the Registrar of Companies. The evidence of P.W.24 also clearly shows the same. Therefore, under these circumstances, this Court finds that only in order to get loan from the Punjab National Bank, A3 was falsely shown as one of the Directors of A1/Company. In order to give security, any one can be Director and even a 3rd party can offer security.

22. The fact remains that there are two sets of documents for the very same property which were deposited in two different Banks. Therefore, naturally one set of documents would be genuine and the other set of documents would not be genuine documents. In this case, from the

oral and documentary evidence, the prosecution proved the fact that the documents recovered from the State Bank of India are genuine documents and the documents recovered from the Punjab National Bank are not genuine ones. Further, the Punjab National Bank came to know about this only on seeing the publication of sale of property made by the State Bank of India and on suspicion, they gave a complaint before the respondent/Police and subsequently, the respondent/Police enquired the matter and found prima facie case and therefore, they registered a case and investigated the matter. Therefore, the delay in filing the complaint has been properly explained. Hence, mere delay is not a reason to discard or disbelieve the case of the prosecution. The delay was also properly explained. Further, merely the documents were not recovered from the Bank separately through recovery mahazar, that may not be the sole ground to discard the evidence of the prosecution. The evidence clearly shows that on seeing the paper publication for auction of scheduled property made by the State Bank of India, the Punjab National Bank officials suspected the same and gave a complaint and therefore, they verified the documents and the documents which were in the possession of the Punjab National Bank were subsequently found to be forged, especially from the evidence of P.W.23 who is the brother of A3 and the evidence of Sub Registrar and also from the expert opinion proved that the documents recovered from the State Bank of India are genuine ones. Therefore, this Court finds that there is no perversity in appreciation of the evidence by both the Courts below and there is no merit in these revisions and they are liable to be dismissed.

23. There is no quarrel with the proposition of law laid down by the Hon'ble Supreme Court and various other High Courts in the decisions referred to by the learned counsel for A1 to A4. However, the present case on hand is entirely different. Moreover, from the oral and documentary evidence, the prosecution has proved that the documents which were deposited before the Punjab National Bank are forged ones. Therefore, the citations referred to by the learned counsel for A1 to A4 are not applicable to the present case on hand and they are distinguishable on facts.

24. Accordingly, all the Criminal Revision Cases are dismissed. The trial Court is directed to take steps to secure the custody of all the

accused to undergo the remaining period of sentence, if any.

09.06.2023

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

To

1. The XV Additional Sessions Judge, Chennai,

2. The Additional Chief Metropolitan Magistrate (CBI Cases)
Egmore at Allikulam, Chennai – 600 003

3. Inspector of Police
Central Bureau of Investigation
SPE/EOW, Chennai

4. Inspector of Police
Central Bureau of Investigation
Special Crime Branch
Raj Bhavan, Besant Nagar
Chennai – 600 090

5. Inspector of Police
Central Bureau of Investigation-EOW
Chennai

6. The Public Prosecutor Officer,
High Court, Madras.

P.VELMURUGAN, J

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Pre-Delivery Order in
Criminal Revision Case Nos.183, 249 and 386 of 2018

09.06.2023