IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 23.03.2023	Pronounced on : 28.04.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.Nos.108, 165, 173, 174, 149 and 169 of 2013

Crl.A.No.108 of 2013 against C.C.No.30 of 2008

M.Jayabalan, ... Appellant/Accused No.1

/versus/

The Inspector of Police,
CBI, EOW, Chennai. ... Respondent/Complainant

Prayer in Crl.A.No.108 of 2013: Criminal Appeal has been filed under Section 374 of Cr.P.C., dated, 27.12.2012 passed by the Learned XI Additional Judge for CBI cases, Chennai in the above C.C.No.31 of 2008 in R.C.No.4/E/2007/CBI/EOW, Chennai convicting the first accused M.Jayabalan for an offence punishable under Section 120-B r/w 420 I.P.C and 13 (2) r/w 13(1)(d) of PC Act 1988 convicting and sentencing to undergo rigorous imprisonment for 1 year and to pay a fine of Rs.2,000/- for the first charge of conspiracy under 120 B and 3 years and to pay a fine of Rs.2,000/- under section 13 (2) r/w 13 (1) (d) of PC Act 1988.

For A1 : Mr.G.R.Hari,

for Mr.R.Baskar.

For Respondent : Mr.K.Srinivasan, Senior Advocate,
Special Public Prosecutor (CBI).

Crl.A.No.165 of 2013 against C.C.No.30 of 2008

V.Mohan, ... Appellant/Accused No.2

/versus/

State by,
The Inspector of Police,
SPE, CBI, EOW,
Chennai. ... Respondent/Complainant

Prayer in Crl.A.No.165 of 2013: Criminal Appeal has been filed under Section 374 of Cr.P.C., pleased to allow the appeal and set aside the judgment of conviction imposed by XI Additional Special Judge, (CBI Cases), relating to Banks and Financial Institutions, Chennai in C.C.No.30 of 2008, dated 21.01.2013.

For A2 : Mr.S.Ananthanarayanan, Senior Counsel,
for Mr.S.M.Nandhie Devhan

For Respondent : Mr.K.Srinivasan, Senior Advocate,
Special Public Prosecutor (CBI).

Crl.A.No.173 of 2013 against C.C.No.30 of 2008

A.Thilagavathi ... Appellant/Accused No.3

/versus/

State by,
Inspector of Police,
Special Police Establishment (CBI),
III Floor, 'A' Wing Rajaji Bhavan,
Besant Nagar, Chennai – 600 090.
in CBI RC.No.4/E/2007/CBI/EOW/CHN ... Respondent/Complainant

Prayer in Crl.A.No.173 of 2013: Criminal Appeal has been filed under Section 374 of Cr.P.C., pleased to call for the records and set aside the judgment in C.C.No.30 of 2008 dated 21.01.2013 passed by the Hon'ble XI Additional Special Judge for CBI cases, Chennai and set the appellant at free.

For A3 : Mr.A.D.Nanarthanan

For Respondent : Mr.K.Srinivasan, Senior Advocate,
Special Public Prosecutor (CBI).

Crl.A.No.174 of 2013 against C.C.No.30 of 2008

V.Anandaraj, (died) ... Appellant/Accused No.4
(Death of the appellant is recorded by this Court *vide* order dated 06.09.2021)

/versus/

State by,
Inspector of Police,
Special Police Establishment (CBI),
III Floor, 'A' Wing Rajaji Bhavan,
Besant Nagar, Chennai – 600 090.
in CBI RC.No.4/E/2007/CBI/EOW/CHN ... Respondent/Complainant

Prayer in Crl.A.No.173 of 2013: Criminal Appeal has been filed under Section 374 of Cr.P.C., pleased to call for the records and set aside the judgment in C.C.No.30 of 2008 dated 21.01.2013 passed by the Hon'ble XI Additional Special Judge for CBI cases, Chennai and set the appellant at free.

For A4 : died

For Respondent : Mr.K.Srinivasan, Senior Advocate,
Special Public Prosecutor (CBI).

Crl.A.No.149 of 2013 against C.C.No.30 of 2008

Lenin Sebas, ... Appellant/Accused No.5

/versus/

Union of India,
The Inspector of Police,
Represented by CBI, Chennai.
(RC.No.4E/007/CBI/EOW/Chennai) ... Respondent/Complainant

Prayer in Crl.A.No.149 of 2013: Criminal Appeal has been filed under Section 374 of Cr.P.C., pleased to allow the appeal and set aside the judgment of conviction imposed by XI Additional Special Judge, (CBI Cases), relating to Banking and Financial Institutions, Chennai in C.C.No.30 of 2008, dated 21.01.2013.

For A5 : Mr.C.K.M.Appaji

For Respondent : Mr.K.Srinivasan, Senior Advocate,
Special Public Prosecutor (CBI).

Crl.A.No.169 of 2013 against C.C.No.30 of 2008

K.Prakash ... Appellant/Accused No.6

/versus/

Union of India,
Rep. by Inspector of Police,
CBI, Chennai.
(RC.No.4E/007/CBI/EOW/Chennai). ... Respondent/Complainant

Prayer in Crl.A.No.169 of 2013: Criminal Appeal has been filed under Section 374 of Cr.P.C., r/w Section 27 of PC Act, 1988, pleased to allow the appeal and set aside the judgment of conviction imposed by XI Additional Special Judge, (CBI Cases), relating to Banks and Financial Institutions, Chennai in C.C.No.30 of 2008, dated 21.01.2013.

For A6 : Mr.R.M.Meenakshisundaram.

For Respondent : Mr.K.Srinivasan, Senior Advocate, Special Public Prosecutor (CBI).

COMMON JUDGMENT

These six Criminal Appeals are filed against the judgment dated 21/01/2013 passed by XI Additional Special Judge, (CBI cases relating to Banks and Financial Institutions), Chennnai, in C.C.No.30 of 2008 in R.C.No.4E/2007/ CBI/EOW/Chennai.

2. For the sake of convenience, the appellants are referred as per their ranking before the trial Court.

A-1/Jayabalan, was the Branch Manager of Indian Bank, South Usman Road Branch, Chennai, during the year 2004 - 2005. After in the year 2006, he was transferred to another Branch. A.G.Sundaram, who succeeded Jayabalan as Branch Manager of Indian Bank, South Usman Road, found that, few of the accounts under the Annapoorna Arogya loan had become as Non-Performing Assets without any repayment after the disbursement of loan and serious irregularities has been found committed by the then Branch Manager, Jayabalan in disbursing the credit facilities without proper scrutiny of the documents and credential of the loanee. Further, in many cases, he had not conducted pre-sanction inspection which is mandatory. Also, it was noticed that, in some of the cases third party property was taken for collateral security without the prior approval of the Head Office. Therefore, K.B.Nagendra Moorthy, General Manager and Circle Head of Indian Bank, Circle Office, on 20.12.2006 gave a written complaint (Ex.P.20) to the the Deputy Superintendent of Police, CBI, EOW, Chennai along with in-house investigation report submitted by Bank Investigating Officer, Mr.K.Radhakrishnan. On completion of investigation, it was concluded that, out of 15 accounts suspected to be of dubious nature, in eight cases, evidence of fraudulent disbursement of loan amount has been adequately found and therefore, eight final reports were filed and taken on file by the Special Court as C.C.No.24/2008 to C.C.No:31/2008. In all these cases the then Branch Manager Jayabalan is one of the accused.

3. The loan sanctioned to M/s.K.M.S Packaging, a partnership firm consisting of V.Mohan (A-2) and Tmt.Thilagavathi (A-3) was one among the 8 firms which availed loan and became Non-Performing Assets due to default. The out come of the investigation conducted by Mr.Loverson Kuruvila had disclosed that, there was an existing proprietary concern in the name of M/s.Mohan Enterprises.

Mr.K.V.Mohan was its proprietor. Making use of the financial statements of M/s.Mohan Enterprises with an intention of cheating the Indian Bank, loan for M/s.K.M.S Package was sought. For that purpose, a partnership was constituted with V.Mohan and Thilagavathi and the partnership deed was executed on 24/06/2005. Current Account No:1725 was opened on 29.06.2005 in Indian Bank, South Usman Raod, where A-1 was the Branch Manager. Application for advance to traders was made stating that M/s.K.M.S Packaging established in the year 2003 and he is in business of manufacturing polythene bags and adhesive tape. After appraisal of the application, A-1 has sanctioned loan of Rs.7 lakhs. The borrower was supposed to pay EMI of Rs.18,480/- each for 48 months. Pro-note from the partners was obtained on 01/07/2005. Anandraj (A-4) who is the husband of A-3 Thilagavathi executed an agreement of guarantee and his house property at Periyar Nagar, Peravallur village was taken as collateral security and equitable mortgage was created with the bank by obtaining a letter confirming the creation of equitable mortgage.

4. On 02/07/2005, the loan amount Rs.7,00,000/- credited in loan account of M/s.KMS Packaging and transferred to Current Account No:1725, of

M/s.KMS Packaging. On the same day, i) Rs.1,50,000/- withdrawn by A-2, partner of M/s.KMS Packaging through a self cheque Ex.P.12. ii) Through a 'yourself' cheque Ex.P.13 for Rs.3,00,660/- pay order Ex.P.14 was purchased in favour of M/s.Infotech Plastic Machinery. iii). Cheque Ex.P.15 was issued for Rs.2,50,000/- in favour of V.Anandaraj (A-4) and he withdrew the money.

5. The Pay order for Rs.3 lakhs purchased using the cheque of M/s.KMS Packaging. The application of Pay order is made by one V.Venkataraman. This pay order been used for supply of machinery to Lenin Sebas (A-5). The said Lenin Sebas in the name of M/s.Jerin Polybags opened Current Account with the help of one Kasi and K.Prakash (A-6 in this case) and availed loan for purchase of machineries in connivance with the Bank Manager. That loan amount was misappropriated and the pay order purchased from out of the loan sanctioned to M/s.KMS Packaging was utilised to purchase machine for M/s.Jerin Polybags. The loan transaction in respect of M/s.Jerin Polybags also become Non-Performing Assets and it is the subject matter of C.C.No.27/2008.

6. Based on the documents accompanied, the final report, the trial Court framed the following charges: -

Rank of the Accused	*Charge framed under Section against the accused*
A1 to A6	120-B r/w 420 of I.P.C and 13(2) r/w 13(1) (d) of P.C Act
A2 to A6	420 of I.P.C
A1	13(2) r/w 13(1)(d) of PC Act, 1988.

7. To prove the charges, the prosecution has examined 13 witnesses (P.W.1 to P.W.13) and marked 45 exhibits (Ex.P.1 to Ex.P.45). On behalf of the accused, one K.Jayaraman, I.P.S, Superintendent of Police, EOW, CBI, Chennai, who received the complaint on 20.12.2006 from K.B.Nagendra Moorthy, General Manager, Indian Bank, examined as D.W.1. The letter dated 30/01/2012 from Indian Bank addressed to A-3/Thilagavathy and the statement of account of M/s.KMS Packaging marked as Ex.D-1 and Ex.D-2 respectively.

8. The Trial Court, on appreciating the evidence held all the accused are guilty of the charges mentioned above and sentenced them to undergo the punishment mentioned below:-

Accused	*Offences*	*Conviction and Sentence imposed by the Trial Court*
A1	120-B r/w 420 of I.P.C and 13(2) r/w 13(1) (d) of P.C Act, 1988.	To undergo R.I for three years and to pay fine of Rs.2,000/-, in default to undergo S.I for one year.
A2 to A6	120-B r/w 420 of I.P.C and 13(2) r/w 13(1) (d) of P.C Act, 1988.	To undergo R.I for one year and to pay fine of Rs.2,000/- each, in default to undergo S.I for six months.
A2 to A6	420 of I.P.C	To undergo R.I for one year and to pay fine of Rs.2,000/- each, in default to undergo S.I for six months.
A1	13(2) r/w 13(1)(d) of PC Act, 1988.	To undergo R.I for three years and to pay fine of Rs.2,000/-, in default to undergo S.I for one year.

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

9. Aggrieved by the above conviction and sentence passed by the trial Court, these six appeals are filed individually by each of the convicted accused.

10. According to the appellants, the trial Court failed to consider that the credit facility to M/s.KMS Package was extended after following the guidelines issued by the Bank. The loan advanced is trade finance and same could be seen from

Ex.P-3, the appraisal memorandum. The procedure for disbursing the trade loan is different from the procedure for disbursing term loan. In respect of trade loan, it is not necessary that loanee to furnish documents for purchase of machineries or raw materials. There is no necessity to pay any margin money of 25% on the cost of the machinery. In case of trade loan, on submission of the application by the loanee along with relevant records and a deed of guarantee for the loan amount executed by the guarantor, loan is disbursed into the account of loanee for managing his trade. The application for trade loan scrutinised by the loan Officer Mr.Soundarajan and only after his verification and recommendation, the loan was sanctioned by A-1. The Loan Officer is responsible for scrutinising the documents and recommending for the loan.

11. As the Manager of the Branch, A-1/Jayabalan, not expected to scrutinize the application before sanctioning the loan. The Loan Manager (P.W.2) is the person directly in-charge and responsible for disbursement of the loan and not A-1. On the recommendation of the loan Officer, loan was disbursed and deposited in the account of the loanee directly and thereafter, Branch Manager has no control over the money, except to ensure the repayment of the loan.

12. It is not correct to say that, M/s.K.M.S Packaging is a non existing firm and the financial statement of KMS Enterprises was used for the KMS Packaging. Ex.D-2, the statement of account of K.M.S Packaging is the proof that it is a functional unit. There is no evidence to prove that, A-2 along with A-3 & A-4 conspired to cheat the Indian Bank. For availing loan, A-2 and A-3 had furnished all the necessary documents along with collateral security of the property owned by A-4. Only after verification of the documents, A-1 Bank Manager allowed to open the account and operate it. The loan amount of Rs.7 lakhs has been fully secured by equitable mortgage created in favour of the bank and there was no intention to cheat the bank by A-2 to A-4 at the time of availing the loan. Due to loss in the business, the loan EMI not paid and later the entire loan amount has been paid and loan account was closed during the pendency of the recovery proceedings instituted by the Bank before DRT in O.A.No.94/2009. Ex.D.1 the letter of the Indian Bank dated 30/01/2012 stating no dues payable by M/s.KMS Packaging to the Bank is the proof for it.

13. The complaint given by K.B.Nagendra Moorthy (P.W.3) was based on the in-house enquiry report submitted by K.Radhakrishnan (P.W.4). The complaint was given by a person, who did not have direct knowledge about the content of the complaint. The suspicion of Radhakrishnan (P.W.4) as found in his report is that, for disbursing the loan, commission was paid to A-1, the Manager. This allegation or suspicion not been substantiated by the prosecution. Therefore, the trial Court ought to have concluded that, there is no case made out under Section 120-B of I.P.C for criminal conspiracy or under Section 420 of I.P.C for cheating or under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act for misconduct.

14. The financial transaction of loan disbursed after scrutiny of the documents by the Loan Officer and securing the property for repayment of the loan cannot be given the colour of crime since the borrower defaulted in repayment of the loan. However strong the suspicion, in the absence of proof the conviction for conspiracy and cheating is bad, more particularly when the dues been recovered and settled.

15. Mr.K.Srinivasan, Learned Special Public Prosecutor appearing for the State submitted that this is not an isolated case where the loan was sanctioned by A-1/Jayabalan without conducting pre-sanction inspection or based on fake document to a fictitious firm. This case is one chapter of a long episode of several loans sanctioned based on fabricated, manipulated documents with sole intention to cheat. The *modus operandi* adopted by the A-1/Jayabalan in connivance with others particularly one Kasi a financial broker and former employee of RBI, clearly proved through documents and oral evidence. The people who were desperately in need of money were enticed to hand over their property document and made to sign in the loan application form and other documents. For that purpose new current accounts were opened. Loans granted in the name of newly established firms without proper and careful scrutiny of the documents. A-1/Jayabalan, Branch Manager, is the final authority for sanction and disbursement of the trade loan and he without proper scrutiny of the documents, knowingly sanctioned the loan and allowed the loanee to withdraw the money for purposes not meant for. It cannot be a defence to plead innocence and blame the Loan Officer M.Sounderajan, who recommend for loan.

When nearly 15 trade finance accounts under the scheme of Annapoorna Arogya become as Non-Performing Asset (NPA), suspicion arose about the manner in which these loans were sanctioned and therefore, an in-house enquiry was ordered to be conducted by K.Radhakrishnan, Senior Manager, Vigilance Department. On scrutiny of the records and after spot visit to the addresses of the loanees, K.Radhakrishnan gave a report with the following findings:-

> "*1. The H.O Guidelines regarding the term loans was not followed.*
>
> *2. The rule allowes payment vide DD or pay order but in the present case cash was directly paid to the loanee and in some cases amount credited to the respective accounts.*
>
> *3. The margin factor was not followed.*
>
> *4. As per the term loan condition invoice to be obtained from the supplier of the equipments and stamped receipts should have been obtained and kept with the documents.*
>
> *5. Before release of the loan amount, business place should have been verified by the Manager...*"

16. In this case, third party property (Anandaraj) was obtained as security without the approval from the higher Authorities. From the loan of Rs.7 lakhs, the said Anandaraj is paid Rs.2,50,000/- through cheque Ex.P-15. Thus, he is monetarily benefited by the loan and no indication that this money was used for any trading purpose. Likewise, a sum of Rs.3 Lakhs used to purchase machinery from M/s.Infotech Plastic Machineries, Gujarat was not for supply of machinery to M/s.KMS Packaging, but for M/s.Jerin Polybags owned by A-5 (Lenin Sebas). The accused are bound to explain how this transaction is not illegal and done without any intention of cheating. Having failed to explain and by producing documents that the loan was cleared taking advantage of one time settlement scheme (OTS) after initiating recovery proceedings will not exonerate the accused persons from the charge of cheating and conspiracy to cheat.

17. Heard the Learned Counsel for the appellants and the Learned Special Public Prosecutor (CBI) for the State/respondent. Records perused.

18. Precisely the prosecution case is that, more than 12 fictitious firms were created pursuant to the conspiracy hatched by Kasi a private individual retired RBI employee and Jayabalan/A1, Branch Manger, Indian Bank, South Usman Road, Chennai. Kasi a financial broker been approached by the parties who were in need of money. He being a close associate of Jayabalan the then Branch Manager of Indian Bank, South Usman Road, had made use of the property documents of the loan seekers and had opened current accounts in the prepared loan application he got signatures of the loan seekers and presented in the Bank. A-1/Jayabalan had invariable without testing the genuineness of the documents annexed or the loan seekers had sanctioned the loan in violation of the guidelines. In some case the documents are used to create equitable mortgage for the loan availed by some other loanee. After sanctioning the loan and releasing the amount into the loanees account, money has been withdrawn and disbursed to the person of their choice and never been utilised for the trade, for which the loan was granted. The loanees naturally failed to pay the instalments and the assets become 'Non-Performing Assets'.

19. The Learned Counsels appearing for the appellants submitted that, as far as the loan transaction pertaining to M/s.KMS Packaging is concern, it is genuine and no proof for the intention to cheat at the inception and there was no element of conspiracy namely an illegal agreement to do an illegal act or any act by illegal means.

20. The Learned Counsel appearing for the A1/Jayabalan at length argued to impress upon this Court that, A-1 acted bonafidely and discharged his duty as the Manager of the Bank. There was no illegal agreement whatsoever by him with any other persons. It is not the allegation that, he obtained any pecuniary advantage by sanctioning the loan. The withdrawal of the loan proceeds through cheques Ex.P-12, Ex.P.13 and Ex.P.15 is the desire of the account holder and for which, the Branch Manager has no control. To prove charge of conspiracy, the circumstances must clearly be established by reliable and clinching evidence. The circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible.

21. In support of his argument, the Learned Counsel rely upon the judgment of the Hon'ble Supreme Court in ***Tanviben Pankajkumar Divetia -vs- State of Gujarat*** reported in ***(1997) 7 SCC 156,*** wherein, it has held that;

> "***45.*** *The principle for basing a conviction on the basis of circumstantial evidences has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the Court has to be watchful and avoid the danger of allowing the suspicion to take*

the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. It has been indicated by this Court that there is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions. (Jaharlal Das v. State of Orissa [(1991) 3 SCC 27 : 1991 SCC (Cri) 527])"

***46.** We may indicate here that more the suspicious circumstances, more care and caution is required to be taken otherwise the suspicious circumstances may unwittingly enter the adjudicating thought process of the Court even though the suspicious circumstances had not been clearly established by clinching and reliable evidences. It appears to us that in this case, the decision of the Court in convicting the appellant has been the result of the suspicious circumstances entering the adjudicating thought process of the Court."*

22. The Learned Counsels for the appellants submitted that, for criminal conspiracy, the essential requirement is an agreement between two or more persons to do an illegal act or an act by illegal means. An unlawful agreement is a *sine qua non* for constituting offence under Section 120-B of I.P.C. There must be an express or implicit agreement between the accused persons, who are charged for conspiracy and further submitted that, the prosecution in this case has not let in any evidence for sanctioning the said loan there was a prior agreement either implicitly or explicitly between the parties to constitute an offence under Section 120-B of I.P.C.

23. In support of this argument, the judgment of the Hon'ble Supreme Court in ***K.R.Purushothaman and State of Kerala*** reported in ***(2005) 12 SCC 631***, is relied wherein, it has held that;

> "***13.*** *To constitute a conspiracy, meeting of minds of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of the conspiracy. Neither is it necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implication. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. The existence of conspiracy and its objects are usually deduced from*

the circumstances of the case and the conduct of the accused involved in the conspiracy. While appreciating the evidence of the conspiracy, it is incumbent on the court to keep in mind the well-known rule governing circumstantial evidence viz. each and every incriminating circumstance must be clearly established by reliable evidence and the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn, and no other hypothesis against the guilt is possible. Criminal conspiracy is an independent offence in the Penal Code. The unlawful agreement is sine qua non for constituting offence under the Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the plan would not perse constitute conspiracy. The offence of conspiracy shall continue till the termination of agreement.

14. *Suspicion cannot take the place of legal proof and prosecution would be required to prove each and every circumstance in the chain of circumstances so as to complete the chain. It is true that in most of the cases, it is not possible to prove the agreement between the conspirators by direct evidence but the same can be inferred from the circumstances* *giving rise to conclusive or irresistible inference of an agreement between two or more persons to commit an offence. It is held in Noor Mohd. Mohd. Yusuf Momin v. State of Maharashtra [(1970) 1 SCC 696 : 1970 SCC (Cri) 274 : AIR 1971 SC 885], that: (SCC pp. 699-700, para 7).*

> *"In most cases proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material."*

And the judgment of the Hon'ble Supreme Court in ***Parveen @ Sonu -vs- State of Haryana*** reported in ***2021 SCC Online SC 1184***, wherein, it has held that;

"12. It is fairly well settled, to prove the charge of conspiracy, within the ambit of Section 120-B, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. At the same time, it is to be noted that it is difficult to establish conspiracy by direct evidence at all, but at the same time, in absence of any evidence to show meeting of minds between the conspirators for the intended object of committing an illegal act, it is not safe to hold a person guilty

for offences under Section 120-B of IPC. A few bits here and a few bits there on which prosecution relies, cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy. Even the alleged confessional statements of the co-accused, in absence of other acceptable corroborative evidence, is not safe to convict the accused. In the case of Indra Dalal v. State Of Haryana1, this Court has considered the conviction based only on confessional statement and recovery of vehicle used in the crime. In the said case, while setting aside the conviction, this Court has held in paragraphs 16 & 17 as under:-

> *"16. The philosophy behind the aforesaid provision is acceptance of a harsh reality that confessions are extorted by the police officers by practising oppression and torture or even inducement and, therefore, they are unworthy of any credence. The provision absolutely excludes from evidence against the accused a confession made by him to a police officer. This provision applies even to those confessions which are made to a police officer who may not otherwise be acting as such. If he is a police officer and confession was made in his presence, in whatever capacity, the same becomes inadmissible in evidence. This is the substantive rule of law enshrined under this provision and this strict rule has been reiterated countlessly by this Court as well as the High Courts.*
>
> *17. The word "confession" has nowhere been defined. However, the courts have resorted to the*

> *dictionary meaning and explained that incriminating statements by the accused to the police suggesting the inference of the commission of the crime would amount to confession and, therefore, inadmissible under this provision. It is also defined to mean a direct acknowledgment of guilt and not the admission of any incriminating fact, however grave or conclusive. Section 26 of the Evidence Act makes all those confessions inadmissible when they are made by any person, whilst he is in the custody of a police officer, unless such a confession is made in the immediate presence of a Magistrate. Therefore, when a person is in police custody, the confession made by him even to a third person, that is, other than a police officer, shall also become inadmissible."*

24. The Learned Counsels for the appellants in unison submitted that, in the absence of proof that the accused persons had a meeting of mind to cheat, the loan sanctioned to M/s.KMS Packaging in the absence of proof that A-2 to A-4 had intention to cheat the bank also should fall. Even assuming that, there was omission to scrupulously scrutiny the loan documents before sanctioning the loan, it is not sufficient proof to hold the charges framed are proved.

25. Finally, M.Jayabalan, who is the common accused in all the 8 cases and found guilty, sentenced to undergo 3 years R.I for the offence under Section

13(2) r/w 13(1) (d) of P.C Act in each case. Pleaded that all these cases are of same nature, been heard and tried simultaneously, so, the accused who are found guilty in more than one case of similar nature been given benefit under Section 427(1) of Cr.P.C and ordered to undergo the sentence in all these cases simultaneously.

26. In support of this submission, the judgment of the Hon'ble Supreme Court in ***P.N.Mohanan Nair -vs- State of Kerala*** reported in ***(2017) 14 SCC 719***, is relied.

> "***7.*** *We have considered the respective submissions, and are of the opinion that essentially the allegations constituted a single transaction between the same parties for a block period split up by the prosecution, presumably for its convenience, into three different cases. The evidence also was common and so is the conviction. Section 427(1) CrPC stipulates that where a person undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, it shall commence at the expiration of the imprisonment previously sentenced, unless the court directs that the subsequent sentence shall run concurrently with such previous sentence. The jurisdiction being discretionary must be exercised on fair and just principles in the facts of a case.*

__8.__ We do not consider it necessary to further elucidate or enter into an exposition of the law, in view of the precedents noticed above. Suffice it to observe that in the facts of the case, the exercise of discretion under Section 427(1) of the Code of Criminal Procedure, mandates that the substantive sentences imposed upon the appellant in the three separate prosecutions, are directed to run concurrently, except the default sentence, if the fine by way of compensation as imposed has not been paid by him. The appellant would naturally be entitled to all consequential reliefs for release from custody as available in law based on the present discussion."

27. For the same point, the Learned Counsel for the appellant also relies upon the judgment of the Hon'ble Supreme Court in ***M.R.Kudva -vs- State of Andhra Pradesh*** reported in ***(2007) 2 SCC 772,*** wherein, it has held that;

"*__12.__ However, in this case the provision of Section 427 of the Code was not invoked in the original cases or in the appeals. A separate application was filed before the High Court after the special leave petitions were dismissed. Such an application, in our opinion, was not maintainable. The High Court could not* *have exercised its inherent jurisdiction in a case of this nature as it had not exercised such jurisdiction while passing the judgments in appeal. Section 482 of the Code was, therefore, not an appropriate remedy having regard to the fact that neither the trial Judge, nor the High Court while passing the judgments of conviction and sentence indicated that the sentences passed against the appellant in both the cases shall run concurrently or Section 427 would be attracted. The said provision, therefore, could not be applied in a separate and independent proceeding by the High Court. The appeal being devoid of any merit is dismissed.”*

28. The prosecution through Ex.P-1, the current account opening form has proved that a Current Account No:1725 in the name of M/s.KMS Packaging opened on 29/06/2005. In the column meant for introducer, the name of Kasi Current Account No:1596 written and scored off. In that space in appears holder of Current Account No:1708 signed and affixed seal. In Ex.P-2 application for advance to traders, M/s.KMS Packaging, V.Mohan is shown as Proprietor and the word 'Prop' is scored and in the next column, it is shown as partnership having its business at No.57, Brahmin Street, Pattaravakkam, Ambattur, Chennai. P.W-4 in his report has stated that, on his inspection to the said premises M/s.KMS Enterprises and proprietary concern of V.Mohan is functioning and not M/s.KMS Packaging. To support this the rental agreement (part of Ex.P-42) with the premises owner by V.Mohan in his individual capacity is relied. P.W-1 in his evidence comparing the unregistered partnership deed of M/s.KMS Packaging and the loan application had highlighted that, the partnership deed says the firm is engaged in trading computers, whereas, the loan application says they are dealing with polythene bags and additive tapes.

29. In this scheme of conspiracy, this is not the only loan where the Branch Manager A1/Jayabalan had sanctioned loan without proper document and scrutiny, but there are few more cases. In the scheme of conspiracy, the loan amount sanctioned to M/s.KMS Packaging been diverted to M/s.Jerin Polybags, a firm floated by A-5/Lenin Sebas, who himself a loanee and defaulter. In the web of conspiracy, A1 has played a pivotal role and invariably the loans which had come under the scam had not been repaid and has been declared as Non-performing Assets. Therefore, the illegal agreement between A-1, A-5 and A-6, who has filed the application forms and made material alteration regarding the details found in the account opening application and loan application are guilty of conspiracy and cheating. Whereas A-3 (Thilagavathi), who is shown as partner of M/s.KMS Packaging and her husband A-4 (V.Anandaraj), who gave his property as security for the loan cannot be brought under the net of conspiracy or cheating in view of the fact that, the prosecution has failed to prove the meeting of their minds with A-1, A-2, A-5 and A-6. The facts elicited through the cross examination of P.W-1, P.W-2 and P.W-4 as well as Ex.D-1 and Ex.D-2, it appears A-3 Thilagavathi, who realised that she had been cheated by A-2 (Mohan) and others by misusing the documents and signatures made by her and her husband when they sought for loan to meet out her family expenses, she has blown the whistle by lodging complaint. Later, she has also cleared the loan amount subsequently.

30. Hence, the conviction and sentence passed by the trial Court for the offence under Section 120-B r/w Section 420 I.P.C and 13(2) r/w 13(1) (d) of P.C Act, 1988 as against A1, A2, A5 and A6 are confirmed. As far as A-3 and A-4 are concerned, for want of evidence, benefit of doubt is extended and the conviction against them is set aside.

31. Insofar as the conviction and sentence for the offence under section 13(2) r/w 13(1)(d) of P.C Act, against A-1/Jayabalan, he being a public servant, had abused his position and knowingly sanctioned the loan to M/s.K.M.S Packagings without proper document and thereby, facilitated A2, A5 and A6 to cheat the bank and have pecuniary advantage by illegal means. In other words, by his misconduct others have gained unlawfully. Therefore, liable to be punished for the offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. Hence, the conviction and sentence imposed by the trial Court against this accused is confirmed.

32. In the result, the conviction and sentence imposed by the trial Court in C.C.No.30 of 2008 on appellants/A1(Jayabalan), A2 (Mohan), A5(Lenin Sebas) and A6(Prakash) are confirmed. The conviction and sentence imposed by the trial Court against A3 (Thilagavathi) and A4 (Anandaraj) are set aside.

Accused	***Offences***	***Sentence imposed by this Court***
A1	120-B r/w 420 of I.P.C and 13(2) r/w 13(1) (d) of P.C Act, 1988.	To undergo R.I for Three years and to pay fine of Rs.2,000/-, in default to undergo S.I

Accused	*Offences*	*Sentence imposed by this Court*
		for one year.
A2, A5 and A6	120-B r/w 420 of I.P.C and 13(2) r/w 13(1) (d) of P.C Act, 1988.	To undergo R.I for one year and to pay fine of Rs.2,000/- each, in default to undergo S.I for six months.
A2, A5 and A6	Section 420 of I.P.C	To undergo R.I for one year and to pay fine of Rs.2,000/- each, in default to undergo S.I for six months.
A1	13(2) r/w 13(1)(d) of PC Act, 1988.	To undergo R.I for three years and to pay fine of Rs.2,000/-, in default to undergo S.I for one year.

33. Accordingly, the ***Criminal Appeal Nos.108, 165, 149 and 169 of 2013 are dismissed.*** The trial Court shall secure the accused persons/A1, A2, A5 & A6 and commit them to prison to undergo remaining period of sentence. The substantive sentence shall run concurrently. The period of sentence already undergo shall be set off under Section 428 of Cr.P.C. The bail bond executed, if any, shall stand cancelled.

34. Insofar as the period of sentence imposed on A1, A5 and A6 in C.C.No.30 of 2008 shall run concurrently together with the imprisonment imposed on them in C.C.No.27 of 2008 in which they are arrayed as A2, A4 and A6.

35. Accordingly, the ***Criminal Appeal Nos.173 & 174 of 2013 are Allowed.*** As far as, A3 (Thilagavathi) & A4 (V.Anandaraj deceased) are concerned, this Court acquit them from all charges. The judgment of conviction and sentence passed by the trial Court against A3 & A-4 is hereby set aside. Fine amount paid if any by the accused, shall be refunded to them.

28.04.2023

Index :Yes/No.
Neutral Citation :Yes/No.
Speaking order/Non-speaking order
bsm
To,
1. The XI Additional Judge for CBI cases, Chennai.
2. The Inspector of Police, SPE, CBI, EOW, Chennai.
3. The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN,J.
bsm

Pre-Delivery common judgment made in
Crl.A.Nos.108, 149, 165, 169, 173, 174 of 2013

28.04.2023