IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :12.06.2023	Pronounced on: 03.07.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Criminal Appeal No.14 of 2013

[Crl.A.No.14 of 2013 against C.C.No.52 of 2004]

R.Chandrasekaran ... Appellant/Accused

/versus/

State rep. by Inspector of Police,
CBI, ACB, Chennai. ... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 of Cr.P.C., pleased to set aside the order of conviction passed by the Learned XI Additional Special Judge (CBI Cases relating to Banks and Financial Institutions), Chennai, passed in C.C.No.52 of 2004, dated 21.12.2012 and acquit the appellant.

For Appellant :Mr.R.Baskar

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

JUDGMENT

The appellant herein is the accused in C.C.No.52 of 2004 on the file of the XI Additional Special Judge (CBI Cases Relating to Banks and Financial Institutions), Chennai.

2. Based on the reliable information received at the office of the

Superintendent of Police, C.B.I, A.C.B, Chennai, a case was registered against the appellant for the offences of criminal conspiracy with unknown persons to cheat Indian Bank and its deposits and in pursuant to the conspiracy committed various illegal acts such as forgery, using forged documents as genuine and criminal misconduct of a public servant.

3. After completion of investigation, it was found that, FDR's in respect of 9 deposits were forged and from those deposits, loans sanctioned fraudulently using forged documents as genuine to cheat the Bank as well as the depositors. For each of the depositors, separate final report filed and taken on file by the XI Additional Special Court for C.B.I cases at Chennai. The Learned Judge took cognizance and assigned C.C Nos.52 to 60 of 2004.

4. The Criminal Appeal No.14 of 2013, which is under consideration arises from the judgement passed by the trial Court in C.C.No.52 of 2004. Based on the final report, charges were framed. The substance of the charges is that, Mr.Chandrasekaran the appellant/accused, while working as Branch Manager of Thiruporur Branch of Indian Bank, during the period from 13.12.1999 to 29.06.2002, with a dishonest intention had induced one

P.K.Parameswaran, a retired Bank staff to deposit his voluntary retirement benefits at Thiruporur branch, where the appellant was working. Accordingly, P.K.Parameswaran, deposited Rs.2 lakhs, for a period of 10 years, jointly in his name and in the name of his wife Mrs.Vijaya Parameswaran. Without his request knowledge and consent, the accused/Chandrasekaran, sanctioned loan of Rs.1,75,000/- on that deposit. From the loan of Rs.1,75,000/- following demand drafts were issued to third parties:-

i). Demand Draft for Rs.60,000/- dated 22.06.2001 in favour of one Mr.V.Narasimhan;

ii). Demand draft for Rs.70,000/- dated 28.06.2001 and;

iii).Demand draft on 24/09/2001 for Rs.45,000/- both in the name of Natesan.

5. To sanction the loan against deposit, the appellant had created a false document using the FDR receipt No: 222037 entrusted to him and on which, he had domain. He forged the Loan Application Form and an Indemnity letter in the name of P.K.Parameswaran, the depositor. The demand drafts were issued in the name of 3rd parties without any request from the depositor. As a Branch Manager, in breach of trust, had fraudulently and dishonestly used the forged documents as genuine in order to cheat the bank. Having made pecuniary advantage for himself and others, charges framed for offences stated below:-

Charge No.1: u/s.420 IPC (3 counts)

Charge No.2: u/s.409 IPC (3 counts)

Charge No.3: u/s.468 IPC (4 counts)

Charge No.4: u/s.468 r/w. 471 IPC.

Charge No.5: u/s.467 IPC.

Charge No.6: u/s.467 r/w. 471 IPC.

Charge No.7: u/s.477-A, IPC.

Charge No.8: u/s.13(2) r/w.13(1)(d) of P.C.Act, 1988.

6. In this case, the depositors are P.K.Parameswaran and his wife. As per the final report, the amount alleged to have been misappropriated by the accused is Rs.1,75,000/-

7. To prove the charges, the prosecution examined 7 witnesses (P.W.1 to P.W.7), marked 39 exhibits (Ex.P.1 to Ex.P.36). Tmt.P.Geetha, Branch Manager, Indian Bank, Thiruporur branch was examined as C.W.1.

8. The offence and sentence imposed on the accused by the trial

Court is as below:-

Accused	***Offences***	***Conviction and Sentence imposed by the Trial Court***
Chandrasekaran	420 of I.P.C (3 counts)	To undergo R.I for three years for each count and to pay fine of Rs.2,000/- for each count, in default to undergo S.I for one year .
	409 of I.P.C (3 counts)	To undergo R.I for three years for each count and to pay fine of Rs.2,000/- for each count, in default to undergo S.I for one year.
	468 of I.P.C (4 counts)	To undergo R.I for three years for each count and to pay fine of Rs.2,000/-, for each count, in default to undergo S.I for one year.
	468 r/w 471 of I.P.C	To undergo R.I for three years and to pay fine of Rs.2,000/-, in default to undergo S.I for one year.
	467 of I.P.C	To undergo R.I for three years and to pay fine of Rs.2,000/-, in default to undergo S.I for one year.
	467 r/w 471 of I.P.C	To undergo R.I for three years and to pay fine of Rs.2,000/-, in default to undergo S.I for one year.
	477-A of I.P.C	To undergo R.I for three years and to pay fine of Rs.2,000/-, in default to undergo S.I for one year.
	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.

The sentences of imprisonment ordered to run concurrently and the period of imprisonment already undergone as under-trial prisoner was ordered to be set off. The default sentence ordered to run consecutively.

9. Almost adopting the same *modus operandi*, the appellant had indulged in nine cases. All the nine cases were tried simultaneously and the

Trial Court held the appellant guilty in all the nine cases.

10. The Learned Counsels for the appellant and the respondent made submissions which are common for all the appeals. In specific cases, ground exclusive for that case were highlighted by them for the appreciation of the Court.

11. Submission by the appellant counsel:

The Learned Counsel appearing for the appellant, as a preliminary argument stated that, the appeals ought to be allowed and the trial Court judgements to be set aside since there is grave error in the order granting sanction to prosecute and in framing charges.

12. According to the Learned Counsel appearing for the appellant, the appellant/Chandrasekaran, being a Branch Manager that, he acted dishonestly and cheated the bank and depositors, thereby, committed an offence punishable under Section 420 IPC and also, he misappropriated the property of the Bank entrusted to him, thereby committed breach of trust an offence under section 409 I.P.C cannot arise simultaneously. The offences under Sections 420 and 409 of I.P.C cannot co-exist. Referring the definition of 'cheating' found in Section 415 I.P.C and the definition of 'Criminal Breach of Trust' found in Section 405 I.P.C, the Learned Counsel for the appellant, strenuously argued that, to attract Section 420 I.P.C, the necessary ingredients are dishonest inducement to deliver any property and such dishonest intention must be from the inception. Whereas, to attract offence under Section 409 IPC, it is the 'entrustment' of the property to the servant or banker as the case may be. To attract Section 409 IPC, the dominion over property by entrustment to a banker and that property must be misappropriated dishonestly converting it as his own. Since, there is a generic difference between these two offences, a person cannot be prosecuted for both the offences for the same set of facts. Hence, there is grave error in the charges framed and tried.

13. Secondly, the prosecution failed to prove that the loan against the deposits were not sanctioned on request application made by the depositors. The genuineness of the deposit receipts or the signatures in the loan applications not been subjected to the test by an field expert. The trial Court erroneously relied upon the oral evidence of the depositors and other witnesses, to hold that the accused had committed cheating, breach of trust, forgery and had fraudulently use of forged document as genuine to cheat the bank. P.W.2 Tmt.Jagashree, had categorically deposed that, all the Demand Drafts were prepared by her and nowhere the accused signed.

14. P.W.2 Jagashree, who is the common witness in all the cases, was working as Officer in the Indian bank, Tirupporur Branch, when the appellant was working as a Branch Manager in that Branch. Her testimony ought not to have been taken as a corroboration to the evidence of P.W.3 P.K.Parameswaran, the depositor to hold that the documents were forged by the accused and used as genuine to obtain pecuniary advantage. She being the officer who sanctioned the loan must have been tried as prime accused and ought not to have treated as a witness to prosecution.

15. The Learned Counsel appearing for the appellant further submitted that the prosecution has neither alleged nor produced documents to show that the appellant, who was serving as a Branch Manager, had obtained the pecuniary advantage for himself. Even according to the case of the prosecution, the Demand Drafts were issued in the name of the 3rd parties and not in the name of the accused/appellant. The prosecution has failed to prove that the demand drafts issued in favour of third parties, in turn came back to the account of the accused or encashed by the accused by some other means. When the ingredients for forgery. fraudulent intention, cheating are not even *prima facie* available, P.W-1, the authority, who is empowered to grant sanction to prosecute the appellant/ accused had accorded sanction without proper application of mind. The trial Court failed to take note that the sanction to prosecute is bad for want of application of mind.

16. The Learned Counsel for the appellant pointing the error in the charge regarding the FD receipt number which is alleged to have been forged, submitted that the correctness of the trial judgement is doubtful since the judge had not even mentioned the numbers of the two FDR's involved in this case correctly.

17. Submission by the Special Public Prosecutor:-

Per contra, the Learned Special Public Prosecutor appearing for

C.B.I submitted that the prosecution through oral and documentary evidence had proved beyond any pale of doubt that the accused is guilty of the charges framed. There is no error in charging the accused for offence under section 420 IPC as well as section 409 IPC. The facts of the case attracts both charges. The error, interchanging the original FDR number and the forged FDR number in the charge will not vitiate the trial. The accused had contested the charges knowing fully well its substance and the error mentioned not caused any prejudice to the accused.

18. According to the Special Public Prosecutor, the evidence adduced by the prosecution had proved that P.K.Parameswaran was induced deceptively by the accused to deposit his retirement benefit in the bank where the accused was working as Branch Manager. With the particulars in the original FDR No:221961, he made a false FD receipt bearing No:222037. Then, forged documents like loan applications and guarantee deeds as if P.W-3 requires loan against his deposit. The accused in his capacity as Branch Manager, sanctioned loan on the deposit. The loan amount had been converted into demand drafts in favour of 3rd parties, which is impermissible without authorisation from the depositors. In all the nine cases, the depositors have not sought the bank neither to sanction loan nor to issue Demand Drafts from that loan amount to the 3rd parties. The accused who had sanctioned the loan contrary to the procedure without instructions of the depositors is bound to explain the circumstances under which these loans were sanctioned and converted as valuable security in the name of 3rd parties. The accused miserable failed to prove the fact especially within the knowledge. The depositors, who were examined as prosecution witnesses had specifically deposed that they did not ask the Accused/Branch Manager to sanction loan on their deposits. Neither they authorised the accused to purchase demand drafts from the loan amount.

19. The Learned Special Public Prosecutor appearing for CBI cases referring the documents and testimony of the witnesses submitted that, Ex.P.2 is the Account opening form for the Term Deposit of Rs.2,00,000/- for a period of 10 years signed and submitted by Mrs.Vijaya Parameswaran and Mr.P.K.Parameswaran (PW-2) jointly. His signature found in Ex.P.2 is identified by P.W.2. The number in the FDR receipt given by the bank for his deposit is 221961, Folio Account No.6/330 dated 19.04.2001. The original FDR is Ex.P5. After encircling the correct FDR number '221961' and by writing the number '222037', in the loan ledger, loan against the deposit receipt No: 222037 been sanctioned and same is reflected in Ex.P4. For the said purpose FDR receipt No: 222037 which was in the domain of the accused been used. Ex.P.8 the application cum pledge letter for advance against deposits and the request letter Ex.P.15 for additional loan were created by forging the signature of the depositor. The FD receipt No.222037 is part of the stationery entrusted to the accused by the Bank management. The accused having domain over the receipt, had misused it by creating a false FD receipt in the name of Vijaya and P.K.Parameswaran. This false FDR been used and referred in the loan applications and the Demand Drafts purchase slips.

20. The learned Special Public Prosecutor therefore submitted that a). Section 420 IPC against the appellant/accused gets attracted, since he induced the depositors P.W.3 P.K.Parameswaran to make his retirement benefit to be deposited in the bank in which the accused was working as Branch Manager with an intention even at the inception to deceive P.K.Parameswaran. b). The accused sanctioned loan on the deposit using the fabricated documents. The accused converted the FDR No.222037 entrusted to him to use it for genuine deposits for his own use, thereby committed offence under section 409 I.P.C. c). He, by using the details found in the original deposit receipt Ex.P.5

bearing No.221961, had fabricated the false FDR No: 222037 (Ex.P.17). The appellant had thus made false documents with intention to cause loss to the bank and without any lawful authority he dishonestly and fraudulently, altered the documents and thereby committed forgery of valuable security, which attracts the offence under Section 467 IPC. d). The said forged documents were used for the purpose of cheating the bank, thus, he had committed the offence punishable under Section 468 IPC. e). The loan applications in the name of the depositors without their knowledge, after inserting the fake FDR number in the place of original FD receipt number in the loan ledger, he had used the false FDR Ex.P.17 as a genuine document for availing loan and to purchase three Demand Drafts in the name of 3rd party. Thus, offences under Section 467 r/w 471 and 468 r/w 471 of I.P.C proved. f). The alteration of loan ledger, he had falsified the accounts thereby committed offence punishable under Section 477-A of I.P.C. g). The appellant was able to complete successfully the said crime, by abusing his position as a public servant viz., Branch Manager. Thus, the offence of misconduct by a public servant for obtaining pecuniary advantage is proved to punish him under Section 13(2) r/w 13(1)(d) of P.C Act.

21. The criminality inbuilt in the accused conduct could be seen from the fact that the loan advanced referring the forged FDR bearing No.222037. Against this FDR, loan had been sanctioned and three Demand Drafts purchased in the name of 3rd party without any authorisation from the depositors. Therefore, the Learned Special Public Prosecutor for CBI cases submitted that the judgment of the trial Court has to be confirmed.

> ***<u>Point for consideration:-</u>*** *Whether the prosecution has proved the charges against the accused beyond reasonable doubt and whether Section 106 of the Indian Evidence Act, can be applied to draw adverse inference against the accused for not explaining why he sanctioned loan against a duplicate FDR and why from that amount permitted to draw DD's in favour of 3rd parties without getting the authorisation of the depositors?*

22. One of the main contention of the Learned Counsel appearing for the appellant is that, the offence under Sections 420 IPC and 409 IPC are mutually exclusive and therefore, both the charges cannot go together. For easy reference, the definition of these two offences given in Sections 415 and 405 IPC are extracted as below:-

<u>Section 415 I.P.C., Cheating:-</u>

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Section *405.,Criminal breach of trust:-*

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

(Explanations omitted)

23. This Court has no different view about the preposition of law that Section 420 I.P.C and 409 I.P.C are generically different. In almost identical case, the Hon'ble Supreme Court in ***N.Raghavender -vs- State of***

Andhra Pradesh, C.B.I reported in ***2021 SCC Online SC 1232,*** has clearly explained when Section 420 of I.P.C and Section 409 I.P.C can co-exist. The relevant portion of the judgment is extracted below:-

> ***"Ingredients necessary to prove a charge under Section 409 IPC:***
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> ***41.*** *Section 409 IPC pertains to criminal breach of trust by a public servant or a banker, in respect of the property entrusted to him. The onus is on the prosecution to prove that the accused, a public servant or a banker was entrusted with the property which he is duly bound to account for and that he has committed criminal breach of trust.* ***(See : Sadupati Nageswara Rao v. State of Andhra Pradesh)****.*
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> ***42.*** *The entrustment of public property and dishonest misappropriation or use thereof in the manner illustrated under Section 405 are a sine qua non for making an offence punishable under Section 409 IPC. The expression 'criminal breach of trust' is defined under Section 405 IPC which provides, inter alia, that whoever being in any manner entrusted with property or with any dominion over a property, dishonestly misappropriates or converts to his own use that*

property, or dishonestly uses or disposes of that property contrary to law, or in violation of any law prescribing the mode in which such trust is to be discharged, or contravenes any legal contract, express or implied, etc. shall be held to have committed criminal breach of trust. Hence, to attract Section 405 IPC, the following ingredients must be satisfied:

(i) Entrusting any person with property or with any dominion over property;

(ii) That person has dishonestly mis-appropriated or converted that property to his own use;

(iii) Or that person dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law or a legal contract.

***43.** It ought to be noted that the crucial word used in Section 405 IPC is 'dishonestly' and therefore, it pre-supposes the existence of mens rea. In other words, mere retention of property entrusted to a person without any misappropriation cannot fall within the ambit of criminal breach of trust. Unless there is some actual use by the accused in violation of law or contract, coupled with dishonest intention, there is no criminal breach of trust. The second significant expression is 'mis-appropriates' which means improperly setting apart for* *ones use and to the exclusion of the owner.*

44. *No sooner are the two fundamental ingredients of 'criminal breach of trust' within the meaning of Section 405 IPC proved, and if such criminal breach is caused by a public servant or a banker, merchant or agent, the said offence of criminal breach of trust is punishable under Section 409 IPC, for which it is essential to prove that:*

(i) The accused must be a public servant or a banker, merchant or agent;

(ii) He/She must have been entrusted, in such capacity, with property; and

(iii) He/She must have committed breach of trust in respect of such property.

45. *Accordingly, unless it is proved that the accused, a public servant or a banker etc. was 'entrusted' with the property which he is duty bound to account for and that such a person has committed criminal breach of trust, Section 409 IPC may not be attracted. 'Entrustment of property' is a wide and generic expression. While the initial onus lies on the prosecution to show that the property in question was 'entrusted' to the accused, it is not necessary to prove further, the actual mode of entrustment of the property* *or misappropriation thereof. Where the 'entrustment' is admitted by the accused or has been established by the prosecution, the burden then shifts on the accused to prove that the obligation vis-à-vis the entrusted property was carried out in a legally and contractually acceptable manner.*

Ingredients necessary to prove a charge under Section 420 IPC:

46. *Section 420 IPC, provides that whoever cheats and thereby dishonestly induces a person deceived to deliver any property to any person, or to make, alter or destroy, the whole or any part of valuable security, or anything, which is signed or sealed, and which is capable of being converted into a valuable security, shall be liable to be punished for a term which may extend to seven years and shall also be liable to fine.*

47. *It is paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) deception of any person, (ii) fraudulently or dishonestly inducing* *that person to deliver any property to any person, and (iii) mens rea of the accused at the time of making the inducement. It goes without saying that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.*

48. *It is equally well-settled that the phrase 'dishonestly' emphasizes a deliberate intention to cause wrongful gain or wrongful loss, and when this is coupled with cheating and delivery of property, the offence becomes punishable under Section 420 IPC. Contrarily, the mere breach of contract cannot give rise to criminal prosecution under Section 420 unless fraudulent or dishonest intention is shown right at the beginning of the transaction. It is equally important that for the purpose of holding a person guilty under Section 420, the evidence adduced must establish beyond reasonable doubt, mens rea on his part. Unless the complaint showed that the accused had dishonest or fraudulent intention 'at the time the complainant parted with the monies', it would not amount to an offence under Section 420 IPC and it may only amount to breach of contract.*

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62. *As already clarified by us, to prove the charge* *under Section 409 IPC, the prosecution need not prove the exact manner of misappropriation. Once the 'entrustment' is admitted or proved, as has been done in the present case, the onus lies on the Accused to prove that the entrusted property was dealt by him in an acceptable manner. Thus, misappropriation with this dishonest intention is one of the most important ingredients of proof of 'criminal breach of trust'. The offence under Section 409 IPC can be committed in varied manners, and as we are concerned with its applicability in the case of a bank officer, it is fruitful to point out that the banker is one who receives money to be drawn out again when the owner has occasion for it. Since the present case involves a conventional bank transaction, it may be further noted that in such situations, the customer is the lender and the bank is the borrower, the latter being under a super added obligation of honouring the customer's cheques up to the amount of the money received and still in the banker's hands. The money that a customer deposits in a bank is not held by the latter on trust for him. It becomes a part of the banker's funds who is under a contractual obligation to pay the sum deposited by a customer to him on demand with the agreed rate of interest. Such a relationship between the customer and the Bank is one of a creditor and a debtor. The Bank is liable to pay money back to the customers when called upon, but until* *it's called upon to pay it, the Bank is entitled to utilize the money in any manner for earning profit.”*

24. As far as facts involved in this appeal, the accused had acted in dual capacity. One as a Public servant being the Branch Manager of Indian Bank entrusted with the FDR receipts in particular and the administration of the affairs of the Branch in general. The another role, as an individual, who had inducing the depositors to invest in the Indian Bank, Thiruporur Branch, not with a bonafide intention to get business for the bank in which he was working as Branch Manager but to deceive the depositors as well as the Bank. Therefore, while his inducement and deceiving the depositors attracts offence punishable under section 420 IPC. Converting dishonestly the FD receipts, which had dominion, for his own use attracts Section 409 IPC. Thereafter, by making entries in the FDR No.222037 a valuable security mentioning the depositors name as Mrs.Vijaya Parameswaran and Mr.Parameswaran, who are the depositors under FDR No.221961 and not the depositors in 222037, the commission of offence under Section 467 IPC gets proved. That apart, by forging Application for Loan against Deposits [Ex.P.8], Additional loan application [Ex.P.15], Indemnity letter [Ex.P.16], the offence under Section 468 IPC namely forging document for the purpose of cheating gets attracted. All these forged documents have been accepted as genuine by the accused himself in his capacity as the Branch Manager and he had sanctioned loan and from the loan amount, three Demand Drafts were issued in favour of 3rd parties. Those Demand Drafts are marked as Ex.P.14 and Ex.P.24.

25. P.W.3 had categorically deposed that he did not request the Bank for sanction of loan against his Fixed Deposit [Ex.P5]. The original FDR receipt is with him and there is no necessity for him to seek for duplicate FDR. He had denied the signature found in Ex.P.8 which is the application dated 28.06.2001 for loan of Rs.60,000/- against his deposit. He does not know Narasimhan, in whose favour the demand draft has been drawn. He has also disowned the signature found in Ex.P15 and Ex.P16. He has not received Ex.P17 which is a duplicate Fixed Deposit receipt bearing No.222037 in substitute for the original deposit receipt No.221961. It is also to be noted that accounts pertaining to the Fixed Deposit made by PW.3 has been falsified as if loan sanctioned against the deposit and certain remittance been made as against the loan.

26. No doubt, the disputed signatures were not sent for handwriting comparison. However, it is not necessary in all the cases the disputed documents to be sent for expert opinion. In this case PW-3 after seeing the signatures found in the loan documents had denied that it is not his signature. Neither he nor his wife went to the bank to make any request to advance loan and he never sought for duplicate FDR alleging that he lost the original deposit receipt No.221961.

27. In the light of his sterling evidence of impeccable quality, the accused as Branch Manager who has converted the FDR bearing No.222037 to use dishonestly without any request from the depositors, is proved guilty of offence punishable under Section 409 of I.P.C., fabricated FDR and application for loan and indemnity letter in the name of the depositors, hence guilty of offence punishable under Section 467 and 468 of I.P.C. The fabricated valuable security and forged document used as genuine to cheat the Bank. He sanctioned loan on the deposit and allowed to purchase three Demand Drafts in the name of 3rd parties from the loan amount without authorisation letter from the depositors, thereby committed offence punishable under Section 467 r/w 471 of I.P.C and 468 r/w 471 of I.P.C.

28. The accused is bound to explain the circumstances under which he permitted the depositor to avail loan and purchase Demand Draft from that money. When the depositors had categorically said that he never lost the FDR and the original is with him and he never made any application for duplicate FDR or made application for loan or authorised to issue Demand Drafts to 3rd parties from the loan availed from his account. These dubious transactions having done by the accused in the capacity as Branch Manager, is bound to explain the facts within his exclusive knowledge.

29. As far as the discrepancy in the charge regarding the original FDR number and false FDR number, though the learned counsel appearing for the appellant strongly argued the said error goes to the root of the matter and has caused prejudice to the accused, this Court is of the view that adverting to the peculiar facts, the number mentioned in the FDR irrelevant to decide the charge. The relevant fact is whether there was a duplicate FD receipt issued for the original FD receipt and based on the duplicate FD receipt, the accused sanctioned loan and permitted to convert the loan money into demand drafts in the name of 3rd parties. The accused has rightly understood the substance of the charge and had contested the case by cross examining the witnesses in connection with the original and duplicate FDR's. He is not a lay man, but a

Branch Manager who is conversant with the procedures of bank transactions. The error of interchanging the FDR numbers between the original and duplicate in the charge is only a clerical error which had no way had caused prejudiced to the accused to put forthwith his defence.

30. For the reasons stated above, this Court holds that there is no merit in the submissions made by the Learned Counsel for the appellant. Hence, the Criminal Appeal is liable to be dismissed.

31. Accordingly, this ***Criminal Appeal No.14 of 2013 is dismissed.*** The judgment of the trial Court passed in C.C.No.52 of 2004 by the XI Additional Special Judge (CBI Cases Relating to Banks and Financial Institutions), Chennai is confirmed. The trial Court is directed to secure the appellant/accused and commit him to the prison to undergo the remaining period of sentence. The period of imprisonment already undergone by the accused shall be set off under Section 428 of Cr.P.C.

03.07.2023

Index :Yes/No.
Internet :Yes/No.

Speaking order/non speaking order
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To:-
1.The XI Additional Special Judge (CBI Cases relating to Banks and Financial Institutions), Chennai.
2.The Inspector of Police, CBI, ACB, Chennai.
3.The Special Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,J.

rpl/bsm

Pre-delivery judgment made in
Crl.A.No.14 of 2013

03.07.2023