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.16 of 2013

[Crl.A.No.16 of 2013 against C.C.No.54 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.54 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.54 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, CBI ACB, Chennai a case was registered against the appellant for the offences of criminal conspiracy with unknown persons to cheat Indian Bank and its depositors 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 defraud the Bank as well as the depositors. For each of the depositors separate final report filed and taken on file by the Special Court for CBI cases at Chennai. The Learned Judge took cognizance and assigned C.C.Nos:52 to 60 of 2004.

4. The Criminal Appeal No.16/2013 which is under consideration arises from the judgement passed in C.C.No.54/2004. 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 to cheat the bank as well as the depositors K.N.Balasubramaniam and his wife Smt.Saraswathi Balasubramaniam, had made a false document namely FDR No:173816 for Rs.75,000/- and handed over it to the depositors instead of the original FD receipt bearing No.222015. Using the original FD receipt No.222015 which the accused retained with himself, sanctioned loan of Rs.65,000/- as if, the depositors sought for loan on the deposit. For the said purpose, he fabricated documents such as application-cum- pledge letter by forging the signatures of the depositors. The loan amount of Rs.65,000/- was misappropriated by the accused by authenticating the vouchers for crediting the amount in the account of the depositors and debiting the same for purchase of demand draft of Rs.65,000/- in favour of A.Jayasankar Proprietor of M/s.Keerthivasan Investments Private

Limited.

5. The accused, a Public servant working as the Branch Manager, in breach of trust misused the FD receipt No:173816 entrusted to him. With intention to cheat the depositors retained the original FD receipt bearing No:222015 and gave the false FDR bearing No:173816 to them. Without the permission of the depositors, the original FDR misused for sanctioning Rs.65,000/- as loan on deposit. The said amount credited into the loan account of the depositor, without their authorisation, fraudulently utilised to purchase third party demand draft in favour of A.Jayasankar, Proprietor M/s.Keerthivasan Investment Private Limited, to clear the due payable by Mrs.Jayamala W/o.R.Chandrasekaran (accused). Thereby, the accused committed offences punishable for cheating, forgery, forging valuable security for the purpose of cheating, using the forged documents as genuine and for misconduct of a public servant abusing his official position to obtain pecuniary advantage illegally.

7. The trial Court framed the below charges against the accused and tried him:-

Charge No.1: u/s.420 IPC.

Charge No.2: u/s.409 IPC.

Charge No.3: u/s.468 IPC.

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.13(2) r/w.13(1)(d) of P.C.Act, 1988.

8. To prove the charges, the prosecution examined 8 witnesses (P.W.1 to P.W.8), marked 21 Exhibits (Ex.P.1 to Ex.P.21). Tmt.P.Geetha, Branch Manager, Indian Bank, Thiruporur Branch was examined as C.W.1.

9. Adopting similar *modus operandi*, the appellant had indulged in nine cases. Nine final reports were filed and taken on file by the trial Court as C.C.Nos:52 to 60 of 2004. All the nine cases were tried simultaneously. In all the nine cases, the trial Court held the appellant guilty.

10. The sentence imposed on the accused by the trial Court in C.C.No.54/2004 is as below:-

Accused	Offences	Conviction and Sentence imposed by the Trial Court
Chandrasekaran	420 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.
	409 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.
	468 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.
	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.
	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.

11. The depositors are Mr.K.N.Balasubramaniam and his wife Smt.Saraswathi Balasubramaniam. The amount alleged to have been misappropriated is Rs.65,000/-.

12. The Learned Counsel for the appellant as well as the Learned

Special Public Prosecutor for the respondent submitted that, the arguments in C.A.No.15/2013 be adopted in this appeal, since the facts and evidence are identical, except the depositors name and amount. The Learned Special Public Prosecutor for the respondent, in addition submitted that, unlike C.C.No.53 of 2004, where the depositor was not examined but charges proved through other witnesses and documents. In this case one of the co-depositor Smt.Saraswathi Balasubramaniam was also examined as P.W-3 and she had deposed in support of the prosecution. Her testimony that, the accused came to her house and requested to deposit in his bank. In response, she gave a cheque for Rs.1,50,000/- drawn from her retirement benefit to the accused and the accused came back to her house and gave the FD receipt Ex.P-9. Neither she nor her husband went to the Bank for seeking loan on their deposit. The signature found in Ex.P-4 (application-cum-Pledge letter dated 07/08/2001) is not her husband's signature. She does not know who is Jayasankar (PW-4) and she did not authorise the bank to draw demand draft for Rs.65,000/- in favour of Jayasankar. She did not receive Ex.P-5 (the FDR No:222015) proves the charge of cheating and fabrication of valuable document for the purpose of cheating. The testimony of P.W-5, A.K.Ramasamy proves the misappropriation of property entrusted to make use of his own.

13. On hearing the submissions made by the Learned Counsel for the appellant and the Learned Special Public Prosecutor for the respondent/C.B.I and perusal of the documents, the following point for consideration arise:-

Whether the trial court properly framed the charges and appreciated the evidence to hold the prosecution proved the charges beyond doubt ?

14. The facts unravelled through the prosecution witnesses can be summed up as below:-

The accused/appellant, while working as Branch Manager in Indian Bank, Thiruporur Branch, during the period from 13.12.1999 to 29.06.2002, with a dishonest intention had gone to the house of K.N.Balasubramanian and induced him and his wife Smt.Saraswathi Balasubramanian to deposit in his branch. Accordingly, they have jointly deposited Rs.75,000/- for 12 months as Fixed Deposit. As per the ledger leaf Ex.P-2, the FD receipt for this deposit is No.222015 with Folio No.6/352. With an intention to cheat the depositors, the FD receipt bearing No:222015 was not given to the depositor by the accused. Instead, he had given them Ex.P-9, the FD receipt bearing No:173816. This FD receipt is part of the receipt book which he received from the West Mambalam Branch of Indian Bank, after giving acknowledgement for the receipt of the same in the letter marked as Ex.P-16.

15. Tmt.Saraswathi Balasubramaniam (P.W-3) had deposed that the accused came to their house and requested to deposit in his branch. He collected cheque for Rs.1,50,000/- and later, gave them Ex.P.9 which is the FD Receipt bearing No:173816 for Rs.75,000/-, dated 07/07/2001 showing the maturity date as 07/07/2002. They never went to the Bank and requested for loan pledging the FD receipt. They never applied for any loan in the bank. The signatures found in Ex.P-4 are not her signatures or her husband's signature.

16. P.W-5, Thiru. A.R.Ramasamy had deposed that, on the written request of the Branch Manager, Indian Bank, Thiruporur branch, he gave FD receipt and RIP receipt book through the accused. The letter of the Branch Manager is marked as Ex.P-16. The accused has signed on it acknowledging the receipt of FDR book bearing receipts No:173801 to 173900 and RIP receipt book No:206501 to 206600. The accused for the purpose of cheating the bank and the depositor had made a false document using one of the FDR bearing No:173816 which he received from P.W-4 and thereby, committed forgery. He had given the forged FD receipt to the depositor and with fraudulent intention retained the original FD receipt bearing No:222015 with him. Misusing the FD receipt Ex.P-3 bearing No.222015, the accused in the capacity as Branch Manager had sanctioned loan on the FD for Rs.65,000/- making false documents such as request letter to advance loan. The signatures of the real depositors been forged and he had sanctioned loan for Rs.65,000/- on the basis of the forged documents.

17. P.W-2 I.Jagashree had deposed that, Ex.P-3 FD receipt No:222015 jointly signed by her and the accused. The accused took with him the FD receipt. He showed her Ex.P-4, the application-cum-pledge letter to sanction loan against the deposit. The accused signed on the second page of Ex.P-4 indicating his approval to sanction loan. The accused sanctioned the loan and from the loan amount, a demand draft for Rs.65,000/- purchased in favour of one A.Jayasankar. P.W-2, had identified the vouchers Ex.P.5 and Ex.P.6 authenticated by the accused for the purchase of the demand draft for Rs.65,000/- in the name of Jayasankar (P.W-4).

18. A.Jayashankar, who was examined as P.W-4 had deposed that, the demand draft [Ex.P.7] was given to him by the accused in connection with the share transaction operated by C.Jayamala the wife of the accused dealing with M/s.Keerthivasan Investment Private Limited.

19. The accused/appellant, while serving as the Branch Manager of the Thiruporur Branch of Indian Bank in breach of trust, had fraudulently and dishonestly used the FD receipt entrusted to him to cheat the bank. Being a public servant having made pecuniary advantage for himself and others is cogently proved through the testimony of P.W-2, P.W-3, P.W-4 and P.W-5 and the documents marked as prosecution exhibits.

20. Ex.P-3 is the FD receipt bearing No.222015, dated 07.07.2001 issued for the Fixed Deposit made by Smt.Saraswathi Balasubramanian and Balasubramanian, which is duly signed by the accused as well as P.W.2, who is one of the authorised signatory. What the accused gave to the depositor Smt.Saraswathi Balasubramanian is the false FD receipt bearing No.173816 (Ex.P.9) entrusted to him by P.W-5. In the said FD receipt, the signatures of the co-authorised person is not genuine but forged. Retaining the genuine FD receipt with him and based on it, the accused had sanctioned loan and the loan amount been utilised by him to pay her wife's debt with P.W-4. Whereas, the forged FD receipt [Ex.P.9] given to the depositor P.W-2 to deceive them. The documents given for sanctioning loan proved to be false document with forged signatures of the depositors.

21. The accused by making and altering the entries in the loan ledger and other documents had forged the valuable security and used the forged document as genuine to cheat the bank and tune of Rs.65,000/-. He had sanctioned the loan and issued the demand draft Ex.P-7 in favour of P.W-4 A.Jayasankar. The testimony of P.W-4 proves that, Ex.P-7 demand draft was given to him for crediting into the trade account of C.Jayamala wife of R.Chandrasekaran the appellant herein.

22. The letter Ex.P.16 addressed by the Branch Manager of

Thiruporur to the Branch Manager, Indian Bank of West Mambalam Branch dated 08.05.2001 proves that, the FDR Nos.173811 to 173900 were entrusted to the accused on 13.05.2001 on the request made by the Branch Manager to lend one FD receipt book and one RIP receipt book, since there was shortage of stationeries in Thiruporur Branch. The accused as the Branch Manager has collected the FD receipt book from West Mambalam Branch. Misusing the FD receipt, the accused had forged FD receipt bearing No.173816 (Ex.P.9).

23. Thus, this Court finds from the documents and the deposition of the witnesses that the accused with the intention to deceive the depositors Thiru.Balasubramaniam and his wife Smt.Saraswathi Balasubramaniam induced them to deposit in the bank in which, he was working as Branch Manager and collected money. Dishonestly, he had retained the original FD receipt bearing No:222015 (Ex.P-3) with him. Had created a false FD receipt misusing the document entrusted to him and given it to the depositor thereby, had cheated the depositor. Hence, committed for the offence punishable under Sections 420 I.P.C and 467 I.P.C. To cheat the bank and the depositor, the FD receipt bearing No:173816 entrusted to him by P.W-5 for the use of the Indian Bank, Thiruporur

Branch, upon which he had dominion over as a public servant, dishonestly used it to appear as if, it is the receipt for the deposit made by Thiru.Balasubramanian and his wife Smt.Saraswathi Balasubramanian handed over it to the depositor. Thereby, he had committed offence punishable under Section 409 I.P.C.

24. The contention of the Learned Counsel for the appellant that, charges under Section 420 I.P.C and Section 409 I.P.C will not co-exist is a fallacious argument. The citations relied by the Learned Counsel is in respect of the fact involved in that case. As far as the facts of this case is concern, the prosecution had satisfactorily placed evidence attracting the ingredients of cheating as well as the offence of breach of trust by a public servant.

25. To fraud the bank the accused had forged the FD receipt marked as Ex.P-9, which is a valuable security thereby, he had committed offence punishable under sections 467 of I.P.C.

26. The accused had given the forged FD receipt bearing No:173816

(Ex.P-9) to the depositor as if, it is the genuine receipt for their deposit and made them to believe. Therefore, the charge for the offence punishable under Section 467 r/w 471 of I.P.C proved through the testimony of P.W.3 and recovery of Ex.P.9 FD receipt from her possession. He had forged the letter in the name of the depositors requesting the bank, a loan of Rs.65,000/- which is an offence punishable under Section 468 I.P.C. Using the forged letter Ex.P4 as genuine, he had sanctioned loan and used the money for purchase of demand draft Ex.P-7, thereby had committed the offence punishable under Section 468 r/w 471 of I.P.C.

27. The accused/appellant is the Branch Manger of a Nationalised Bank come within the meaning of 'Public Servant as defined under Section 2 of Prevention of Corruption Act, 1988. He had been prosecuted after obtaining sanction order Ex.P-1 from P.W-1 K.Natarajan, the authority competent to remove him. The material evidence placed before the Court duly prove that, he had abused his position and had obtained pecuniary advantage for his wife and thereby, caused loss to the Bank. The said offence is punishable under section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

28. Thus, the prosecution had proved the charges beyond any doubt.

Accordingly, this ***Criminal Appeal No.16 of 2013 is dismissed.*** The judgment of the trial Court passed in C.C.No.54 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.

29. Finally, the Learned Counsel for the appellant prayed that, nine cases emanated from single F.I.R and the accused been convicted in all the nine cases. If the conviction in all the cases are confirmed, the accused/appellant will be incarcerated for nearly about 27 years. Presently, the accused is nearing 70 years and therefore, this Court may sympathetically consider to exercise its power under Section 427 of Cr.P.C and order the period of sentence in all these cases to run concurrently.

30. On considering the said request and the nature of offence committed by the accused while confirming the judgment of the trial Court hereby order the period of substantive sentence imposed in this case (i.e.,) C.C.No.54 of

2004 as confirmed above in C.A.No.16 of 2013 shall run concurrently along with the sentence imposed in C.C.No.52 of 2004 as confirmed by this Court in C.A.No.14 of 2013.

03.07.2023

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

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.

bsm

Pre-delivery judgment made in
Crl.A.No.16 of 2013

03.07.2023