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.17 of 2013

[Crl.A.No.17 of 2013 against C.C.No.55 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.55 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).

<u>J U D G M E N T</u>

The appellant herein is the accused in C.C.No.55 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 deposits, separate final report filed and taken on file by the 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.17/2013 which is under consideration arises from the judgement passed in C.C.No.55/2004. Based on the final report, charges were framed. The substance of the charges framed against the appellant/accused is that, the accused fraudulently and dishonestly with intention to cheat Shri.K.S.Balasubramanian and his wife Smt.Saraswathi Balasubramaniam had induced them to deposit Rs.75,000/- in Indian Bank, Thiruporur Branch where he was working as Branch Manager. Accordingly, they parted away Rs.75,000/- to the accused. After receiving the money, the accused had given them FD receipt bearing No.222014, dated 07.07.2001 and had made entry in the ledger Folio for the FD receipt bearing No.222014. The accused and Tmt.I.Jagashree had signed FD receipt bearing No.222014 dated 07.07.2001 with Folio No.6/351. The accused retaining the original FD receipt, created a false FD receipt bearing No.173815 which was entrusted to him by the Branch Manager of West Mambalam on the request made by Branch Manager of Thiruporur Branch under letter dated 08.05.2001. With an intention to cheat the depositors as well as the Bank after handing over the forged FD receipt bearing No.173815 to the depositor, the accused had forged the application cum pledge letter dated 23.08.2001 seeking advance of Rs.55,000/- against the said deposit. He had forged the signature of the depositors and had sanctioned loan against the deposit. The loan amount used for purchasing demand draft for Rs.55,000/- in the name of Mr.Jayashankar. The said Mr.Jayashankar, who is the representative of M/s.Keerthivasan Investment Private Limited, had received the demand draft for consideration payable by Smt.Jayamala W/o.R.Chandrasekaran, the accused, for the shares she purchased.

5. The accused a Public Servant working as the Branch Manager, in breach of trust, had cheated the depositor and forged FD receipt bearing No.222014 entrusted to him for the purpose of cheating, based on the forged loan application and using the application as genuine, sanctioned loan of Rs.55,000/- against the FD receipt. He had utilised the loan amount of Rs.55,000/- to purchase the demand draft in favour of A.Jayashankar, to clear the debt of his wife C.Jayamala. Therefore, the trial Court framed the below charges:-

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

6. In this case, the depositors are Thiru.K.N.Balasubramanian and his wife Tmt.Saraswathi Balasubramaniam, the loan amount alleged to have been misappropriated is Rs.55,000/-.

7. To prove the charges, the prosecution examined 7 witnesses (P.W.1 to P.W.7), marked 18 Exhibits (Ex.P.1 to Ex.P.18). Tmt.P.Geetha, Branch Manager, Indian Bank, Thiruporur Branch was examined as C.W.1.

8. In C.C.No.55 of 2004, which is the subject matter of the Crl.A.No.17 of 2013, is under consideration, the 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	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.

Accused	*Offences*	*Conviction and Sentence imposed by the Trial Court*
	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.

9. Adopting similar *modus operandi*, the appellant had cheated nine depositors therefore, 9 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 and in all the nine cases, the trial Court held the accused guilty.

10. Submission by the Appellant Counsel:-

The Learned Counsel appearing for the appellant as well as the Learned Special Public Prosecutor submitted that, the argument submitted by them in Crl.A.No.14 of 2013 regarding point of law and Crl.A.No.16 of 2013 regarding facts are adopted in this appeal since the facts and evidence are identical. The depositors are one and the same, except the loan amount availed from the deposit.

The Learned Counsel appearing for the appellant states that, the depositors Thiru.Balasubramanian and his wife Tmt.Saraswathi Balasubramaniam not examined in this case as witnesses. To establish the charge that they were deceived by the accused by handing over depositor FD receipt No.173815 or to prove the application cum pledge letter Ex.P.5 was not signed by them to bring home the charges under Sections 468 of I.P.C or 468 r/w 471 of I.P.C. In the absence of proof that, the FDR bearing No.173815 is a document forged by the accused by examining the handwriting expert. The prosecution for the offence of forgery and cheating has to fail.

11. Submission by the Special Public Prosecutor:-

Per contra, the Learned Special Public Prosecutor submitted that, Tmt.Saraswathi Balasubramaniam, who is one of the depositor has been examined as P.W.3 in C.C.No.54 of 2004, wherein, she has spoken about the other FD receipt bearing No.222015 (original) and FD receipt bearing No.173816 (fabricated). So, the non-examination of the depositor in this case will not affect the prosecution.

12. 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 evidence adduced by the prosecution proves the charge beyond doubt despite non-examination of the depositor?

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

The accused/appellant, 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 gone to the house of K.N.Balasubramanian and induced him and his wife Smt.Saraswathi Balasubramaniam to deposit in his branch. Accordingly, they have jointly deposited Rs.75,000/- for 12 months as Fixed Deposit. As per the ledger (Ex.P.4), the FD receipt for this deposit is No.222014 with Folio No.6/351. The FD receipt bearing No.222014 is marked as Ex.P.4 and the loose leaf ledger is marked as

Ex.P.3. From these two exhibits, Court finds that, on 23.08.2001 a sum of Rs.55,000/- been advanced as loan on deposit (LOD) for which, the depositors had submitted application-cum-pledge letter which is marked as Ex.P.5. Ex.P.6 is the loose leaf ledger which indicates the necessary debits subsequent to the sanction of loan. Ex.P.7 is voucher indicating a sum of Rs.55,000/- from the amount advanced against FD receipt No.222014 is used for issuing demand draft for Rs.55,000/- in the name of Thiru.Jayashankar. Ex.P.8 is the voucher indicating the demand draft No.121980 and the demand draft of Rs.55,000/- in favour A.Jayasankar is marked as Ex.P.9. Tmt.I.Jagashree was examined as P.W.2 had identified her signature in the said demand draft marked as Ex.P.9 and also identified the signature of the accused which is found right of her signature with the seal of the accused.

14. P.W.2 Tmt.I.Jagashree had deposed that, during the year 2001, when VRS scheme introduced in Indian Bank, many of the staff and officers of the Indian Bank went on VRS. At that time, the accused mobilised deposits from those staff retired voluntarily by contacting them personally used to collect application from them along with cash or cheque for the said deposit. No depositor personally came to the Branch. The depositors are the retired staffs of the bank, their accounts were personally dealt by the accused by handing over the interest amount to the depositor by way of cash or demand draft or pay order. The depositor never visited the bank either for opening the bank or for receiving interest. On several occasion, the accused used to inform that the depositors had requested loan on their deposit and he will bring the loan application of the depositors personally along with originally deposit receipts issued by the bank stating that, the depositors are buying shares for themselves and therefore, the loan amount to be utilised for purchase of demand drafts in favour of 3rd party. Though, the banking norms mandates that, for issuing demand draft to third parties namely, the FD holders have to give written request. When she asked the accused for authorisation letter from the depositors, the accused used to promise that, he will collect the letter from the depositors while handing over the loan proceeds and keep it in the loan document in some cases, he has kept the authorisation letter with the loan documents and in some case, he failed to do so.

15. As far as the transaction pertaining to Thiru.Balasubramanian and Tmt.Saraswathi Balasubramanian, P.W.2 had identified the signature of the accused and had deposed that the depositors did not come to the Branch for opening the account. The application form was brought by the accused. The FDR

Ex.P.4 was taken away by the accused promising that, he will hand over it personally to the depositor. The request for loan was sanctioned and signed by the accused on the reverse of Ex.P.5. The proceeds of the loan was used to purchase the demand draft for A.Jayasankar. There is no request letter from the deposit holder to issue demand draft in favour of third party. The accused promise that, he will obtain authorisation letter from the depositor holder and keep it in the loan file, but it is not found in the loan file. She had identified the signature of the accused in two places of the FD receipt marked as Ex.P.10 which was forged and given to the depositor to make them believe that they are holding the genuine FDR. Thus, she had exposed the criminal act of the accused, misusing the FD receipt bearing No.173815 for Rs.75,000/- in the name of Tmt.Saraswathi Balasubramaniam and Thiru.K.S.Balasubramanian, making false entry in the loan ledger.

16. A.R.Ramasamy P.W.4, the Branch Manager of West Mambalam had categorically deposed that, on receipt of the letter from the Manager of Thiruporur Branch. He handed over one FD receipt Nos.173801-900 and RIP receipt book Nos.206501-600, after getting the acknowledgement from the accused in the letter Ex.P.13. Whereas, P.W.2 the officer in the Thiruporur Branch had deposed that, the receipt of Ex.P.10, FD receipt No.173815 not reflected in the issuance register Ex.P.3 or Ex.P.6. The loose leaf ledger marked as Ex.P.3 and Ex.P.6 only mentions the FD receipt bearing No.222014 and not FD receipt bearing No.173815. This clearly establish that, the FD receipt entrusted to the accused under Ex.P.13 letter been used by the accused to create the fake FDR.

17. The Learned Special Public Prosecutor appearing for the respondent/C.B.I want this Court to take note of the evidence adduced by Tmt.Saraswathi Balasubramaniam as P.W.3 in C.C.No.54 of 2004, for the purpose of proving the case in C.C.No.55 of 2004, such process is not permissible under law of evidence or under Criminal Procedure Code, unless and until it is a joint trial of more than one trial for similar offence. Whereas, in this case, it is a simultaneous trial and not joint trial. The witnesses are supposed to speak about the documents and facts involved in respective case. Perusal of Ex.P.3 testimony recorded in C.C.No.54 of 2004 does not say anything about the Exhibits marked in this C.C.No.55 of 2004. Therefore, the said contention is rejected outrightly.

18. Independently assessing the testimony found in this case, this Court through evidence of P.W.2 Tmt.I.Jagashree, who had deposed that in Ex.P.10, the FD receipt bearing No.173815, the accused himself has signed for both the authorised signatories is found to be true. On the scrutiny of the signatures found in the document C-317 is the code number given to the accused which is found in Ex.P.9 demand draft and Ex.P.4 the FD receipt bearing No.222014. The same code number is found below the signature of the accused in fake FDR Ex.P.10. It is clear from the scrutiny of FD receipt Ex.P.10 through naked eye that, the accused has put his signature at two places to make it appear that, the FDR was jointly issued by both the authorised signatories. According to the prosecution, the accused has made false entry and forged the FD receipt a valuable security, for the purpose of cheating the depositor. He had handed over this forged FD receipt to the depositor to satisfy them that the receipt given to the them is a genuine receipt.

19. The Learned Special Public Prosecutor for the respondent/C.B.I submitted that, though the depositor not examined by the prosecution in this case, the entrustment of this FD receipt to the accused is spoken by P.W.4 and fortified by the acknowledgement made by the accused in Ex.P.13, for receiving the FD receipt. When there is no corresponding entry in the ledger in respect of this FD receipt, the accused has to explain under what circumstances this FD receipt bearing No.173815 which is marked as Ex.P.10 was issued by him in the name of Tmt.Saraswathi Balasubramaniam and Thiru.K.N.Balasubramanian. Being the signatory, this is a fact which is especially within the knowledge of the accused. Having failed to explain about the issuance of Ex.P.10, the charge against the accused that, he had prepared the false document Ex.P.10 and used it as genuine for the purpose of cheating the depositors and simultaneously gets proved. The accused had used the genuine deposit receipt for raising the loan of Rs.55,000/- against the original fixed deposit receipt Ex.P.4 and the demand draft of Rs.55,000/- drawn in favour of Jayasankar (P.W.3) been utilised by the accused to pay the due of his wife Jayamala.

20. The Learned Special Public Prosecutor for the respondent/C.B.I relying upon the testimony of A.Jayasankar submitted that, the end user of the loan been proved to be C.Jayamala the wife of the accused. P.W.2 Tmt.I.Jagashree, Officer of the Bank had categorically deposed that, the depositors never visited the bank either to open the account or for deposit or for availing the loan. Therefore, contended that, the conviction against the accused for all the charges has to be confirmed.

21. Per contra, the Learned Counsel appearing for the appellant submitted that, the testimony of P.W.3 A.Jayasankar cannot be relied upon since he has not produced any statement of accounts to show that, he received Rs.55,000/- from the accused towards the due payable by C.Jayamala the wife of the accused.

22. The rival submission on deep consideration in the light of the document and evidence leads to the conclusion that, the FD receipt bearing No.173815 (Ex.P.10) was entrusted to the accused by P.W.5 A.R.Ramasamy. The accused has signed in the letter Ex.P.13. His specimen signature with Code-317 found in the letter as well as the signature acknowledging the receipt of one FD receipt bearing Nos.173801–173900 and one RIP book with receipt Nos.206501–206600 is held to be correct and the entrustment of this FDR's to the accused also not denied. P.W.2 had deposed that, to show the FDR bearing No.173815 issued in the name of Smt.Saraswathi Balasubramaniam and Thiru.Balasubramanian, there is no entry in Ex.P.3 or Ex.P.6 which are the loose leaf ledger loan maintained by the Bank. Ex.P.3 pertains to FD account and Ex.P.6 pertains to loan account on deposits. Being the signatory to Ex.P.10, the accused is bound to explain about the fact which are especially within the knowledge. Therefore, though the prosecution has not examined the depositor in this case, the proven facts, a fake fixed deposit receipt been prepared by the accused and back of the receipt, there is entry to show as if interest paid for the deposit in the month of October – 2001 Rs.1875/-, January – 2002 Rs.1875, July – 2002 Rs.3750. These entries are made to show as if the depositors been paid interest on the dates mention. Whereas, in Ex.P.3 which is in respect of the genuine FD bearing No.222014 marked as Ex.P.4, the entires regarding particulars of interest paid, shows as if the interest payable been credited for the loan availed and nothing paid to the depositor. The accused had been maintaining a parallel record one for the bank and another for the account holder. He had failed to explain this double entries he had made in the documents.

23. Hence, this Court holds that the accused is liable to be punished for the offence under Section 409 of I.P.C., for committing breach of trust by converting the property (FDR) entrusted to him. The accused had cheated the depositor by issuing demand draft in the name of A.Jayasankar, a third party, from out of the loan amount raised on the FD receipt bearing No.222014 without authorisation from the depositors to issue demand draft in the name of third party. P.W.3 A.Jayasankar, in whose favour the said demand draft Ex.P.9 for Rs.55,000/- admits the receipt of the money and he explains that, he received the money for the due payable by C.Jayamala, wife of Chandrasekaran. This evidence is sufficient to prove that the accused has misappropriated and cheating the bank by issuing a demand draft in the name of Thiru.A.Jayasankar which in turn been used to clear the due of his wife payable to Thiru.A.Jayasankar.

24. The misconduct of a public servant misusing his office to obtain pecuniary advantage and cheating the bank and causing loss of Rs.55,000/- to the bank and misappropriated the money attract punishment under Section 13(2) r/w 13(1)(d) of P.C Act, 1988. Regarding the offence of forgery using the forged document as genuine and forgery of valuable security, Ex.P.10 the FD receipt been valuable security is forged by the accused by making false entry in it. Therefore, offence under Section 467 of I.P.C is made out.

25. The charge that, he used this forged valuable security FD receipt bearing No.173815 (Ex.P.10) as genuine to cheat the depositors been proed through P.W.2 and the ledger entries. Hence, this Court arrives at conclusion that the charge for the offence under Section 467 r/w 471 of I.P.C proved beyond doubt. Similarly, the offence of forging the requisition letter of the depositor, and using it as genuine to sanction loan and the loan amount used for issuing demand drafts in the name of third parties without authorisation are established though documents Ex.P.3, Ex.P.6 and the oral evidence of P.W.2 and P.W.3. Thus, offences under Section 468 r/w 471 as well as offence under Section 468 of I.P.C is held to be proved.

26. As a result, the conviction and sentence imposed by the trial Court for the offence under Sections 420 of I.P.C, 467 of I.P.C, 467 r/w 471 of I.P.C, 468 of I.P.C, 468 r/w 471 of I.P.C, 409 of I.P.C and 13(2) r/w13(1)(d) of P.C Act, 1988 are confirmed.

27. Accordingly, this ***Criminal Appeal No.17 of 2013 is dismissed.*** The judgment of conviction passed by the XI Additional Special Judge (CBI cases relating to Banks and Financial Institutions), Chennai in C.C.No.55 of 2004, dated 21.12.2012 is confirmed. The trial Court is directed to secure the appellant/accused and commit him to the prison to undergo the remaining period of sentences. The period of imprisonment already undergone by the accused shall be set off under Section 428 of Cr.P.C. The period of sentence shall run concurrently.

28. 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.

29. This Court, on considering the said request and the nature of offence committed by the accused while confirming the judgment of the trial Court order the period of sentence imposed in C.C.No.55 of 2004 in C.A.No.17 of 2013 shall run concurrently along with the period of sentence imposed in C.C.No.52 of 2004 as confirmed in C.A.No.14 of 2004.

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.17 of 2013

03.07.2023