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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.18 of 2013

[Crl.A.No.18 of 2013 against C.C.No.56 of 2004]

R.Chandrasekaran, ... Appellant/Accused

/versus/

1. State rep. by Inspector of Police,
CBI, ACB, Chennai. ... 1st respondent/Complainant

2. A.N.Lakshmi,
No.37, Perumal Sannidhi Street,
Alwarkurichi,
Tenkasi – 627 412. ... 2nd Respondent/Complainant

R2 impleaded as per order dated 28.04.2023 made in Crl.M.P.No.5104 of 2023 in Crl.A.No.18 of 2023.

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.56 of 2004, dated 21.12.2012 and acquit the appellant.

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For Appellant :Mr.R.Baskar

For R1 :Mr.K.Srinivasan, Senior Counsel
Special Public Prosecutor (C.B.I).

For R2 : Mr.S.R.Raghunathan.

JUDGMENT

The appellant herein is an accused in C.C.No.56 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.

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3. After completion of investigation, it was found that FDR's in respect of 9 deposits were forged and from those deposits, loans were sanctioned fraudulently using forged documents as genuine to defraud the Bank as well as the depositors. For each of the deposits so defrauded, separate final report filed and same 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:18 of 2013 which is under consideration arises from the judgement passed in C.C.No.56/2004. Based on the final report, the following charges were framed by the trial court:-

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

Shri.R.Chandrasekaran while working as Branch Manager of Thiruporur Branch of Indian Bank during the period from 13.12.1999 to 29.06.2002 at Thiruporur cheated Indian Bank, Thiruporur branch by dishonestly inducing the bank to deliver vide LOD an amount of Rs.1,75.000/- as DD No.101369 in favour of one M/s Cony Bio Health for FDR No 222028 of Smt.A.N.Lakshmi for Rs.2 lakhs and you thereby committed an offence punishable u/s 420 of IPC and within my cognizance.

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

Shri.R.Chandrasekaran while working as Branch Manager of Thiruporur branch of Indian Bank during the period from 13.12.1999 to 29.06.2002 at Thiruporur having dominion over the FDR No.222028 of Smt. Lakshmi for Rs 2 lakhs misappropriated an amount of Rs.1,75,000/- as mentioned in detail in the above charge and thereby you committed an offence punishable u/s 409 of IPC and within my cognizance.

Charge No.3: u/s.467 IPC.

Shri.R.Chandrasekaran, while working as Branch Manager of Thiruporur branch of Indian Bank during the period from 13.12.1999 to 29.6.2002 at Thiruporur forged the FDR bearing No. 173808 09.08.2001 in the name of Smt. AN Lakshmi is a valuable security with intent to give the same to the depositors in the place of original FDR bearing No.222028 dt 09.08.2001 and enable you creating loans over the same and that you thereby committed an offence punishable us 467 IPC and within my cognizance

Charge No.4: u/s.467 r/w 471 of IPC.

Shri.R.Chandrasekaran while working as Branch Manager of Thiruporur branch of Indian Bank during the period from 13.12.1999 to 29.6.2002 at Thiruporur

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fraudulently and dishonestly used as genuine the documents mentioned in the above charge which you knew at the time you used it, to be a forged document, and you thereby committed offences punishable u/s 467 r/w 471 IPC and within my cognizance.

Charge No.5: u/s.13(2) r/w.13(1)(d) of P.C.Act, 1988.

Shri.R.Chandrasekaran while working as Branch Manager of Thiruporur branch of Indian Bank during the period from 13.12.1999 to 29.6.2002 at Thiruporur by corrupt or illegal means or by otherwise abusing your position as such public servant obtained for yourselves pecuniary advantage of Rs.1,75,000/- from the bank and in the manner as stated in the first charge and thereby you committed an offence punishable u/s 13(2) r/w 13(1)(d) of PC Act, 1988 and within my cognizance.

5. To prove the charges, on the side of the prosecution 7 witnesses (P.W.1 to P.W.7), marked 16 Exhibits (Ex.P.1 to Ex.P.18). Tmt.P.Geetha, Branch Manager, Indian Bank, Thiruporur Branch was examined as C.W.1.

6. Alleging the appellant had cheated nine depositors, by adopting similar *modus operandi*, 9 final reports were filed by the Investigating Officer and

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same 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.

7. In respect of C.C.No.56 of 2004, which is the subject matter of Crl.A.No.18 of 2013, 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	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.
	467 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.

8. In this case, the depositor is A.N.Lakshmi. The amount alleged to

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have been misappropriated is Rs.1,75,000/-

9. The Learned Counsels for the respective parties had made submissions which are common for all the appeals. Thereafter, the specific ground exclusive for the cases were highlighted by them for the appreciation of the Court.

10. <u>Submission by the appellant counsel:</u>

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 error in framing charges.

11. According to the Learned Counsel for the appellant, the first charge against him is that, he while he was serving as Branch Manager, Thiruporur, Indian Bank during the period 13/12/1999 to 29/06/2002, he dishonestly induced the bank to deliver demand *vide* Loan on Deposit an amount Rs.1,75,000/- *vide* Demand Draft No:101369 in favour of M/s.Cony Bio Health for

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FDR No.222028 of Smt. Lakshmi. However, the prosecution has not filed any document to show Thiruporur Branch of Indian Bank granted loan on deposit (LOD) for FD receipt bearing No.222028. Nor it has produced evidence that, on the inducement of the accused, loan on Deposit (LOD) was sanctioned by the accused while he was serving the Thiruporur Branch. Contrarily, the prosecution witness P.W-2 had categorically stated that, regarding the loan transactions of A.N.Lakshmi everything was done at the Mappedu Branch. Only from the letter (Ex.P-6) dated 12/08/2002 sent by the Branch Manager, Mappedu addressed to the Thiruporur Branch, she came to know about the loan transactions. Therefore, the charge as it is framed is not sustainable and the accused cannot be punished for the charge which is not even spoken by the prosecution witnesses.

12. The Learned Counsel for the appellant submitted that, in respect of other charges like offences under sections 409 I.P.C, the prosecution ought to have established through evidence that, some property was entrusted to the accused or the accused had dominion over it as a public servant which he later converted or misappropriated as his own. To attract offences under Sections 467 of I.P.C or 468 of I.P.C or 471 of I.P.C, first, the prosecution ought to have

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identified the document which is alleged to have been forged or a false document made by the accused. Then, they should have proved that, fraudulently and dishonestly, the accused used the said forged documents as genuine and caused damages or injury to the Bank. In this case, out of 16 documents none of the document and out of 7 witnesses none of the witnesses speak about the facts alleged in the charges regarding creation of loan against the FD receipt marked as Ex.P-8. Nor there is evidence from the prosecution side to show from the said loan amount alleged to have been sanctioned, demand draft was issued in favour of a third party namely M/s.Cony Bio Health.

13. The identification of the signatures of the accused by some of the bank witnesses cannot be taken as conclusive proof for forgery or making false documents. The writings and signatures found in the disputed document ought to have been sent to laboratory for comparison of the admitted writing and signature with that of the disputed signatures and writings. The prosecution has conveniently omitted to carry on this exercise but had filed final report alleging the accused made false documents to cheat the Indian Bank, Thiruporur Branch. Whereas the witnesses for prosecution admits that, the accused was transferred

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from Thiruporur Branch to Mappedu Branch, during the month of June 2002. The request to record lien on the deposit of Rs.2,00,000/- in the name of A.N.Lakshmi in FD receipt No:173808 dated 09/08/2001 had alleged to have been written by the Manager Mappedu on 12/08/2002. The author of this letter marked as Ex.P-6 not examined. The content of this letter not proved otherwise through statement of accounts, loan ledger or application for loan maintained at Mappedu Branch which has alleged to have sanctioned the loan.

14. The Learned Counsel appearing for the appellant submitted that, the sanctioning authority P.W.1 without proper application of mind had accorded sanction. The allegation against the appellant is in respect of FD receipt bearing No:173808 dated 09/08/2001 forwarded by, from the Manager of Mappadu Branch to the Thiruporur Branch on 12/08/2002 to mark the lien on FD receipt bearing No:173808 dated 09/08/2001 of A.N.Lakshmi for Rs.2,00,000/-. It is alleged that, the accused had issued this FD receipt by signing it at two places. However, no material evidence placed before the P.W-1 to support this allegation. Even before the trial Court, the prosecution has not established the FD receipt bearing No:173808 marked as Ex.P-8 was forged by the accused.

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15. The trial Court erred in holding the accused guilty of misappropriation. The allegation that, loan on FD receipt No:173808 was obtained from Mappadu Branch is not proved by examining staff from the Mappadu Branch nor registers from Mappadu Branch produced. P.W-2, Tmt.I.Jagashree, in the cross examination has admitted that, she do not know personally what loan transactions happened at Mappedu Branch regarding the deposit of Ms.A.N.Lakshmi. Neither the prosecution has placed evidence that the loan sanctioned on the deposit been utilised by the accused to purchase demand draft in favour of M/s.Cony Bio Health *vide* demand draft No.101369. In absence of proof that, Meppedu Branch of Indian Bank was induced by the accused and parted away the money and that money was used to purchase a demand draft in favour of M/s.Cony Bio health, without any evidence worthy relying the trial Court has erroneously convicted the appellant. According to the Learned Counsel for the appellant, except the evidence of PW-2 (Jagashree), who had identified the signatures of the accused in Ex.P-8 and the evidence of P.W-4 (A.N.Ramasamy), who had deposed that, the FDR receipt No:173808 is part of the FD receipt book given to the accused under acknowledgement Ex.P-11. No other evidence to

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corroborate the case of the prosecution. These evidence is fit to be rejected since their testimony does not substantiate the charges for which the accused was tried.

16. Per contra, the Learned Special Public Prosecutor appearing for CBI submitted that, the prosecution to prove that the accused had misused the FD receipt bearing No:173808 over which, he had dominion been clearly established through the evidence of the Manager, West Mambalam Branch, Indian Branch. Mr.Ramasamy [PW.4]. He had deposed that, in case of shortage of stationeries, it is a normal practice in the bank to lend receipts to the other branch. Likewise, on the request of Manager of Thiruporur branch *vide* letter Ex.P.11, one FDR receipt book and one RIP receipt book was handed over to Chandrasekaran/the accused herein. In the said letter (Ex.P.11), the accused has signed acknowledging the receipt of FD receipt bearing Nos.173801 to 173900 and one RIP receipt book Nos.206501 to 206600. Thus, the prosecution has proved the entrustment of FD receipt bearing No.173808 to the accused on 11.05.2001. This FD receipt been used to duplicate the original FD receipt Ex.P-5 bearing No.222028 given to the depositor Tmt.A.N.Lakshmi. The accused had made false entries in the FD receipt bearing No:173808 in the name of A.N.Lakshmi and affixed his signatures. This

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FD receipt been used to raise loan of Rs.1,75,000/- from Mappedu Branch after the accused transferred from Thiruporur Branch to Mappedu Branch. When the Thiruporur Branch was informed about the loan transaction and asked to record the lien, the fraud committed by the accused came to light and those facts are spoken by P.W-2. She had deposed that, on verifying the ledger, she noticed the folio No.6/630 mentioned in Ex.P-8 relates to the FD receipt bearing No:is 222028 and not FD receipt bearing No:173808. The accused had signed the fake FD receipt twice and his signature is identified by P.W-2 I.Jagashree as well as P.W-3 A.N.Lakshmi. Both are conversant with the signature of the accused being worked with him in Thiruporur Branch. Further, P.W-3, who is the depositor had not only identified the signature of the accused in the fake FD receipt marked as Ex.P-8, she has also denied that, the signature on the back of Ex.P-8, above the space signature of the depositor is not her signature.

17. Therefore, the Learned Special Public Prosecutor appearing for the respondent/C.B.I submitted that, the guilt of the accused regarding breach of trust by a public servant and making false document to cheat is well proved through the evidence adduced. Hence, the judgment of the trial Court has to be

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confirmed.

18. Heard the Learned Counsel for the appellant and the Learned Special Public Prosecutor for the respondent/C.B.I. Records perused.

19. At the outset, this Court record that, the charge of cheating the Indian Bank, Thiruporur Branch by inducing it to issue demand draft for Rs.1,75,000/- from the loan availed from the FD receipt bearing No:222028 is ill found. The evidence of P.W-3 A.N.Lakshmi as well as the records collected from Indian Bank Thiruporur Branch and the evidence of P.W-2 clearly indicate that, from the Fixed Deposit of Rs.2,00,000/- in FD receipt bearing No.222028, the depositor had availed loan from the Sholinganallur Branch and not from Thiruporur Branch. She had also not availed loan from Mappedu Branch. P.W-2 also admits that, the loan of Rs.1,75,000/- in the name of A.N.Lakshmi on the FD receipt bearing No.173808 was sanctioned by Mappedu Branch and not by Thiruporur Branch. The charge that, the accused induced Thiruporur Branch to deliver LOD amount of Rs.1,75,000/- for demand draft No.101369 is unfound. Assuming the error in the charge is curable, atleast the prosecution ought to have

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adduced evidence to prove that the Mappedu Branch was induced to sanction loan of Rs.1,75,000/- based on the FD receipt bearing No.173808 and from the loan amount, demand draft was purchased in favour of M/s.Cony Bio Health. Except, Ex.P-6 a letter from the Manager, Mappedu Branch of Indian Bank, no other document maintained at Mappedu Branch produced by the prosecution to substantiate the charge of cheating.

20. Regarding FD receipt bearing No:173808 (Ex.P-8), the prosecution through P.W-4 Mr.A.K.Ramasamy and through the letter (Ex.P-11) which contains the acknowledgement of the accused for the receipt of the FDR and RIP books had proved beyond doubt that the Ex.P-8 was entrusted to the accused by P.W-4 on 13/05/2001. The said FD receipt been converted into a valuable security by the accused. He had signed the FD receipt with particulars of the depositor, term of deposit, due date and rate of interest payable for the deposit. If, it is duplicate receipt in lieu of the original receipt Ex.P-5, then there must have been a request application from the depositor to issue a duplicate FD receipt. Next, in Ex.P-8 the accused should have mentioned it is the duplicate receipt issued in lieu of the original receipt bearing No:222028. Also, he should have mentioned in

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the FD ledger about the issuance of duplicate FD receipt and its number. Nothing been done by the accused after issuing Ex.P-8.

21. The accused as signatory of Ex.P-8 FD receipt and who had dominion over it as a public servant is bound to explain why he signed in Ex.P-8 and made the document a valuable security. The failure of the accused, to explain the fact which is especially within his knowledge, certainly force the Court to draw adverse inference under Section 106 of the Indian Evidence Act. By making Ex.P.8, a FD receipt for Rs.2,00,000/- in the name of Ms.A.N.Lakshmi, the accused had forged a valuable security enabling Ms.A.N.Lakshmi to receive the principal and interest. This offence squarely attracts Section 467 of I.P.C. Whether it was used as genuine to gain unlawfully is yet another fact which requires proof. In this case, the prosecution witnesses and the evidence relied by the prosecution does not go further to prove that the valuable security namely FD receipt No:173808 forged by the accused used as genuine to avail loan and he dishonestly utilised to purchase Demand Draft for Rs.1,75,000/- in the name of M/s.Cony Bio Health. The oral evidence of P.W-2, who is not the author of Ex.P-6 and admittedly not aware of the alleged loan on deposit in respect of Ex.P-8 is not

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adequate to hold the forged valuable security FD receipt Ex.P-8 was used as genuine.

22. The accused being a public servant, the misappropriation of the property entrusted to him by converting into a valuable security enabling to get the principal and interest mentioned in it, is a abuse of position to get pecuniary advantage. If false document made with dishonest intention to cheat is proved then omission to examine the person in whose name the valuable security falsely made or any other person who obtains pecuniary advantage or not is immaterial. The dishonest intention and making of false document purported to be a valuable security is suffice to hold a public servant guilty of misconduct an offence under Section 409, 467 of I.P.C and punishable under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

23. In the result, this ***Criminal Appeal No.18 of 2013 is partly allowed as stated above.*** The accused/appellant is held guilty of offences punishable under Sections 409 I.P.C, 467 I.P.C and 13(2) r/w 13(1)(d) of P.C. Act, 1988. The judgment of the trial Court passed in C.C.No.56 of 2004 by the XI

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Additional Special Judge (CBI Cases Relating to Banks and Financial Institutions), Chennai is partly set aside. The conviction for the offences under Sections 420 I.P.C and 467 r/w 471 I.P.C are hereby set aside. The Trial Court is directed to secure the accused and commit him to prison to undergo the remaining period of sentence for the offences under Section 409 I.P.C, 467 I.P.C and Section 13(2) r/w 13(1)(d) of P.C Act as modified above. The period of imprisonment already undergone shall be set off under Section 428 of Cr.P.C. The period of sentences shall run concurrently.

24. 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 may run concurrently.

25. This Court, on considering the said request and the nature of

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offence committed by the accused while partly confirming the judgment of the trial Court, order the period of sentence imposed in C.C.No.56 of 2004 as partly modified in C.A.No.18 of 2013 shall run concurrently with the period of sentence imposed in C.C.No.52 of 2004 by the trial Court 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
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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.

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DR.G.JAYACHANDRAN,J.

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Pre-delivery judgment made in
Crl.A.No.18 of 2013

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