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.19 of 2013

[Crl.A.No.19 of 2013 against C.C.No.57 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.57 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).

J U D G M E N T

The appellant herein, is the accused in C.C.No.57 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 CBI cases at Chennai. The Learned Judge took cognizance and assigned C.C.Nos:52 to 60 of 2004.

4. The Criminal Appeal No.19 of 2013 which is under consideration arises from the judgement passed in C.C.No.57 of 2004. The content of the final report is that, Mr.Chandrasekaran the appellant/accused, while working as Branch Manager of Indian Bank, Thiruporur Branch, during the period from 13.12.1999 to 29.06.2002, induced Mr.M.Ganapathy, who is none other than the brother in law of the accused to deposit Rs.2 lakhs in Thiruporur Branch of Indian Bank. As per the bank record, for the said deposit FD receipt No:451789 was issued. However, with a dishonest intention to cheat the depositor and the bank, the accused, retained the FD Receipt with him instead of handing over it to the depositor. To satisfy the depositor, he gave a Cash Certificate of Indian Bank, a practise not in use. Further, the said Cash Certificate was without any reference about the FDR Number or rate of interest for the deposit. Then, the accused against the FDR in the name of the M.Ganapathy owe which he had dominion, made a false document namely application-cum-pledge letter for advance with forged signature of Mr.M,Ganapathy. The application along with the FD receipt bearing No:451789 for Rs.2,00,000/- in the name of Mr.M.Ganapathy was submitted to the Bank. The accused as Bank Manager knowing fully well that, the letter for advance is forged but intentionally and dishonestly sanctioned loan of

Rs.1,80,000/-. This loan amount was later utilised by the accused to issue a demand draft in the name of third party without authorisation from the depositor and gave it to one A.Jayasankar, for purchase of shares in the name of his wife C.Jayamala.

5. The trial Court, based on the final report framed charges as under:-

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

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 cheated Indian Bank, Thiruporur branch by dishonestly inducing the bank to deliver vide LOD an amount of Rs 1.80 lakhs vide DD No.096391 dt.12.3.2001 in favour of one Shri A. Jayashankar of M/s Keerthivasan Investment Pvt Ltd, from FDR bearing No 451789of of Shri M.Ganapathy and you thereby committed an offence punishable u/s 420 of IPC and within my cognizance (3 counts).

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 29.6.2002 at Thiruporur having *dominion over the FDR No.451789 of Shr M.Ganapathy for Rs.2 lakhs misappropriated an amount of Rs.1,80,000/- 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.468 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 forged the following documents intending that it shall be used for the purpose of cheating and that you thereby committed an offence punishable u/s 468 IPC and within my cognizance.

1) Application cum pledge letter for advance against deposit in the bank for LOD against RIP No 451789 in the name of Shri M.Ganapathy.

Charge No.4: u/s.468 r/w 471 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 fraudulently and dishonestly used as genuine the document is 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 468 r/w 471 IPC and within my cognizance.*

Charge No.5: u/s.467 IPC (2 counts).

Shri.R.Chandrasekaran while working as Branch Manager of Thiruporur branch of Indian Bank during the period from 13.12.1999 29 6 2002 at Thiruporur forged the FDR bearing No 13455 dt.5.3.2001 in the names of Shri.M.Ganapathy and Demand Promissory note for Rs.1.80 lakhs in the ate of Shri.M.Ganapathy which are valuable securities with intent to give the same to the depositors in the place of original FDR bearing No 451789 dt5.3.2001 and enable you creating loans over the same and that you thereby committed an offence punishable u/s 467 IPC and within my cognizance.

Charge No.6: u/s.467 r/w 471 IPC (2 counts)

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 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(2 counts).*

Charge No.7: 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 29.06.2002 at Thiruporur, by corrupt or illegal means or by otherwise abusing your position as such public servant obtained for yourselves pecuniary advantage of Rs.1,80,000/- 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) of PC Act 1988 and within my cognizance."

6. To prove the above charges, the prosecution examined 8 witnesses (P.W.1 to P.W.8), marked 22 Exhibits (Ex.P.1 to Ex.P.22). Tmt.P.Geetha, Branch Manager, Indian Bank, Thiruporur Branch was examined as C.W.1.

7. The trial Court found the accused guilty. The sentence imposed on the accused by the trial Court in C.C.No.57 of 2004 is as below:-

Accused	*Offences*	*Conviction and Sentence imposed by the Trial Court*
Chandarasekaran	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	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 (2 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.
	467 r/w 471 of I.P.C (2 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.
	13 (2) r/w 13(1) (d) of P.C Act.	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. The depositor in this case is Mr.M.Ganapathy, who is incidentally also the brother-in-law of the accused. The amount alleged to have been misappropriated is Rs.1,80,000/-

9. The Learned Counsel for the appellant as well as the Learned Special Public Prosecutor for the respondent/C.B.I submitted that, the arguments in C.A.No.15 of 2013 against C.C.No.53 of 2004 be adopted in this appeal, since the facts and evidence are identical, except the depositors name and amount.

10. The Learned Counsel for the appellant submitted that, the guilt of the accused is not presumable. The prosecution ought to have proved the charges beyond doubt. In this case, the intention to cheat neither the depositor nor the bank proved through reliable evidence. The disputed signature by the depositor in the reverse of the FD receipt on the revenue stamp (Ex.P-4) and in the loan application form Ex.P-5 ought to have been sent for field expert opinion. P.W-2 evidence that, the practise of issuing Cash Certificate to the depositors is not in vogue is incorrect. Her evidence is not supported by documentary proof like Banking Rules, Regulations or Guidelines on Fixed Deposit.

11. The Learned Special Public Prosecutor appearing for the CBI/respondent submitted that, in this case Mr.M.Ganapathy was examined as P.W-4 and he had deposed in support of the prosecution. He had categorically stated that, at request of the accused, he gave him Rs.2,00,000/- to be deposited in the Bank. The accused gave him the cash certificate bearing serial No:013455 (Ex.P-11). He did not applied for loan on his deposit or received any loan on the deposit he made. He did not give the application marked as Ex.P-5. The signatures found in Ex.P-5 is not his signature. He did not execute pro-note in favour of the bank and the signature in Ex.P.16 is not his signature. The FD receipt bearing No.451789 was not given to him. The signature found on the reverse of FD Receipt No:451789 (Ex.P-4) is not his signature. He did not availed loan or purchased demand draft in the name of Jayasankar from the loan amount. He did not know who is Jayasankar. Thus, his evidence proves the accused with the intention of cheating him induced to deposit in the Indian Bank, Thiruporur Branch where he was serving as Manager. After receiving the money for deposit, the accused in fact, deposited Rs.2,00,000/- in the name of Mr.M.Ganapathi on 05/03/2001, but with intention to cheat the depositor and the bank, had retained the FD Receipt Ex.P-4 with him and with forged letter for advance (Ex.P-5) and pro-note (Ex.P-16) availed loan to purchase the demand draft (Ex.P-10) in the name of A.Jayasankar (PW-3). As per the testimony of A.Jayasankar, the accused gave the demand draft to him for purchase of shares in the name of his wife

C.Jayamala. The charges against the accused been proved beyond doubt by the prosecution as stated above, therefore the appeal is liable to be dismissed.

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

13. The testimony of P.W-4 Mr.M.Ganapathi proves the fact that, the accused induced him to deposit in Indian Bank, Thiruporur Branch. Ex.P-4 is the Fixed Deposit Receipt bearing No:451789, dated 05/03/2001. According to the depositor P.W-4, he did not receive the FD receipt from the accused. He only received Ex.P-11, the Cash Certificate bearing No:013455, dated 05/03/2001.

14. The testimony of P.W-2, who is the co-signatory along with the accused in Ex.P-4 the FD receipt bearing No: 451789 dated 05/03/2001, discloses the fact that, the accused brought the application form for deposit (Ex.P-2) and cash of Rs.2,00,000/- and ssked her to prepare the FD receipt in the name of Mr.M.Ganapathy. She prepared Ex.P-4 the FD receipt and gave it to the accused. On 12/03/2001 the accused brought the FD receipt (Ex.P-4) and the loan application form Ex.P-5. He instructed her to authorise the opening of loan account. The accused authorised the debit voucher Ex.P-6 for the loan of Rs.1,80,000/- and credit voucher Ex.P-7 for issuing a demand draft in favour of A.Jayasankar. According to this witness, third party demand draft will be issued only on specific request from the depositor in writing. When she asked for such authorisation, the accused promised to get it from the depositor and hand over to the Bank.

15. The inducement to part away Rs.2,00,000/- and dishonestly holding the FD receipt to create a lien over the deposit and get loan of Rs.1,80,000/- is manifestly seen from the evidence of P.W-4 Mr.M.Ganapathy. The issuance of Cash Certificate Ex.P-11 without any request from P.W-4 and without any corresponding entries in the bank records is spoken by P.W-2 and her evidence in this regard not impeached. If Ex.P-11 cash certificate is issued to the accused as a duplicate for FD receipt Ex.P-4, then it should have reflected in the FD ledger maintained by the Bank. Ex.P-3 which is the loose leaf ledger for FD receipt No.451789 does not show any indication about issuance of Cash Certificate. Neither in the Cash Certificate No:013455 dated 05/03/2001, there is entry to show this is issued as duplicate in lieu of the FD Receipt No: 451789. The perusal of Ex.P-14, the ledger for the loan show that the loan of Rs.1,80,000/- is sanctioned securing the RIP No:451789.

16. Thus, the prosecution has proved clearly that the FD receipt entrusted to the accused over which he had dominion been used to avail loan by producing forged letter and Pro-note. The signatures of the accused in the vouchers authorising the debit and credit of Rs.1,80,000/- from the loan account of Mr.M.Ganapathi without his authorisation is proved through the testimony of P.W-2 and P.W-4. The demand draft issued in the name of A.Jayasankar is used for purchase of shares by the accused is proved through the testimony of P.W-3 A.Jayasankar.

17. The contention of the Learned Counsel for the appellant that, there is no corroboration to the oral evidence of P.W-2, P.W-3 and P.W-4, has to be rejected in view of the sterling quality of the witnesses, who are the colleague, relative and the service provider of the accused. They are all well acquainted with his signature and writings. The accused, who have played a pivotal role in getting the deposit from Mr.M.Ganapathi P.W-4 and authorised the sanction of loan and later drawn the demand draft in favour of third party without authorisation owe an explanation the circumstances these transaction took place. Particularly when evidence shows, he received it from P.W-2 and handed over the demand draft to PW-3. The reason to issue Ex.P-11 the Cash Certificate in the name of Mr.M.Ganapathi without his requisition and without any corresponding entries in the FD ledger and Loan ledger are facts especially within the knowledge of the accused. His failure to disclose the fact especially and exclusively within his knowledge force the Court to draw adverse inference.

18. The accused had induced P.W-4 Mr.M.Ganapathi to part away Rs.2,00,000/-. He had dishonestly retained the FD Receipt with him, loan against the FD book raised without the knowledge and consent of the depositor. Forged documents were given in support of the forged request letter for loan. The forged documents been used as genuine to grant the loan authorised by the accused and the loan amount misappropriated by him utilising the demand draft issued in the name of third party to pay his wife's debt.

19. The ingredient for the offence of cheating the depositor and the bank is proved. The Cash Certificate entrusted to the accused, a public servant been misappropriated for his own use to dishonestly mislead the depositor with an intention to cheat. The FD receipt entrusted to him been dishonestly converted to raise loan. Thereby, the offence of breach of trust is proved. To avail loan, false document with forged signature of the depositor produced by the appellant as a genuine document thus, offences punishable under Sections 468 and 468 r/w 471 of I.P.C are proved.

20. Though, it is desirable and prudent to get the expert opinion on the signatures and handwritings, yet the power to compare the signatures and writing by the Court under Section 73 of the Evidence Act is always vested with the Court. In the case in hand, the trial Court had relied on the testimony of depositor and held that the accused has forged the documents in the name of the depositor. This Court does not find any error or illegality in the said finding, in view of the impeccable quality of the P.W-4 Mr.M.Ganapathi's evidence and on comparing the admitted signatures of P.W-4 with the signature of the depositor on the reverse of the FD receipt (Ex.P.4) and in the Pro-note (Ex.P.14), it is clear to the naked eyes they are forged. Thus, the charge of forging valuable security to attract offence under section 467 of I.P.C (2 counts) and use of these two forged valuable securities as genuine which is offence punishable under Section 467 r/w 471 of I.P.C (2 counts) also held to be proved.

21. The accused who worked as the Branch Manger of a Nationalised Bank at the relevant point of time come within the meaning of *'Public Servant'* as defined under Section 2 of the 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 prove that, he had abused his position and had obtained pecuniary advantage and corresponding loss to the Bank. The said offence is punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

22. Therefore, this Court holds that the prosecution had proved the charges beyond any doubt. Accordingly, this ***Criminal Appeal No.19 of 2013 is dismissed.*** The judgment of the trial Court passed in C.C.No.57 of 2004 by the XI Additional Special Judge (CBI Cases Relating to Banks and Financial Institutions), Chennai is hereby 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.

23. 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.

24. This Court, on considering the said request and the nature of offence committed by the accused while confirming the judgment of the trial Court, while confirming the conviction and sentence imposed by the trial Court in C.C.No.57 of 2004, order the period of substantive sentence imposed shall run concurrently with the substantive period of sentence imposed in C.C.No.52 of 2004 as confirmed 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.19 of 2013

03.07.2023