IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 23.03.2023	Pronounced on : 28.04.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.Nos.198 & 648 of 2013

Crl.A.No.198 of 2013 against C.C.No.31 of 2008

M.Jayabalan. ... Appellants/Accused No.1

/versus/

Inspector of Police,
CBI, EOW, Chennai. ... Respondent/Complainant

Prayer in Crl.A.No.198 of 2013: Criminal Appeal has been filed under Sections 374 and 382 of Cr.P.C., against the judgement dated 18.02.2013 passed by the Learned XI Additional Judge for CBI Cases, Chennai in the above C.C.No.31 of 2008 in R.C.No.4/E/2007/CBI/EOW, Chennai.

The Trial Court found this appellant and the co-accused R.Rajendran (A-2) found guilty of charges tried. On the date of judgment, the co-accused absconded. Hence, the case against the co-accused R.Rajendran was split up from the main case in C.C. No.31/2008 and new number C.C.No.5/2013 was assigned to the absconding accused. The judgment in C.C.No.31 of 2008 for the first accused/Jayabalan pronounced and sentenced as below:-

A1: Rigorous Imprisonment for three years and to pay fine of Rs.2000/-, in default, six months Simple imprisonment for the offence under Section 120-B r/w 420, 468 and 468 r/w 471 I.P.C and 13(2) r/w 13(1)(d) of P.C Act 1988,

A1: Rigorous Imprisonment for three years and to pay fine of Rs.2,000/- in default six months Simple Imprisonment for the offence under Section 13(2) r/w 13(1)(d) of P.C Act 1988.

For A1 : Mr.G.R.Hari,
for Mr.R.Baskar.

For Respondent : Mr.K.Srinivasan, Senior Advocate,
Special Public Prosecutor (CBI).

Crl.A.No.648 of 2013 against C.C.No.5 of 2013

R.Rajendran ... Appellant/Accused No.2

(A2/Rajendran in C.C.No.31 of 2008. On the date of judgment i.e., 18/02/2013 he remained absent. Hence, case against him was split up from the main case and numbered as C.C.No.5/2013. Later, secured on execution of Non-Bailable Warrant. The judgment pronounced on 04/04/2013.)

/versus/

The Union of India,
Rep. by the Superintendent of Police,
CBI/ACB, Chennai. ... Respondent/Complainant

Prayer in Crl.A.No.648 of 2013: Criminal Appeal has been filed under Section 374 of Cr.P.C 1973, pleased to allow the appeal and set aside the judgment of conviction imposed in C.C.No.5 of 2013, on the file of XI Additional Special Judge, CBI Cases relating to Banks and Financial Institutions, Chennai, dated 04.04.2013.

The Court below found the accused R.Rajendran guilty and sentenced him as below:-

A2: Rigorous Imprisonment for 7 years and fine of Rs.3,50,000/- in default to undergo one year Simple imprisonment for the offence under Section 120-B r/w 420, 468 and 468 r/w 471 I.P.C and 13(2) r/w 13(1)(d) of P.C Act 1988.

A2: Rigorous Imprisonment for 7 years and fine of Rs.3,50,000/- in default to undergo one year Simple imprisonment for the offence under section 420 I.P.C.

A2: Rigorous Imprisonment for 7 years and fine of Rs.3,50,000/- in default to undergo one year Simple imprisonment for the offence under section 468 I.P.C.

A2: Rigorous Imprisonment for 7 years and fine of Rs.3,50,000/- in default to undergo one year Simple Imprisonment for the offence under section 468 r/w 471 I.P.C.

For A2 : Mr.P.Sonu,
for Mr.S.Regu

For Respondent : Mr.K.Srinivasan, Senior Advocate,
Special Public Prosecutor (CBI).

COMMON JUDGMENT

For the sake of convenience, the appellants M.Jayabalan and R.Rajendran are referred as first and second accused, as per their original ranking before the Trial Court in C.C.No.31/2008.

2. The case of the prosecution is that, on 03/09/2005, a Savings Bank Account No:15288 in the name of Mr.R.Karthik, a student of SRM Engineering College was opened in the Indian Bank, South Usman Road on the introduction of the second accused Rajendran, who is the father of the said Karthik. An undated application for advance to traders in the name of R.Karthik was submitted, stating that, he is running a business in the name of Sinra Departmental Stores at No.135, Madipakkam Main Road, Madipakkam, Chennai for past 3 years and maintaining account in ICICI Bank. The second accused R.Rajendran, who is father of the borrower has stood as guarantee. A certificate dated 01/09/2005, signed by the Assistant Manager, Hindustan Express Limited stating that, R.Karthik son of Ramachandran working as Data Entry Operator for past 2 years on consolidated pay of Rs.5,000/- p.m were enclosed. Based on the application and documents enclosed, A-1/Jayabalan, who was the then Branch Manager had sanctioned loan of Rs.4,50,000/- to Karthik on 06/09/2005. The loan amount was credited into the SB account of Karthik.

3. On 22/01/2005, personal loan of Rs.50,000/- was sanctioned to A2/Rajendran by A1/Jayabalan. In his application for "personal loan to salaried class customer", A-2/Rajendran has stated that, he is employed in Altius Network limited, Ashok Nagar for a consolidated salary of Rs.17,500/- p.m. The loan amount credited in the SB Account of Karthik withdrawn on different dates by the second accused, on authorisation through the pay slips signed by Karthik.

4. The crime came to light after A-1 transferred from South Usman Road Branch, Mr.A.G.Sundaram (P.W.2), who succeeded A-1/Jayabalan as Branch Manager of Indian Bank, South Usman Road, found several loans sanctioned by A-2 remain unpaid and the instalments were not properly paid. The accounts under the Annapoorna Arogya loan which become as Non-Performing Assets, then on scrutiny disclosed serious irregularities committed by the then Branch Manager Jayabalan/A1.

Therefore, K.B.Nagendra Moorthy, General Manager and Circle Head of Indian Bank, Circle Office, gave a written complaint, on 20.12.2006 before the Deputy Superintendent of Police, CBI, EOW, Chennai, along with in-house investigation report submitted by Bank Investigating Officer Mr.K.Radhakrishnan.

5. The complaint was taken up for investigation, after registering a Regular Case in RC.No.4/E/2007/CBI/EOW on 21/6/2007. Out of 15 accounts, in eight cases, evidence for fraudulent disbursement of loan amount sufficiently found and therefore, eight final reports came to be filed by the Inspector of Police, Loverson Kuruvila. As far as the loan sanctioned in the name of Rajendran A-2 and his son Karthik which is the subject matter of the present appeal, final report dated 27/07/2008 was taken cognizance by the XI Additional Special Judge (CBI)in C.C.No.31 of 2008 against two accused persons, who are the appellants herein. R.Kasi, R.K.Vasu, S.Ramesh, M.Sounder Rajan and D.Ranganathan were shown in column (2) as accused persons not sent for trial.

6. The trial Court, on perusal of the documents and final report, framed charges as below:-

Rank of the Accused	*Charge framed under Section against the accused*
A1 and A2	120-B r/w Sections 420, 468 and 468 r/w 471 of I.P.C and Section 13(2) r/w 13(1) (d) of P.C Act, 1988.
A2	Section 420 I.P.C Section 468 I.P.C Section 468 r/w 471 I.P.C
A2	Section 13(2) r/w 13(1) (d) of P.C Act, 1988

7. To prove the charges, the prosecution has examined 14 witnesses (P.W.1 to P.W.14) and marked 50 exhibits (Ex.P.1 to Ex.P.50).

8. The Trial Court, on appreciating the evidence held both the accused (A1 & A2) guilty of the charges mentioned above and sentenced them to undergo with the following punishment as below:-

Accused	*Offences*	*Conviction and Sentence imposed by the trial Court*
M.Jayabalan [C.C.No.31 of 2008]	Section 120-B r/w 420, 468, 468 r/w 471 I.P.C and 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 six months.
	Section 13(2) r/w 13(1)(d) of PC Act, 1988.	To undergo R.I for three years and to pay fine of Rs.2,000/-, in default, to undergo S.I for six months.

Accused	*Offences*	*Conviction and Sentence imposed by the trial Court*
Rajendran [C.C.No.5 of 2013]	120-B r/w 420, 468 and 471 I.P.C and 13(2) r/w 13(1) (d) of PC Act	To undergo R.I for seven years and to pay fine of Rs.3,50,000/-, in default to undergo S.I for one year.
	420 of I.P.C	To undergo R.I for seven years and to pay fine of Rs.3,50,000/-, in default, to undergo S.I for one year.
	468 of I.P.C	To undergo R.I for seven years and to pay fine of Rs.3,50,000/-, in default, to undergo S.I for one year.
	468 r/w 471 of I.P.C	To undergo R.I for seven years and to pay fine of Rs.3,50,000/-, in default, to undergo S.I for one year.

The substantial sentence of imprisonment ordered to run concurrently and the period of imprisonment already undergone ordered to be set off.

9. Aggrieved by the above conviction and sentence passed by the trial Court in C.C.No.31/2008, Jayabalan, the first accused filed Crl.A.No.198 of 2013 and in C.C.No.5 of 2013 (split up from C.C.No.31/2008) by Rajendran, the second accused filed Crl.A.No.648 of 2013.

10. According to the appellants, the trial Court failed to consider that the credit facilities was extended to Karthik after obtaining necessary documents and security. It is pure and plain financial transaction and disbursal of loan. Due to default in repayment, the accused persons are suspected to have conspired to cheat the Bank.

11. Mr.K.Srinivasan, Learned Special Public Prosecutor appearing for the State submitted that, this is not a stray case where the loan was sanctioned by A1/Jayabalan without proper scrutiny or with improper documents The Account opening form, loan application, withdrawal slip as well as withdrawal were all done by A-2 Rajendran and as the Branch Manager, knowing well that the salary certificate and the informations found in the loan application form in the name of Karthik is false, allowed to open the account and also allowed A-2/Rajendran to withdraw the money under Ex.P.20 to Ex.P-26. The hand writing expert P.W-10 (Ravi) in his opinion Ex.P.36 and in the deposition has clearly stated that, the signature and writings found in Ex.P-2 (account opening form), Ex.P-5 Asset and Liabilities statement, Ex.P-20 to Ex.P-26 withdrawal slips were written by A2/Rajendran.

12. A-1/Jayabalan, the Bank Manager without proper application has advanced the loan. The plain perusal of the documents based on which the loan sanctioned to Karthik and allowing the second accused to withdraw the entire amount, proves the conspiracy between these two accused to cheat the bank. Without proper scrutiny and for extraneous reasons, loan to nearly 15 trade finance accounts under the scheme of Annapoorna Arogya scheme was sanctioned. Later, they all become Non-Performing Asset (NPA) for default. Suspicion arose about the manner in which these loans were sanctioned and therefore, in-house enquiry was ordered to be conducted by K.Radhakrishnan, Senior Manager, Vigilance Department. On scrutiny of the records and spot visit to the addresses of the loanees, he gave a report with the following findings:-

> *"1. The H.O Guidelines regarding the term loans was not followed.*
> *2. The rule allows payment vide DD or pay order but in the present case cash was directly paid to the loanee and in some cases amount credited to the respective accounts.*
> *3. The margin factor was not followed.*

4. As per the term loan condition invoice to be obtained from the supplier of the equipments and stamped receipts should have been obtained and kept with the documents
5.Before release of the loan amount, business place should have been verified by the Manager..."

13. Heard the Learned Counsels for the appellants and the Learned Special Public Prosecutor for the respondent. Records perused.

14. In this case, the loan sanctioned to Karthik is primarily based on the information furnished by the applicant that, he is running a Departmental Stores at Madipakkam for 3 years and having account in ICICI bank. Ex.P-4 appraisal memorandum shows that, A-1 has sanctioned trade loan of Rs.4,50,000/ to Karthik for his departmental Stores. Whereas, P.W-5 (Radhakrishnan) had deposed that, he and the Branch Manager A.G.Sundaram visited the Madipakkam. They found no such departmental store by name Sinra Departmental Stores in the said address. R.Karthik was a student at that time and he is not eligible to get trade loan. P.W-11 Venkatesan had deposed that, the address and phone number shown in Ex.P-6 the credit report for R.Karthik signed by A-1/Jayabalan is his address and his phone number. At no point of time, there was enquiry from the Bank. P.W.11 is a resident of Madipakkam for years and he know A-2 and his family and deposed that, they are not in any business activity in Madipakkam.

15. The testimony of P.W-11 (Venkatasan) clinches the issue that, without any business showing the address and phone number of P.W-11, A2/Rajendran had applied for trade loan in the name of his son, who was pursing his studies. A1/Jayabalan, without inspection had sanctioned loan. Also allowed A2/Rajendran to withdraw the money using payslips. The loan amount not repaid and the account became Non-Performing Assets..

16. The hand writing experts opinion Ex.P.36 and his testimony proves that, the documents used to avail loan contains false information. The turnover details and assets and liabilities statements are manipulated which attracts offences under Sections 468 and 471 of I.P.C. Hence, the finding of the trial Court holding A1 and A-2 guilty of the charges is confirmed.

17. While confirming the conviction, this Court is of the view that, the conviction of seven year R.I for the charges imposed on A2/Rajendran, who absconded on the date of judgment is on the higher side and not proportionate to the offence, hence same is reduced to two years R.I and with fine of Rs.2,000/- for each charge and in default one year S.I for each.

18. As a result, the ***Criminal Appeal No.198 of 2013 is dismissed.*** The judgment of the Trial Court passed in C.C.No.31 of 2008 is confirmed. The trial Court shall secure the accused person A1/Jayabalan and commit him to prison to undergo remaining period of sentence. The period of sentence already undergo shall be set off under Section 428 of Cr.P.C. The bail bond executed, if any, shall stand cancelled. The period of sentence imposed on this appellant, who is arrayed as A1 in C.C.No.31 of 2008 shall run concurrently together with the period of sentence imposed on him for the similar offence and identical sentence in C.C.No.27 of 2008, wherein the accused is arrayed as A2.

19. Insofar as, the conviction and sentence passed by the trial Court in

C.C.No.5 of 2013 against A2/Rajendran, this Court modifies the conviction as below:-

<table>
<tr><th>Accused</th><th>Offences</th><th>Conviction and Sentence imposed by the trial Court</th><th>Conviction and Sentence imposed by this Court</th></tr>
<tr><td rowspan="4">Rajendran [C.C.No.5 of 2013]</td><td>120-B r/w 420, 468 and 471 I.P.C and 13(2) r/w 13(1) (d) of PC Act</td><td>To undergo R.I for seven years and to pay fine of Rs.3,50,000/-, in default to undergo S.I for one year.</td><td>To undergo R.I for Two years and to pay fine of Rs.2,000/-, in default to undergo S.I for one year.</td></tr>
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20. As a result, the ***Criminal Appeal No.648 of 2013 is partly allowed.*** The trial Court shall secure the accused person A2/Rajendran and commit him to prison to undergo remaining period of sentence. The period of sentence already undergo shall be set off under Section 428 of Cr.P.C. The sentence ordered to run concurrently. The bail bond executed, if any, shall stand cancelled.

28.04.2023

Index : Yes/No.
Neutral Citation : Yes/No.
Speaking order/Non-speaking order
bsm

To,

1. The Learned XI Additional Judge, (CBI Cases), Chennai.
2. The Superintendent of Police, CBI/ACB, Chennai.
3. The Inspector of Police, CBI, EOW, Chennai.
4. The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN,J.

bsm

Pre-Delivery common judgment made in
Crl.A.Nos.198 & 648 of 2013

28.04.2023