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.20 of 2013

[Crl.A.No.20 of 2013 against C.C.No.58 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.58 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.58 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 on 26/09/2002, against the appellant and unknown others for the offences of criminal conspiracy 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. Criminal Appeal No:20/2013, which is under consideration, arises from the judgement passed in C.C.No.58/2004.

5. The case of the prosecution 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. During his tenure at the said branch, G.Sivakumar, S/o.M.Ganapathy on 04/03/2002 deposited Rs.3,00,000/- under the Re-investment Plan (RIP). For the said deposit, the RIP receipt No:210660 was jointly signed and issued by PW-2 [Ms.Jagashree] and the accused. Necessary entries were made in the Deposit Ledger maintained in the Bank. The accused, who was entrusted with the RIP Deposit Receipt No:206505 and having dominion over it, misappropriated the receipt to make a false document replicating the particulars found in the original RIP receipt bearing No:210660. He handed over the forged RIP receipt bearing No:206505 to the depositor. By dishonestly retaining the original RIP receipt with him, he fraudulently misused it for raising loan on the deposit. He fabricated the application for loan in the name of Sivakumar the depositor. After sanctioning loan of Rs 2,80,000/-, he by authorising the debit vouchers and credit vouchers in respect of this amount, had permitted the Bank to issue three demand drafts in the name of third parties, without getting the authorisation of the depositor, who was at that time not in India and living in Germany and his accounts being administered by his father Ganapathi. The RIP receipt used by the accused to forge a fake RIP in the name of Sivakumar was the part of stationery entrusted to the accused by A.R.Ramasamy, the Manager, West Mambalam Branch, after getting acknowledgement from the accused.

6. Knowing well that the documents are forged, dishonestly the accused sanctioned loan on deposit. A sum of Rs.2,80,000/- credited into the loan account created in the name of Sivakumar. From that account same amount debited for issuance of two Demand drafts dated 06/04/2002 for Rs.50,000/- and Rs.60,000/- in the name of R.Rajagopalan and one demand draft dated 06/04/2002 for Rs.50,000/- in the name of B.Geetha was issued. The depositor has not authorised to issued demand drafts in the name of third parties from his account. He neither gave letter for loan or availed loan. His signature found on the reverse of the RIP No:210660 is not the signature of his son Sivakumar.

7. As per the bank record, for the said deposit, RIP receipt No:210660 dated 04/02/2002 was issued to the depositor Sivakumar. However, with a dishonest intention to cheat the depositor and the bank, the accused, retained the said RIP Receipt with him, instead of handing over it to the depositor. To satisfy the depositor, he gave the fabricated RIP receipt No:206505. The said RIP receipt was in dominion as Manger of the Branch and entrusted to him under a letter of acknowledgement by the Manager of West Mambalam. The application-cum-pledge letter for advance loan on RIP No:210660 is a false document containing forged signature of the depositor Sivakumar. The signature on the reverse of the said receipt is not the signature of Sivakumar. Using the forged RIP and letter as genuine, loan Rs.2,80,000/- sanctioned with dishonest intention and the loan amount converted into three Demand Drafts in the name of third parties for Rs.50,000/-,Rs50,000/- and Rs 60,000/- .

8. The trial court based on the final report framed charges as under:-

> ***Charge No.1:*** *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.60,000/- vide DD No.471767 in*

favour of B.Geetha, 471678, 471677 for Rs.50,000/- and R.60,000/- respectively in favour of one Shri Rajagopalan as LOD from the FDR No.210660 of Shri G.Sivakumar for Rs.3 lakhs and that you thereby committed an offence punishable under Section 420 of IPC and within my cognizance.(3 counts).

***Charge No.2:** 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.210660 of Shri G.Sivakumar for Rs.3 lakhs, misappropriated an amount of Rs.1,60,000/- as mentioned in detail in the above charge and thereby you committed an offence punishable under Section 409 of IPC and within my cognizance.(3 counts).*

***Charge No.3:** 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 under Section 468 IPC and within my cognizance.*

1)Application cum pledge letter for advance against on deposit in the bank for LOD against the FDR No.210660 in the name of Shri G.Sivakumar.

Charge No.4: *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 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 468 r/w 471 of I.P.C and within my cognizance.*

Charge No.5: *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 FDR bearing No.206505, dated 04.03.2002 in the name of G.Sivakumar which is a valuable security with intent to give the same to the depositors in the place of original FDR bearing No.210660 dt.04.03.2002 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: *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 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.7: *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 wilfully and with intent to defraud the bank altered i)Debit voucher for debiting LOSD 9/597 for LOD of Rs.1.10 lakhs against STD 221914 the amount in the first row of debit column and second row of balance column, ii)the amount in the first line and the balance amount in the second line altered in LOD 9/597 Ledger Sheet No.30185 for Rs.1.10 lakhs to Shri Sivakumar against STD No.221914 regarding debit, iii) the amount in three places in debit voucher for debiting BP for Rs.2.30 lakhs which belong to the Bank and thereby you committed an offence punishable u/s 477-A IPC and within my cognizance.(3 counts).*

Charge No.8: *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 you position as such public servant obtained for yourselves pecuniary advantage of R.1,60,000/- from the bank and in the manner as stated in the firt charge and thereby you committed an offence punishable under Section 13(2) r/w 13(1)(d) of PC Act 1988 and within my cognizance (3 counts).*

9. To prove the above charges, the prosecution has examined 7 witnesses (P.W.1 to P.W.7), marked 24 Exhibits (Ex.P.1 to Ex.P.24). Tmt.P.Geetha, Branch Manager, Indian Bank, Thiruporur Branch was examined as C.W.1.

10. Adopting almost similar *modus operandi*, the appellant had indulged few more 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. Nine appeals before this Court filed and same taken up for consideration individually in C.A.Nos.14 to

22 of 2013.

11. The sentence imposed on the accused by the trial Court in C.C.No.58 of 2004 is as below:-

Accused	***Offences***	***Conviction and Sentence imposed by the Trial Court***
Chandrasekaran	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 (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.
	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.
	477-A 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.
	13(2) r/w 13(1)(d) of P.C Act, 1988 (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.

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.

12. The depositor in this case is Mr.Sivakumar, S/o.M.Ganapathy, the amount alleged to have been misappropriated is Rs.1,60,000/-

13. The Learned Counsel for the appellant as well as the Learned Special Public Prosecutor submitted that the arguments in C.A.No.19/2013 against C.C.No.57/2004 be adopted in this appeal.

14. The facts and evidence in C.C.No.57 of 2004 and C.C.No.58 of 2004 are identical, except the depositor name and amount. In C.C.No.57 of 2004, the depositors Mr.Ganapathy in C.C.No.58 of 2004 which is subject matter of the present appeal C.A.No.20 of 2013, the depositor is his son Siva kumar. The depositor Siva Kumar was not examined but on his behalf his father, M.Ganapathi, who was Managing the accounts of his son Sivakumar was examined as P.W-3.

15. 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 depositor, who availed loan and signed in the documents was not examined. The signature of the depositor in the reverse of the RIP-Ex.P 5 on the revenue stamp and in the loan application form Ex.P-6 ought to have been sent for field expert opinion. The entrustment to the accused the RIP receipt No:206505 (Ex.P-15) to bring home the charge under Section 409 IPC not proved. The oral evidence of PW-4 about the entrustment of RIP receipt No:206505 to the accused, based on the acknowledgement in the letter marked as Ex.P19, is not corroborated with the registers maintained at West Mambalam Branch for that purpose. PW-2 evidence that the accused signed at two places in RIP Ex.P-15, is not proved through comparison with admitted signature of the accused. M.Ganapathi [PW-3] the father of the depositor is not a competent witness to speak about the nature of transactions of his son with the bank.

16. Per contra, the Learned Senior Counsel for the CBI/respondent submitted that, in this case, PW-3 M.Ganapathy is the father of the depositor Sivakumar. The witness had specifically deposed that his son is in Germany and on his behalf, he is maintaining his accounts with the Indian Bank, Thiruporur Branch. This witness is not a stranger to the accused. He is brother-in-law of the accused and there is no reason to suspect him for falsely deposing against the accused. PW-3 had categorically stated that his son Sivakumar deposited Rs.3 lakhs in the Indian Bank, Thiruporur Branch, for which the accused gave him the RIP receipt bearing No: 206505 (Ex.P-15). This RIP receipt proved to be a valuable security entrusted to the accused by PW-4, which has been dishonestly converted to misappropriate the fund of the Bank. PW-3 had deposed that the signature on the reverse of RIP receipt No: 210660 which is the original receipt is not his son's signature. His son never requested the bank to sanction loan on his deposit. Therefore, the trial Court had rightly convicted the accused for cheating the depositor as well as the Bank, committed breach of trust, fabricated valuable security and other documents. Using the forged documents as genuine, misappropriated the money and obtained pecuniary advantage.

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

18. The testimony of PW-3 [Mr.Ganapathi] proves the fact that his son Sivakumar in the year 2002 deposited Rs.3 lakhs in the Indian bank, Thiruporur Branch. The accused was working as Manager of that branch and he gave the deposit receipt Ex.P-16 to him. Neither he nor his son requested for loan against this deposit. The signature on the back of Ex.P-5 is not his son's signature. According to PW-3, the accused did not give the original RIP Receipt Ex.P-5.

19. The testimony of P.W-2 disclosed, the deposit money was brought to the bank by the accused. The depositor Sivakumar did not come to the branch for opening the account. She is the co-signatory along with the accused in Ex.P-5 the RIP receipt No:210660 dated 04/03/2002. Her testimony further discloses the fact that the accused brought to the bank the loan application form and the depositor did not come to the bank to avail the loan. The loan application Ex.P-6 was filled by the accused. The vouchers relating to the loan on deposit dated 06/04/2002 for Rs.1,60,000/- was authorised by her. Ex.P-9 to Ex.P-11 the credit vouchers to disburse the loan amount by way of demand draft in favour of P.Geetha Rs.50,000/-, two demand drafts in favour of Rajagopalan Rs.50,000/- each were authorised by her on the basis of sanction given by the accused on the

LOD form (Ex.P-2).

20. The epi-centre of crime emanates from Ex.P-15, the forged RIP receipt bearing No:206505. According to PW-2, the RIP bearing receipt No:206505 dated 04/03/2002 in the name of Sivakumar for Rs.3 lakhs is in the handwriting of the accused and he had affixed his signatures in both the places (meant for the signatures of the authorised signatories). This RIP not officially issued to Sivakumar since there is no entries in the ledger about the issuance of Ex.P-15. Also, no request was received from the depositor to issue duplicate receipt.

21. P.W-4 [A.K.Ramasamy] had deposed that, the RIP receipt number 206505 (Ex.P-15) is part of the stationery given to the accused from the West Mambalam Branch on 08/05/2001. The acknowledgement for receiving the receipt book is made by the accused in Ex.P-19. P.W-3 had deposed Ex.P-15 was given to him by the accused.

22. Thus, it is clearly established that Ex.P-15 was entrusted to the accused by PW-4. The said entrustment is in the capacity of a public servant/Manager of the Bank is proved from the acknowledgement by the accused in Ex.P.19. The accused had misused this RIP entrusted to him by replicating the entries found in the original RIP Ex.P-5 bearing No:210660. Used this RIP Ex.P.15 forged and given to P.W-3 M.Ganapathi, the father of the depositor Sivakumar genuine. Based on false document viz., application for loan in the name of Sivakumar, the accused had dishonestly sanctioned loan of Rs.1,60,000/- and also sanctioned to convert the loan amount as three demand drafts in the name of the third parties.

23. In this case, the three demand drafts in the name of the third parties issued without the request of the depositor. According to PW-2, who is one of the signatories to these three Demand Drafts (Ex.P.12 to Ex.P.14), she prepared and issued these demand drafts in the name of third parties on the assurance of the accused that he will bring the request letter from the depositor and submit to bank.

24. The prosecution has not examined Tmt.P.Geetha or Rajagopalan in whose favour these 3 demand drafts stand. The accused is neither the signatory to these demand drafts. The incriminating evidence against the appellant in so far as the three demand drafts marked as Ex.P-12 to Ex.P-14 is the evidence of P.W-2, who had deposed that, she prepared the credit vouchers Ex.P-9 to Ex.P-11 and authenticated on the instruction of the accused. This is a weak piece of evidence to fix the accused for the charge of using the forged document as genuine to misappropriate the loan amount.

25. The accused with intention to cause damage to the depositor had retained the original RIP (Ex.P-5) with him. To deceive the depositor, he had given the duplicate RIP (Ex.P-15). Thus, the prosecution has proved that the depositor been cheated by the accused, when he dishonestly gave the duplicate RIP receipt Ex.P-15 with intention to use the original for raising loan and to deceived by make them believe that Ex.P-15 is the original RIP receipt. This satisfied the ingredient required to prove the charge of cheating. Later, the original RIP Ex.P-5 been dishonestly used for raising loan, without the consent and knowledge of the depositor. By filing up RIP receipt No:206505 (Ex.P-15) in his hand and affixing his signature for both the authorised signatories. Thus, the charge of forging valuable security stands proved on handing over the forged RIP receipt Ex.P-15 to P.W-3 Mr.Ganapathi with dishonest intention as if it is the genuine RIP, the charge of using the forged valuable security as genuine stands proved. From the testimony of P.W-4 and Ex.P-19 the entrustment of Ex.P15 to the accused, his dominion over it and conversion to his own use stands proved. Being a public servant, the proven facts also attracts the offence of misconduct by a public servant punishable u/s.13(2) r/w13(1)(d) of Prevention of Corruption Act, 1988.

26. Therefore, the conviction and sentence for offences under Sections 420 I.P.C, 409 I.P.C, 467 I.P.C, 467 r/w 471 I.P.C and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 are confirmed. The conviction for the charges under Section 468 I.P.C and Section 468 r/w 471 I.P.C are hereby set aside for want of proof beyond doubt.

27. In the result, ***this Criminal Appeal No.20 of 2013 is partly allowed as stated above.*** The judgment of conviction passed by the XI Additional Special Judge (CBI cases relating to Banks and Financial Institutions), Chennai in C.C.No.58 of 2004, dated 21.12.2012 is partly set aside. The trial Court is directed to secure the appellant/accused and commit him to the prison to undergo the remaining period of sentence imposed by the trial Court for the offences under Sections 420, 409, 467, 467 r/w 471 of I.P.C and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. The period of imprisonment already undergone by the accused shall be set off under Section 428 of Cr.P.C.

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 partly confirming the judgment of the trial Court, order the substantive sentence imposed in C.C.No.58 of 2004 as modified in C.A.No.20 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
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.20 of 2013

03.07.2023