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.21 of 2013

[Crl.A.No.21 of 2013 against C.C.No.59 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.59 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.59 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 28/09/2002 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 different 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, 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.21 of 2013 which is under consideration arises from the judgement passed in C.C.No.59 of 2004. Based on the final report, charges were framed and the substance of the charges is that, Mr.Chandrasekaran the appellant/accused, while working as Second Manager of Ramapuram Branch of Indian Bank and as Branch Manager of Thiruporur branch of Indian Bank between 13.12.1999 and 29.06.2002, with a dishonest intention had converted the FD receipt bearing No:745078 over which he had dominion. He used it as genuine to forge a document as if, he along with his brother Mr.R.Venkatasubramanian had deposited Rs.5,00,000/- in West Mambalam Branch of Indian Bank. For the said purpose, fake rubber stamp, seal of Indian Bank were affixed on the forged FDR bearing No:745078 and by using the forged document as genuine, on 14/08/1999, he availed Rs.2,00,000/- as loan on deposit (LOD) at Ramapuram Branch, by abusing his official position as a public servant viz., Second Manager, Indian Bank, Ramapuram Branch. In the loan application, the accused forged the signature of his brother Mr.R.Venkatasubramanian. Knowing fully well that, the letter as well as the FDR are forged document, he authorised the sanction of loan. Subsequently, he got transfer to Thiruporur Branch. Later, when the loan became overdue and exceeded the limits, the accused made another application for additional loan forging his brother's signature and authorised the sanction of the loan. The accused, on 21 occasions had drawn money either as cash or for purchase of Demand Drafts, from his loan account totally a sum of Rs.5,99,502/-. Thereby, had committed offences of cheating, breach of trust by a public servant, conversion of valuable security by forgery and use of the valuable security so forged as genuine, forgery of documents like Application cum pledge letter in name of his brother, letter of West Mambalam Branch to record the lien on the deposit and use of those documents as genuine to cheat the bank and to make pecuniary advantage.

5. The trial Court framed the following charges:-

Charge No.1: u/s.420 IPC (21 counts).

R.Chandrasekaran while working as Branch Manager of Thiruporur Branch of Indian Bank during the period from 1999 to 2002 at Ramapuram and Thiruporur cheated Indian Bank, by dishonestly inducing the bank to deliver the following amounts shown in the chart hereunder as LOD on the stolen FD receipts in the joint names of your brother Shri Venkatasubramanian and yourself showing as if it is issued West Mambalam Branch for amount of Rs.5 lakhs on 1.6.99 as FD No.745078 and thereby you committed an offence punishable us 420 of IPC and within *my cognizance. (21 counts)*

Sl.No.	DD.No.	Date of issue	Amount	Issued Branch	Favour to
1.	66083	14.8.99	Rs.10,000/-	Ramapuram	R.Venkatasubramanian
2.	66082	14.8.99	80,990/-	Ramapuram	G.Sivakumar
3.	Cash	16.8.99	10,000/-	Ramapuram	SB 8650 of Shri R.Chandrasekaran (A1)
4.	66084	19.8.99	25,000/-	Ramapuram	M/s.Sri Sundarsana Consultants
5.	Cash	19.8.99	20,000/-	Ramapuram	Cash by Shri R.Chandrasekaran (A1)
6.	66089	14.9.99	55,000/-	Ramapuram	Margabandu Sastrigal
7.	Cash	14.9.99	3500/-	Ramapuram	Cash by Shri R.Chandrasekaran (A1)
8.	66092	17.9.99	55,000/-	Ramapuram	M/s.Sri Sundarsana Consultants
9.	Cash	25.10.99	7,780/-	Ramapuram	Cash by Shri R.Chandrasekaran (A1)
		Total	1,08,870/-		
Sl.No.	**DD.No.**	**Date of issue**	**Amount**	**Issued Branch**	**Favour to**
1.	66110	02.11.99	91,000/-	Ramapuram	M/s.Leo Enterprises
2.	66113	06.11.99	17,870/-	Ramapuram	M.J.Prabhakar

Sl.No.	DD.No.	Date of issue	Amount	Issued Branch	Favour to
1.	Cash	05.08.00	5,000/-	Thiruporur	Cash to Shri R.Chandrasekaran (A1)
2.	Cash	24.08.00	10,000/-	Thiruporur	SB A/c.No.11282 of Shri.R.Chandrasekaran (A1)
3.	Cash	03.10.00	15,000/-	Thiruporur	Shri R.Chandrasekaran (A1)
4.	Cash	03.10.00	11,541/-	Thiruporur	PF Advance loan

5.	*77819*	*03.10.00*	*22,200/-*	*Thiruporur*	*Delhi*
6.	*77819*	*03.10.00*	*52,700/-*	*Thiruporur*	*M.Ganapathy*
7.	*207969*	*03.10.00*	*5,250/-*	*Thiruporur*	*G.Sivakumar*
8.	*207968*	*31.10.00*	*6,671/-*	*Thiruporur*	*K.R.Sethuraman*
9.	*77839*	*13.10.00*	*50,000/-*	*Thiruporur*	*M/s.Keethivasan Investment Pvt. Ltd*
10	*77847*	*20.10.00*	*50,000/-*	*Thiruporur*	*M/s.Keethivasan Investment Pvt. Ltd*
		Total	*Rs.2,23,362/-*		

Charge No.2: u/s.409 IPC (21 counts).

Shri.R.Chandrasekaran while working as Second Manager of Ramapuram branch of Indian Bank and Branch Manager of Thiruporur branch of Indian Bank during the period from 1999 to 2002 at Ramapuram and Thiruporur having dominion over the over the bank funds in the respective branches misappropriated an amount of Rs.5,99,502/- as mentioned in detail in the above charge and thereby you committed an offence punishable u/s 409 of IPC and within my cognizance. (21 counts).

Charge No.3: u/s.468 IPC (4 counts).

Shri.R.Chandrasekaran, while working as Second Manager of Ramapuram branch of Indian Bank and Branch Manager of Thiruporur branch of Indian Bank during the period from 1999 to 2002 at Ramapuram and

Thiruporur forged the following documents intending that it shall be used for the purpose of cheating and that you thereby committed an offence punishable w/s 468 IPC and within my cognizance.

1) Application cum pledge letter for advance against deposit in the bank for LOD against the FDR No.745078, dt. 14.8.99 in the name of Shri R. Venkatasubramaniam

2) Reply letter marking lien as if by Manager, West Mambalam branch.

3) Application cum pledge letter for availing advance against deposit in the bank for LOD against the FDR No.745078 dt. 1.11.99 in the name of Shri R.Venkatasubramaniam.

4) Application cum pledge letter for availing advance against deposit in the bank for LOD against the FDR No.745078 dt. 20.10.2000 in the name of Shri R.Vendatasubramaniam. (4 counts).

Charge No.4: u/s.468 r/w. 471 IPC (4 counts).

Shri.R.Chandrasekaran while working as Second

Manager of Ramapuram branch of Indian Bank and Branch Manager of Thiruporur branch of Indian Bank during the period from 1999 to 2002 at Ramapuram and 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 IPC and within my cognizance. (4 counts) .

Charge No.5: u/s.467 of IPC.

Shri.R.Chandrasekaran while working as Second Manager of Ramapuram branch of Indian Bank and Branch Manager of Thiruporur branch of Indian Bank during the period from 1999 to 2002 at Ramapuram and Thiruporur forged the seal and signature of West Mambalam, Indian Bank and signature of the Branch Manager of West Mambalam branch in FDR bearing No. 745078 dt. 1.6.1999 in the names of Shri Venkatasubramanian and also yourself which is valuable security with intent to defraud the bank for availing various LODs as stated in the first charge and thereby you committed an offence punishable us 467 IPC and within my cognizance.

Charge No.6: u/s.467 r/w. 471 IPC.

Shri.R.Chandrasekaran while working as Second Manager of Ramapuram branch of Indian Bank and Branch Manager of Thiruporur branch of Indian Bank during the period from 1999 to 2002 at Ramapuram and 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 w/s 467 r/w 471 IPC and within my cognizance.

Charge No.7: u/s.13(2) r/w.13(1)(d) of P.C.Act, 1988.

Shri.R.Chandrasekaran while working as Second Manager of Ramapuram branch of Indian Bank and Branch Manager of Thiruporur branch of Indian Bank during the period from 1999 to 2002 at Ramapuram and Thiruporur by corrupt or illegal means or by otherwise abusing your position as such public servant obtained for yourselves pecuniary advantage of Rs.5,99,502/- from the bank and in the manner as stated in the first charge and thereby you committed an offence punishable w's 13(2) r/w 13(1)(d) of PC Act, 1988 and within my cognizance.

6. To prove the charges, the prosecution has examined 9 witnesses (P.W.1 to P.W.9), marked 49 exhibits (Ex.P.1 to Ex.P.49). Tmt.P.Geetha, Branch Manager, Indian Bank, Thiruporur branch was examined as CW.1.

7. Against the appellant, nine cases registered. All the nine cases were tried simultaneously. The trial Court held the appellant guilty in all the nine cases and sentenced him.

8. In respect of C.C.No.59 of 2004, which is the subject matter of Crl.A.No.21/2013, under consideration, 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 (21 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 (21 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 (4 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 r/w 471 of I.P.C (4 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 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. The Learned Counsel for the appellant and the Learned Special Public Prosecutor for the respondent/C.B.I made their respective submissions and same taken note by this Court for appreciation of law and facts.

10. Submission by the Appellant Counsel:-

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 appellant, being a Branch Manager of Thiruporur Branch and earlier as Second Manager of Ramapuram Branch, was tried for the offence of cheating as well as breach of trust by a public servant i.e., offences punishable under section 420 I.P.C as well as 409 I.P.C. As per the charges, he induced the bank and obtained loan to a tune of Rs.5,99,502/- on the forged documents. Thereby, committed offence punishable under Section 420 I.P.C. He also misappropriated the property of the Bank entrusted to him, thereby committed breach of trust an offence under Section 409 I.P.C.

12. The Learned Counsel for the appellant submitted that, the act of dishonest inducement to deliver a property and the act of receiving the property entrusted are mutually exclusive to each other. For the same property, offence under Sections 420 and 409 of I.P.C cannot co-exist. Referring the definition of *'cheating'* found in Section 415 I.P.C and the definition of *'Criminal breach of trust'* found in Section 405 I.P.C, the learned counsel for the appellant, strenuously argued that to attract Section 420 I.P.C, the necessary ingredients are dishonest inducement to deliver any property and such dishonest intention must be from the inception. Whereas, to attract offence under Section 409 I.P.C, it is the *'entrustment'* of the property to the servant or banker as the case may be. To attract Section 409 I.P.C, the dominion over property by entrustment to a banker and that property must be misappropriated dishonestly converting it as his own. Since there is a generic difference between these two offences, a person cannot be prosecuted for both the offences for the same set of facts. Hence, there is grave error in the charges framed and tried.

13. Secondly, the prosecution failed to prove that the FD receipt bearing No:745078 belongs to Ramapuram Branch and the accused had dominion over it or entrusted to the accused by some other officer. The prosecution failed to establish that the FD receipt marked as Ex.P-2 was dishonestly and fraudulently used by the accused to avail loan in his name and in the name of his brother Balasubramanian. The disputed signatures in the documents like, FD receipt Ex.P-2, loan applications Ex.P-4, request letters for additional loan Ex.P-9 and Ex.P-13 were not sent for expert opinion. The trial Court erroneously relied upon the oral evidence of the prosecution witnesses, who are not experts or have direct knowledge about the transaction under consideration. P.W.2 Tmt.I.Jagashree, who had introduced the Ex.P-2 to Ex.P-36 is a staff at Thiruporur Branch. She is not a witness competent to speak about the documents maintained at Ramapuram Branch or West Mambalam Branch.

14. When admittedly, the documents relied by the prosecution have been dealt by several of the bank staff and the accused was not the only person who processed the loan application or the debit and credit vouchers. In fact in most of the documents, the accused had not seen or signed. Therefore, even if there is any element of irregularity in the FD receipt (Ex.P-2) and the loan transaction, the accused cannot be singularly held responsible.

15. P.W-1 K.Natarajan, is the Sanctioning Authority, a Senior Officer of the Bank and a person well conversant with the banking procedure, ought not to have granted sanction to prosecute, when the ingredients for forgery or dishonest intention or cheating are not even *prima facie* available. P.W-1, had accorded sanction without proper application of mind. The trial Court failed to take note that the lacunae in the order of sanction to prosecute and bad for want of application of mind.

16. Submission by the Special Public Prosecutor:-

Per contra, the Learned Special Public Prosecutor appearing for C.B.I submitted that, the prosecution through oral and documentary evidence had proved beyond any pale of doubt that the accused is guilty of the charges framed. There is no error in charging the accused for offence under section 420 I.P.C as well as section 409 I.P.C. The facts of the case attracts both charges.

17. According to the Special Public Prosecutor for the respondent/C.B.I, the prosecution has proved the charges against the accused through the witnesses and exhibits in the following manner:-

The Fixed Deposit receipt bearing No:745078 Ex.P-2 belongs to Ramapuram Branch whereas, West Mambalam Branch is show as the issuing bank. The FD receipt stands in the name of R.Venkatasubramanian and R.Chandrasekaran (accused). The Fixed Deposit is for Rs.5,00,000/-. The term of deposit is shown as 120 months from 01/06/1999. In Ex.P-2, the Ledger Folio No:21/165. P.W-2 Tmt.I.Jagashree had deposed that, the accused was transferred from Ramapuram Branch to Thiruporur Branch. As per the procedure when a staff get transfer from one branch to another, the documents relating to the loan availed by that Officer will be transferred to the branch he is transferred. Therefore, Thiruporur branch received Ex.P-2 from Ramapuram Branch. Along with FD receipt Ex.P-2, the loan application of the accused taking advance on the deposit Ex.P-4 also received. The witness had identified the signatures of the accused found on the reverse of Ex.P-2 and on the loan application form Ex.P-4. The signature in the respective documents are marked as Ex.P-3 and Ex.P-5, Ex.P-6. On 01/11/1999, the depositors R.Venkatasubramanian and R.Chandrasekaran (accused) sought additional loan on the deposit and the additional loan was sanction by himself. Subsequently, several applications for additional loan of different amount sought by the accused and he himself sanctioned it and paid into his loan account. He had passed the vouchers for purchase of demand drafts in the name of M/s.Keerthivasan Investment Private Ltd from his loan account and given to A.Jayasankar (PW-4) and M.Ganapathy (PW-5). As per the evidence of A.Jayasankar (PW-4), the two demand drafts for Rs.50,000/- each was given to him by the accused for purchase of shares in the name of his wife C.Jayamala. As per the evidence of M.Ganapathy (PW-5), the demand draft for Rs.52,700/- was given to him by the accused to whom he earlier entrusted Rs.50,000/- to invest in Fixed Deposit in the accused Bank. The accused did not bring the receipt, but after repeated demand, gave the demand draft for Rs.50,000/-. Therefore the Learned Special Public Prosecutor for respondent/C.B.I submitted that, the trial Court rightly convicted the accused and the appeal has to be dismissed as devoid of merits.

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

> ***Point for consideration:-*** *Whether the prosecution has proved the charges against the accused beyond reasonable doubt and whether Section 106 of the Indian Evidence Act, can be applied to draw adverse inference against the accused for not explaining the circumstances Ex.P-2 came into existence in his name and his brother Venkatasubramaniam name?*

19. In this case, as per Ex.P-2, Fixed Deposit receipt, the accused and his brother R.Venkatasubramanian are the joint depositors. The said

R.Venkatasubramanian is the key witness for the prosecution and he was examined as P.W-3. He had deposed as follow:-

> *"I am acquainted with the signature of my brother the Accused. Accused asked me to invest money in his bank. I usually deposit in Sundaram Finance since I get more interest. Since my brother asked for deposits I offered at Indian Bank. I have deposited Rs.1.75 lakhs in Indian Bank in various deposits on various dates because of the request made by the Accused. I have not gone to the bank I give my cheques for deposit to the Accused. The Accused in turn returns me with the fixed deposit receipts. I have signed the deposit opening form given by the accused to me at my residence. Sundaram Finance was also adopting the same procedure. Accused never worked in West Mambalam Branch. Accused has never given me fixed deposit receipts issued by West Mambalam Branch. I used to deposit in my name along with my wife's name. I do not know at what branch is Accused work. But I have given my cheques for depositing in the Indian Bank. I have never invested the fixed deposit in my name along with the name of the Accused (Chandrasekaran). I have given requisition to deposit in my name and in my wife's name. The receipts*

issued to me were in the joined name of me and my wife. I have never raised loan in the deposits held by my name and in my wife's name. I have not authorised my brother Accused to obtain loan on my behalf. Ex.P.9 is shown to the witness. The witness says the signatures found in Ex.P.9 are not the signatures of him. The disputed signatures are marked as Ex.P.37 and Ex.P.38. Ex.P.10 and P.11, P.12 signatures are my brother, R.Chandrasekaran Accused. I have not asked for any loan against my deposits as shown in Ex.P.9. Ex.P.13 is shown to the witness. The witness says the signatures found in Ex.P.13 are not his signatures. The disputes signatures are marked as Ex.P.39 and Ex.P.40. Ex.P.14 and P.15 signatures in Ex.P.13 are the signatures of R.Chandrasekaran the Accused. I have not requested for any loan to Thiruporur Branch, Indian Bank as shown in Ex.P.13. I have not received the fixed deposit receipt Ex.P.2 said to be issued in the name of me along with the Accused R. Chandrasekaran with West Mambalam Branch, Indian Bank. The signatures found in the reverse side of Ex.P.2 is not my signature. The disputed signature is marked as Ex.P.41. Ex.P.3 is the signature of the Accused R.Chandrasekaran found in Ex.P.2. Witness is shown Ex.P.4. The signatures found in Ex.P.4 at the front and the reverse side are not my signatures. The disputed signatures are marked as Ex.P.43 and 43. I have not asked for loan at

Ramapuram Branch, Indian Bank as shown in Ex.P.4. The signatures Ex.P.5 and P.6 found in Ex.P.4 are the signatures of the Accused R.Chandrasekaran. I do not have any business with M.Ganapathy and Keerthivasan Investments Pvt. Ltd., I was examined by CBI in this regard."

20. The criminality inbuilt in the accused is exposed through the testimony of P.W-3 the co-depositor who is none else than his brother. From his evidence, it is clear as crystal that R.Venkatasubramanian had not gone to Ramapuram Branch of Indian Bank to invest Rs.5,00,000/- jointly with his brother R.Chandrasekaran. The signatures found on the FD receipt or the applications for loan are not his signatures. The accused who is the co-depositor has to explain how the FDR came into existence showing him as co-depositor and bears his signatures.

21. The factum of loan advanced using the said FDR bearing No.745078, is established through the Bank exhibits such as loan applications, correspondence between the Branches to create lien over the deposit and confirmation of creating lien. The ledger sheet (Ex.P.16) of Thiruporur Branch and relevant vouchers signed and sanctioned by the accused strongly proof the charges framed against him. These documents came from Ramapuram Branch to Thiruporur Branch on the transfer of the accused from Ramapuram Branch to Thiruporur Branch.

22. One of the main contention of the Learned Counsel appearing for the appellant is that, the offence under Sections 420 I.P.C and 409 I.P.C are mutually exclusive and therefore, both the charges cannot go together. For easy reference, the definition of these two offences given in Sections 415 of I.P.C and 405 of I.P.C are extracted as below:-

Section 415 of I.P.C., Cheating:-

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Section ***405 of I.P.C., Criminal breach of trust:-***

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

(Explanations omitted)

23. As far as facts involved in this appeal, the accused had played dual role. As a Public Servant being the Second Manager, Ramapuram Branch of Indian Bank and having dominion over the FD receipt bearing No:745078. As a co-depositor of Rs.5,00,000/- in West Mambalam Branch of Indian Bank.

24. This Court has no different view about the preposition of law that Section 420 I.P.C and 409 I.P.C are generically different. In almost identical case, the Hon'ble Supreme Court in ***N.Raghavender -vs- State of Andhra Pradesh, C.B.I*** reported in ***2021 SCC Online SC 1232,*** has clearly explained when Section 420 of I.P.C and Section 409 I.P.C can co-exist. The relevant portion of the judgment is extracted below:-

"Ingredients necessary to prove a charge under Section 409 IPC:

41. *Section 409 IPC pertains to criminal breach of trust by a public servant or a banker, in respect of the property entrusted to him. The onus is on the prosecution to prove that the accused, a public servant or a banker was entrusted with the property which he is duly bound to account for and that he has committed criminal breach of trust.* ***(See : Sadupati Nageswara Rao v. State of Andhra Pradesh)****.*

42. *The entrustment of public property and dishonest misappropriation or use thereof in the manner illustrated under Section 405 are a sine qua non for making an offence punishable under Section 409 IPC. The expression 'criminal breach of trust' is defined under Section 405 IPC which provides, inter alia, that whoever being in any manner entrusted with property or with any dominion over a property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property contrary to law, or in violation of any law prescribing the mode in which such trust is to be discharged, or contravenes any legal contract, express or* *implied, etc. shall be held to have committed criminal breach of trust. Hence, to attract Section 405 IPC, the following ingredients must be satisfied:*

(i) Entrusting any person with property or with any dominion over property;

(ii) That person has dishonestly mis-appropriated or converted that property to his own use;

(iii) Or that person dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law or a legal contract.

***43.** It ought to be noted that the crucial word used in Section 405 IPC is 'dishonestly' and therefore, it pre-supposes the existence of mens rea. In other words, mere retention of property entrusted to a person without any misappropriation cannot fall within the ambit of criminal breach of trust. Unless there is some actual use by the accused in violation of law or contract, coupled with dishonest intention, there is no criminal breach of trust. The second significant expression is 'mis-appropriates' which means improperly setting apart for ones use and to the exclusion of the owner.*

***44.** No sooner are the two fundamental ingredients of* *'criminal breach of trust' within the meaning of Section 405 IPC proved, and if such criminal breach is caused by a public servant or a banker, merchant or agent, the said offence of criminal breach of trust is punishable under Section 409 IPC, for which it is essential to prove that:*

(i) The accused must be a public servant or a banker, merchant or agent;

(ii) He/She must have been entrusted, in such capacity, with property; and

(iii) He/She must have committed breach of trust in respect of such property.

45. *Accordingly, unless it is proved that the accused, a public servant or a banker etc. was 'entrusted' with the property which he is duty bound to account for and that such a person has committed criminal breach of trust, Section 409 IPC may not be attracted. 'Entrustment of property' is a wide and generic expression. While the initial onus lies on the prosecution to show that the property in question was 'entrusted' to the accused, it is not necessary to prove further, the actual mode of entrustment of the property or misappropriation thereof. Where the 'entrustment' is admitted by the accused or has been established by the prosecution, the burden then shifts on the* *accused to prove that the obligation vis-à-vis the entrusted property was carried out in a legally and contractually acceptable manner.*

<u>Ingredients necessary to prove a charge under Section 420 IPC:</u>

46. *Section 420 IPC, provides that whoever cheats and thereby dishonestly induces a person deceived to deliver any property to any person, or to make, alter or destroy, the whole or any part of valuable security, or anything, which is signed or sealed, and which is capable of being converted into a valuable security, shall be liable to be punished for a term which may extend to seven years and shall also be liable to fine.*

47. *It is paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) mens rea of the accused at the time of making the inducement. It goes* *without saying that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.*

48. *It is equally well-settled that the phrase 'dishonestly' emphasizes a deliberate intention to cause wrongful gain or wrongful loss, and when this is coupled with cheating and delivery of property, the offence becomes punishable under Section 420 IPC. Contrarily, the mere breach of contract cannot give rise to criminal prosecution under Section 420 unless fraudulent or dishonest intention is shown right at the beginning of the transaction. It is equally important that for the purpose of holding a person guilty under Section 420, the evidence adduced must establish beyond reasonable doubt, mens rea on his part. Unless the complaint showed that the accused had dishonest or fraudulent intention 'at the time the complainant parted with the monies', it would not amount to an offence under Section 420 IPC and it may only amount to breach of contract.*

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62. *As already clarified by us, to prove the charge under Section 409 IPC, the prosecution need not prove the* *exact manner of misappropriation. Once the 'entrustment' is admitted or proved, as has been done in the present case, the onus lies on the Accused to prove that the entrusted property was dealt by him in an acceptable manner. Thus, misappropriation with this dishonest intention is one of the most important ingredients of proof of 'criminal breach of trust'. The offence under Section 409 IPC can be committed in varied manners, and as we are concerned with its applicability in the case of a bank officer, it is fruitful to point out that the banker is one who receives money to be drawn out again when the owner has occasion for it. Since the present case involves a conventional bank transaction, it may be further noted that in such situations, the customer is the lender and the bank is the borrower, the latter being under a super added obligation of honouring the customer's cheques up to the amount of the money received and still in the banker's hands. The money that a customer deposits in a bank is not held by the latter on trust for him. It becomes a part of the banker's funds who is under a contractual obligation to pay the sum deposited by a customer to him on demand with the agreed rate of interest. Such a relationship between the customer and the Bank is one of a creditor and a debtor. The Bank is liable to pay money back to the customers when called upon, but until it's called upon to pay it, the Bank is entitled to utilize the* *money in any manner for earning profit."*

25. In this case, the evidence discloses that the accused as depositor had dishonestly induced the Ramapuram Branch and Thiruporur Branch of Indian Bank to lend advance. The FDR used by him to get loan is a forged FD thereby, his intention to cheat which is an offence within the definition of cheating is punishable under Section 420 I.P.C. Thus, his dishonest inducement to advance loan to a tune of Rs.5,99,502/- by the bank attracts the offence punishable under section 420 I.P.C. The forging the FD receipt over which he had dominion and sanction of loan against the forged FDR's entrusted to him attracts Section 409 IPC i.e., misappropriation of property entrusted to him. Thereafter, by making false entries in the FD receipt in which, he had dominion mentioning his name and his brother name as depositors of Rs.5,00,000/- at West Mambalam Branch and making use of the forged FD receipt for availing loans on various dates totally to a tune of Rs.5,99,502/- attracts the offence under Section 467 I.P.C.

26. P.W-3, R.Venkatasubramanian, the co-depositor, in unequivocal term had deposed that, he did deposited jointly in his name and his wife name in Indian Bank through his brother R.Chandrasekaran (accused) but not

Rs.5,00,000/- at West Mambalam Brach along with his brother R.Chandrasekaran as found in Ex.P-2 FD receipt. He had also identified the signatures of the accused on the reverse of the Ex.P-2 FD receipt and denied the co-depositor signatures found in it. He had deposed that, he did not given the letter Ex.P-9 seeking loan against the FD receipt Ex.P-2. The signature (Ex.P-13) found in Ex.P-9 is not his signature. He had further deposed that, signatures marked as Ex.P-39 and Ex.P-40 found in Ex.P-13, the request letter addressed to Thriuporur Branch to sanction additional loan of Rs.2,00,000/- is not his signatures. The signatures marked as Ex.P-14 and Ex.P-15 in the letter Ex.P-13 is the signature of his brother R.Chandrasekaran (accused). Through the testimony of P.W-3, the charges of making false documents such as loan applications and using it as genuine to avail loan gets proved. This satisfies the ingredients required for offences punishable under Sections 468 I.P.C and 468 r/w 471 I.P.C.

27. P.W-4, A.Jayasankar had deposed that, he received from the accused two demand drafts drawn in favour of M/s.Keerthivasan Investment Pvt Ltd, bearing demand drafts Nos.77847 and 77839 each for Rs.50,000/- dated 20/10/2000 and 13/10/2000 respectively. These two demand drafts were handed over at his office by the accused towards transaction of shares done in the name of

Jayamala W/o.Chandrasekaran (the accused). Ex.P-32 and Ex.P-35 are the two demand drafts given by the accused to P.W-4 (A.Jayasankar). The corresponding vouchers are marked as Ex.P-28, Ex.P.30, Ex.P.33 and Ex.P.34. P.W-2 had identified it and deposed that, those vouchers were sanctioned by the accused.

28. Similarly, P.W-5 N.Ganapathi, who is the brother-in-law of the accused had testified against the accused. He admits receipt from the accused the demand draft dated 03/10/2000 for Rs.52,700/- drawn in his favour. For issuance of the demand draft, fund from the loan account on the FDR No:745078 been transferred and same is proved from the entries made in the loan ledger Ex.P-16 and the voucher Ex.P-25. These are exhibits maintained in the Bank in the course of business and identified by PW-2.

29. No doubt, the disputed signatures were not sent for handwriting expert comparison. However, it is not necessary in all the cases, the disputed documents to be sent for expert opinion. In this case, P.W-3, after seeing the signatures found in the loan documents had denied that, it is not his signature. Also he had positively ascertained that his brother R.Chandrasekaran (accused) had signed in those documents. The records maintained in the bank proves that loans were sanctioned based on Ex.P-2 FD receipt and on the request letter signed by the accused. The loan amount been used for purchase of demand drafts in the name of P.W-4 and P.W-5. Those Demand drafts were handed over to them by the accused to clear his debt.

30. In the light of these sterling evidence of impeccable quality, it is proved beyond doubt that, the accused had misappropriated the property (Ex.P-2: FDR No:745078) over which he had dominion as Second Branch Manager of Ramapuram Branch and used it as his own. Thus, had committed offence punishable under Section 409 I.P.C. He had fabricated the FD receipt making false entries in it to appear as if he and R.Venkatasubramanian had deposited Rs.5,00,000/- in West Mambalam Branch on 01/06/1999. Thus, he had committed offence of forging a valuable security punishable under section 467 of I.P.C. He had made false documents like, requisition letters for loan by forging the signature of the co-depositor thereby had committed offence punishable under Section 468 of I.P.C. Using the forged FDR (valuable security) and the requisition letters forging the signature of the co-depositor for loan as genuine and had cheat the Bank by availing loan, thereby committed offences punishable under Sections 467 r/w 471 of I.P.C and 468 r/w 471 I.P.C.

31. The offence of cheating stands proved through Ex.P-7 and Ex.P-8 which are the letters used by the accused to induce the Indian Bank, Thiruporur Branch to advance additional loans. These letters are false documents made by the accused to deceive the Thiruporur Branch. The fake rubber stamp seal of West Mambalam Branch though seized during the search of the accused house, it is not marked as material object during the trial. Nonetheless, the prosecution has proved that there was no real deposit of Rs.5,00,000/- in the West Mambalam Branch in the name of the accused and his brother R.Venkatasubramanian jointly. This false letter indicates as if such Fixed Deposit under Ex.P-2 exists and lien created for the loan on that deposit. The accused is bound to explain under what circumstances these dubious transaction took place, since these facts are within his special knowledge and even his co-depositor not aware of it.

32. The FD receipt which is used to sanction loan is one the accused had dominion in the capacity of a public servant viz., Second Manager of

Ramapuram Branch. He had converted the FD receipt bearing No:745078 as a valuable security and used it as genuine for the purpose of getting loan. This attracts offences punishable under Section 409 of I.P.C as well as offences under Sections 467, 467 r/w 471 IPC and offence of misconduct by a public servant, who had abused his position to make pecuniary advantage from out of the loan amount to discharge his debt with P.W-4 and P.W-5.

33. For the reasons stated above, this Court holds that there is no merit in the submissions made by the Learned Counsel for the appellant. Hence, the Criminal Appeal is liable to be dismissed.

34. Accordingly, this ***Criminal Appeal No.21 of 2013 is dismissed.*** The judgment of the trial Court passed in C.C.No.59 of 2004 by the XI Additional Special Judge (CBI Cases Relating to Banks and Financial Institutions), Chennai is confirmed. The period of imprisonment already undergone by the accused shall be set off under Section 428 of Cr.P.C.

35. 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 the cases are confirmed, the accused 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 ordering the period of sentence in all these cases to run concurrently.

36. This Court, on considering the facts of the case finds that, in rest of the cases, the accused had forged the deposit made by third parties and misappropriated the money by fabricating the documents. Whereas, in this case, the accused had forged the valuable security in his own name and in the name of his brother and had misappropriated about of Rs.5,99,502/-. The graver offence of breach of trust, converting the FD receipt for his own use disentitles him from seeking indulgence of this Court to exercise its power under Section 427 of Cr.P.C. Therefore, the period of substantive sentence imposed in this case ordered ***to run consecutively*** after expiry of the period imposed in C.C.Nos.52 to 58 of 2004 by the trial Court as confirmed/modified by this Court in C.A.Nos.14 to 20 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.21 of 2013

03.07.2023