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.22 of 2013

[Crl.A.No.22 of 2013 against C.C.No.60 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.60 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.60 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 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 C.B.I cases at Chennai. The Learned Judge took cognizance and assigned C.C.Nos.52 to 60 of 2004. Based on the final report, charges were framed against the accused and he was tried.

4. In C.C.No.60/2004, which is the subject matter of this appeal, the specific case of the prosecution is that, Mr.R.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 FDR bearing No:118975 over which he had dominion. He used it as genuine to forge a document as if his sister Mrs.G.Nagalakshmi on 02/02/2000 had invested in FD for a period of 36 months a sum of Rs.5 lakhs in Indian Bank, West Mambalam Branch. Further, using the said forged FDR, made a loan applications for Rs.4,50,000/- in the name of his sister with a request to issue a demand draft in favour of A.Jayasankar for Rs.2,50,000/-. The signature of the depositor in the loan application is not genuine. The Pro-note for Rs.4,50,000/- executed in favour of the Bank by in the name of Mrs.G.Nagalakshmi is a false document forging the signature of Mrs.G.Nagalakshmi. The accused though knowing well that, the FDR as well as the requisition letter and the Pro-notes are forged, intentionally and dishonestly by abusing his position as Branch Manager of the Thiruporur Branch sanctioned loan on this deposit. Issued demand draft for Rs.2,50,000/- and

Demand draft for Rs.1,50,000/- both demand drafts were handed over to A.Jayasankar by the accused towards the transaction of shares done by Ms.Jayamala W/o.Chandrasekaran (the accused) Proprietor of M/s.Keerthivasan Investment Private Limited.

5. The Trial Court, based on the materials placed by the Investigating Officer, framed 7 charges and tried the accused.

Charge No.1: u/s.420 of IPC (2 counts), Charge No.2: u/s.409 of IPC (2counts); Charge No.3: u/s.468 of IPC; Charge No.4:u/s.468 r/w 471 of IPC; Charge No.5:u/s.467 of IPC; Charge No.6:u/s.467 r/w 471 of IPC and Charge No.7: u/s.13(2) r/w 13(1)(d) of P.C.Act, 1988.

6. To prove the charges, the prosecution examined 8 witnesses (P.W.1 to P.W.8), marked 27 Exhibits (Ex.P.1 to Ex.P.27). Tmt.P.Geetha, Branch Manager, Indian Bank, Thiruporur branch was examined as C.W.1. The trial Court held the accused guilty of all the above charges and sentenced him to undergo sentence as below:-

Accused	*Offences*	*Conviction and Sentence imposed by the Trial Court*
Chandrasekaran	420 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.
	409 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.
	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.
	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.

7. The Learned Counsels for the appellant and respondent made their respective submissions and same taken note by this Court for appreciation of law and facts.

8. Submission by the appellant counsel:-

The Learned Counsel appearing for the appellant, placed a specific argument that the appeals ought to be allowed and the trial Court judgements to be set aside since the prosecution has miserably failed to place before the Court, the demand drafts alleged to have been issued to P.W-3 A.Jayasankar. The evidence of P.W-5 A.R.Ramasamy is no way relevant to this case. P.W-2, I.Jagashree testimony is to be disregarded since she is not a reliable witness. P.W-4 G.Nagalakshmi, is the depositor as per Ex.P-2. She had denied her signatures in the reverse of the fixed deposit receipt Ex.P-2, Loan requisition letter Ex.P-4 and the Pro-note Ex.P-6. The disputed signatures were not sent for expert opinion to prove that the signatures of the depositor G.Nagalakshmi are forged. The trial Court had erroneously relied her testimony just because, she being the sister of the accused.

9. According to the Learned Counsel for the appellant the first charge against the accused is dishonest inducement to issue two demand drafts in favour of A.Jayasankar for Rs.2,50,000/- and Rs.2,00,000/- constituting offence of cheating. However, to bring home this charge, the demand drafts are not placed before this Court for appreciation. No explanation offered by the Investigating

Officer for not securing those documents. Except the vouchers and the testimony of Jayasankar P.W-3, there is no substantial evidence available to prove the charge for the offence under Section 420 I.P.C.

10. The Learned Counsel for the appellant submitted that the act of dishonest inducement to deliver a property (FDR) 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.

11. Secondly, the prosecution has failed to prove that FDR No.118975 belongs to Ramapuram Branch and same was entrusted to the accused and he had dominion over it. Neither the prosecution has proved that the accused has misappropriated a sum of Rs.4,00,000/- by sanctioning loan to Mrs.G.Nagalakshmi, on the Fixed Deposit and issuing demand drafts for Rs.2,50,000/- and Rs.1,50,000/- in favour of Mr.Jayasankar. The handwriting expert opinion not obtained to prove the application-cum-pledge letter for advancing loan in the name of Mrs.Nagalakshmi against FD receipt No.118975. Therefore, charge of forgery is not sustainable. The evidence of P.W.2 I.Jagashree identifying the documents not suffice to prove the fact of forgery and misappropriation by using forged document as genuine. 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 to the Court the documents marked as Ex.P-2 to Ex.P-21. She 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.

12. Admittedly, the documents relied by the prosecution have been dealt by several bank staffs 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 even seen or signed. Therefore, even if there is any element of irregularity in the FDR (Ex.P-2) and the loan transaction, the accused cannot be singularly held responsible.

13. P.W-1, K.Natarajan, 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 *ex 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.

14. <u>Submission by the Special Public Prosecutor:-</u>

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.

15. 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:-

15.1. P.W.2 Tmt.I.Jayashree, had categorically deposed that the accused brought the FD receipt bearing No.118975 and informed that, the depositor Mrs.G.Nagalakshmi, his relative and she is sick, she cannot come to the branch for availing the loan and requested the accused to sanction the loan against the deposit. The accused brought loan on deposit (LOD) form for Rs.4.5 lakhs against the Fixed Deposit of Rs.5 lakhs in the name of Mrs.G.Nagalakshmi. FD receipt is marked as Ex.P.2; the loan application is marked as Ex.P.3. The accused gave a letter Ex.P.4, wherein, the depositor Mrs.G.Nagalakshmi had requested to issue demand draft for Rs.2.5 lakhs in favour of A.Jayasankar from out of the loan amount. The transactions are reflected in the ledger leaf extract marked as Ex.P.5. The signature of the accused been identified by this witness. Further, P.W.2 had deposed that the accused brought with him the letter of West Mambalam Branch addressed to Thiruporur Branch, to note lien against FDR Ex.P.2. The vouchers prepared for sanctioning the Loan on Deposit and purchase of demand draft are identified by the witnesses. To prove that, the accused has dishonestly induced the bank to sanction loan and from the loan amount, to issue demand draft in favour of A.Jayasankar. The evidence of A.Jayasankar was examined as P.W.3. To prove that, the two demand drafts for Rs.2.5 lakhs and Rs.1.5 lakhs was given to him by the accused to credit in the account of Jayamala wife of Chandrasekaran.

15.2. P.W.4 G.Nagalakshmi, the sister of the accused had deposed that, she had not seen the FDR marked as Ex.P.2 which stands in her name. She had not deposited any money in the Indian Bank, West Mambalam Branch. The signature found on the reverse of the FDR Ex.P.2 is not her signature. The signatures in the loan application and request letter to issue demand draft for

Rs.2.5 lakhs in favour of A.Jayasankar, which are marked as Ex.P.3 and Ex.P.4, are not her signature. She had categorically deposed that, she did not seek any loan from Indian Bank, Thiruporur Branch and the signatures found in Ex.P.16 the demand promissory note and Ex.P.19 the cheque for Rs.30,000/- are not her signatures. The Learned Counsel for the appellant did not cross examine this witness and therefore, the Learned Special Public Prosecutor for the respondent/C.B.I submitted that the prosecution has proved the charges and hence, the judgment of the trial Court has to be confirmed.

16. 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 name of his sister G.Nagalakshmi ?*

17. The accused has faced trial for the following charges:-

Firstly, 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 Inidan Bank, Thiruporur branch by dishonestly inducing the bank to deliver vide LOD an amount of Rs.2,50,000/- vide DD Nos. 096360 dt. 17.11.2000 favouring Shri A. Jayashankar and another DD No.096380 dt. 29.12.2000 for an amount of Rs.1,50,000/-in favour of Shri A.Jayashankar from the FDR No.118975 in the name of Smt. Nagalakshmi for Rs.5 lakhs and you thereby committed an offence punishable u/s 420 of IPC and within my cognizance. (2 counts).

Secondly, 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 bank funds in the above branch misappropriated an amount of Rs.4,00,000/- as mentioned in detail in the above charge and thereby you committed an offence punishable u/s 409 of IPC and within my cognizance. (2 counts).

Thirdly, Shri R.Chandrasekaran, while working as Branch Manager of Thiruporur branch of Indian Bank *during the period from 13.12.1999 to 29.6.2002 at Thiruporur forged the 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 the FDR No.118975 in the name of G.Nagalakshmi.

Fourthly, 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 468 r/w 471 IPC and within my cognizance.

Fifthly, Shri R.Chandrasekaran while working as Branch Manager Thiruporur branch of Indian Bank during the period from 1999 to 2002 at 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.118975 dated 2.2.2000 in the *name of G. Nagalakshmi which is a 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 u/s 467 IPC and within my cognizance.*

Sixthly, Shri R.Chandrasekaran while working as Branch Manager of Thiruporur branch of Indian Bank during the period from 1999 to 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.

Seventhly, Shri R.Chandrasekaran while working as Branch Manager of Thiruporur branch of Indian Bank during the period from 1999 to 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.4,00,000/- from the bank and in the manner as stated in the first charge and thereby you committed an offence punishable u/s 13(2) r/w 13(1)(d) of PC Act, 1988 and within my cognizance.

18. P.W.1 K.Natarajan, is the authority competent to remove the accused and he has given sanction to prosecute the accused. The sanction order is marked as Ex.P.1. It is a common sanction order for the 9 cases for which the accused tried. The specific facts which satisfied the P.W.1 to accord sanction is capsulized by P.W.1 in the order as below:-

> *“While Sri Chandrasekaran was working as Branch Manager, Indian Bank, Tirupporur Branch, he had stolen one Fixed Deposit Receipt leaf bearing No.118975 and used this FD Receipt as genuine one for Rs.5 lakh in the name of Smt.G.Nagalakshmi, his sister. For this, Sri Chandrasekaran used forged rubber stamp "Indian Bank, West Mambalam Branch" made by him. Here, Sri Chandrasekaran forged the signature of the Branch Manager and the Officer of West Mambalam Branch. On 17.1.1.2000, Sri Chandrasekaran prepared a forged application in the name-of-Smt. Nagalakshmi for LOD for Rs.4.50 lakh. The withdrawals of Rs.4 lakh were given through two Demand Drafts bearing Nos. 096360 dated 17.11.2000 for Rs.2.50 Lakhs and DD No.096380 dated 29.12.2000 for Rs.1.50 lakh both favouring one Sri A Jayashankar, obviously for buying shares in the name of Sri Chandrasekaran's wife Smt. Jayamala Chandrasekaran.*

Whereas, the above facts-disclose the commission of offence punishable U/s 409, 420, 467, 468, 471 & 477-A IPC and 13 (2) r/w 13(1) (d) of PC Act, 1988."

19. P.W.2 I.Jayashree is the key witness for the prosecution in this case, who had spoken about Ex.P.1 to Ex.P.21. The relevant portion of her evidence in chief reads as below:-

> "*On 17.11.2000 the accused brought the request letter for the loan on deposit of Mrs. G.Nagalakshmi, wife of M.Ganapathy along with the fixed deposit receipt No.118975 said to have been issued by Indian Bank, West Mambalam Branch for Rs.5 lakhs in the name of G.Nagalakshmi. The accused informed that she is his relative and as she sick, she cannot come to the branch for availing the loan and has requested the accused to sanction the loan against the deposit. The deposit receipt brought by the accused is marked as Ex.P.2. The LOD form brought by the accused for loan of Rs.4.5 lakhs against the loan on Ex.P.2 is marked as Ex.P.3. The request letter for extending the loan on this deposit and the proceeds to be issued by way of draft favouring A Jayashankar for Rs.2.50 lakhs is marked as Ex.P.4. The ledger extract for opening the LOD for Rs.2.5 lakhs against Ex.P.2 maintained by Indian Bank,*

Thiruporur Branch is marked as Ex.P.5. The letter brought by the accused dated 18.11.2000 said to have been issued by West Mambalam Branch addressed to the Thiruporur Branch for having noted lien against Ex.P.2 is marked as Ex.P.6. The debit voucher for sanctioning LOD for Rs.2.50 lakhs against Ex.P.2 deposit dated 11.11.2000 is marked as Ex.P.7. I identify the signature of the accused in Ex.P.7 is marked as Ex.P.8. The corresponding credit voucher for issuing D.D. in favour of A Jayashankar for Rs.2.50 lakhs is marked as Ex.P.9. There is an entry in Ex.P.5 for sanctioning of additional LOD for Rs.1.50 lakhs against Ex.P.2 deposit on 29.12.2000. The corresponding LOD debit voucher for Rs.1.50 lakhs is marked as Ex.P.10. 1 identify the signature of the accused in Ex.P.10 is marked as Ex.P.11. The corresponding credit voucher for issue of D.D. in favour of A Jayashankar for Rs.1.50 lakhs is marked as Ex.P.12. I identify the initial of the accused in Ex.P.12 is marked as Ex.P.13. Subsequently the accused informed that the party has requested for converting the LOD to ODFDS for easy operation. The said deposit under Ex.P.2 is transferred to the ODFDS on 05.01.2001 the ledger sheet is marked as Ex.P.14. It is authenticated by the accused and the signature of the accused in Ex.P.14 is marked as Ex.P.15. The Demand Promissory Note dated 17.11.2000 has been prepared by me and handed over to *the accused for obtaining the signature of G.Nagalakshmi since the loan has been transferred to ODFDS and signed DPN is brought by the accused. The same is marked as Ex.P.16. The said ODFDS account in the name of G.Nagalakshmi is converted into LOD account on 30.09.2001 and the corresponding ledger is marked as Ex.P.17 and identify the initial of the accused in Ex.P.17 is marked as Ex.P.18. The cheque bearing No.971637 of Thiruporur Branch dated 09.01.2001 for Rs.30,000/- for issuing a D.D. favour R.Venkatasubramaniam from ODFDS account, brought by the accused is marked as Ex.P.19. Ex.P.19 is initialed by me. The corresponding D.D. voucher for Rs.30,000/- dated 09.01.2001 is marked as Ex.P.20. It is prepared in the handwriting of the accused and bears his initial and his initial is marked as Ex.P.21.was examined by CBI in this regard."*

20. P.W.3 A.Jayasankar had deposed that, in connection with the share transaction in the name of C.Jayamala, the accused gave him two demand drafts one for Rs.2,50,000/- demand draft bearing No.96360 dated 17.11.2000 another for Rs.1,50,000/- demand draft bearing No.96380. The prosecution has not produced these two demand drafts. However, wants to correlate the demand drafts with the credit voucher (Ex.P.9) for issuing demand draft in favour of

A.Jayasankar P.W.3 for Rs.2,50,000/- and the credit voucher (Ex.P.12) for issuing demand draft in favour of A.Jayasankar P.W.3 for Rs.1,50,000/-.

21. P.W.2 had deposed that, these two credit vouchers were sanctioned by the accused and the signature of the accused was identified by P.W.2 Further, it is admitted by P.W.2 that, she prepared the demand promissory note Ex.P.16. She gave it to the accused to get the signature of Mrs.G.Nagalakshmi since the loan has been transferred to ODFDS. The conversion of loan to ODFDS been made by P.W.2 allegedly on the request of the accused. There is no written request from the depositor Mrs.Nagalakshmi for such conversion. P.W.2 had further deposed that ODFDS account in the name of Mrs.G.Nagalakshmi again reconverted into LOD account on 30.09.2001 and the corresponding ledger entries found in Ex.P.17, in which, the accused initialled. Her testimony further states that, the accused prepared demand draft voucher for Rs.30,000/- dated 09.01.2001 marked as Ex.P.20 and initialled in it. The cheque bearing No.971637 of Thiruporur Branch dated 09.01.2001 for Rs.30,000/- was brought by the accused for issuing demand draft Ex.P.20 in the name of Mr.R.Venkatasubramaniyan.

22. P.W.4 Mrs.G.Nagalakshmi, the sister of the accused and in whose name FDR Ex.P.2 stands had categorically denied any deposit in Indian bank, West Mambalam Branch or request to sanction loan at Thiruporur loan against the said deposit.

23. P.W.5. A.R.Ramasamy the Chief Manager of Indian Bank, West Mambalam Branch when Ex.P.2 the FD receipt bearing No.118975 was shown to him, he had denied that the said FD receipt which is purportedly to have been issued by West Mambalam Branch in the name of Mrs.Nagalakshmi for Rs.5,00,000/- not been issued by the West Mambalam Branch. The official seal of the Indian Bank West Mambalam Branch affixed in Ex.P.2 does not belongs to West Mambalam Branch, Indian Bank and the signatures found therein are not of any Officer of the Branch. There is no record available in Indian Bank, West Mambalam branch showing Ex.P.2 receipt with Folio No.25/166. Though the search list annexed along with FIR indicates several fake rubber stamps of Indian Bank recovered from the residence of the accused, those rubber stamps not marked.

24. On cumulative assessment of these evidences for prosecution, this

Court finds that the alleged dominion over Ex.P.2 FDR bearing No.118975 with the accused not proved beyond doubt. Likewise, the end use of the loan amount sanctioned on the said deposit for issuing demand drafts in favour of A.Jayasankar for Rs.2,50,000/- and Rs.1,50,000/- not been substantiated by producing the demand drafts except the ledger entry and vouchers.

25. P.W.2 had spoken about the demand draft for Rs.30,000/- drawn in favour of Mr.R.Venkatasubramaniyan and this transaction does not form part of the charge, besides no witness examined to prove that the said Rs.30,000/- encashed by Mr.R.Venkatasubramaniyan. The First Charge of cheating the bank by inducing to issue two demand drafts in favour of Jayasankar, though, from the circumstances may be true, for want of proof, the said charge is liable to be held has not proved.

26. Ex.P.4 the request letter in the name of Mrs.G.Nagalakshmi to sanction loan for Rs.4,50,000/- and from out of it, to issue demand draft for Rs.2,50,000/- is denied by P.W.4 Mrs.G.Nagalakshmi. The other documents purported to have been under her signature also denied by her. Since she is the sister of the accused, her testimony give rise to a strong suspicion towards the accused but it will not be sufficient to hold her testimony without corroboration as proved. For the sake of corroboration, the prosecution examined P.W.2, who is conversant with the signature of the accused. She had deposed that, Mrs.Nagalakshmi never visited the bank in connection with the deposit or loan on deposit. It was the accused who brought the FD receipt, loan application form, pro-note which are marked as Ex.P.2, Ex.P.3 and Ex.P.16 and the accused prepared the debit and credit vouchers.

27. The evidence placed by the prosecution looked at any angle only probabilises the case but not proved beyond doubt. The prosecution has filed certified copy of the search list and certified copy of specimen impression of rubber stamp which are marked as Ex.P.24 to Ex.P.27. The search list marked as Ex.P.24, Ex.P.26 and Ex.P.27 reveals that, several incriminating materials were recovered from the accused house pursuant to the home search. Particularly, Ex.P.25 contains the impression of rubber stamp found and seized from the accused house during the search conducted on 28.05.2002. Several seals specimen is found in this document. The seals were not produced before the Court.

Nonetheless, P.W.5, A.R.Ramasamy, the Chief Manager of West Mambalam Branch had deposed that, the Official seal of West Mambalam Branch affixed in Ex.P.2 not belongs to West Mambalam, Indian Bank. The signature found therein are not of any Officers of the Branch. In his evidence, he had deposed that, under Ex.P.22 letter of Indian bank, West Mambalam Branch issued one receipt book of FDR bearing nos.173801-173900 (100 receipt) and one RIP bearing Nos.206501-206600 (100 receipts) and same was received by the accused on 13.05.2001. Whereas, the FD receipt alleged to have been forged and used by the accused to cheat the Indian Bank, Thiruporur Branch is FD bearing No.118975. Therefore, the evidence of P.W.5 A.R.Ramasamy is not relevant to hold that Ex.P.2, FD receipt bearing No.118975 was entrusted to the accused or he had dominion over it at any point of time.

28. In this case, the Court finds that, to prove the charges against the accused beyond doubt, the evidence to link Exhibits marked as Ex.P.2 to Ex.P.21 not sufficient. The error and omission of the Investigating Officer not placing the best evidence collected during the course of investigation, for the Court to appreciate, inures the benefit of acquittal to the accused.

29. As a result, this ***Criminal Appeal No.22 of 2013 is allowed.*** The conviction and sentence passed by the trial Court in C.C.No.60 of 2004 is hereby set aside. Fine amount paid if any by the accused, shall be adjusted towards the fine payable in other case, were the conviction and sentence of the trial Court confirmed.

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.22 of 2013

03.07.2023