IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2023

CORAM

THE HON'BLE MR. JUSTICE DR.G.JAYACHANDRAN

Crl.A.Nos.259,278,280,290 & 310 of 2013

Crl.A.No.259 of 2013

K.Krishnaswamy ...Appellant/A1

Vs.

State by
The Inspector of Police,
SPE/CBI/ACB,
Chennai ... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code., to set aside the judgment dated 26.03.2013 made in C.C.No.38 of 2003 by XI Additional Special Judge, CBI Cases relating to Banks and Financial Institutions, Chennai against the appellant and acquit the appellant from the above case.

For Appellant : Mr.R.Rajaratnam
for Mr.C.Sundaresan

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI

Crl.A.No.278 of 2013

1. K.Babu @ Janarthanan
2. P.Viji Rani
3. Kalamani ...Appellants/A2, A3 & A7

Vs.

State Represented by
The Inspector of Police,
SPE/CBI/ACB,Chennai. ... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code., against the conviction and sentence passed by the XI Additional Special Judge, CBI Cases by his judgment dated 26.03.2013 made in C.C.No.38 of 2003.

For Appellants : Mr.K.Shankar

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI

Crl.A.No.280 of 2013

Prabakar ...Appellants/A5

Vs.

State Represented by
The Inspector of Police,
SPE/CBI/ACB,Chennai. ... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code., against the conviction and sentence passed by the XI Additional Special Judge, CBI Cases (CBI Cases relating to Banks and Financial Institutions) Chennai by his judgment dated 26.03.2013 made in C.C.No.38 of 2003.

For Appellant : Mr.K.Shankar

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI

Crl.A.No.290 of 2013

S.Ramesh ...Appellant/A8

Vs.

State Represented by
The Inspector of Police,
SPE/CBI/ACB,
Chennai. ... Respondent

PRAYER:

Criminal Appeal filed under Section 374(2) of Criminal Procedure Code., set aside the judgment dated 26.03.2013 made in C.C.No.38 of 2003 passed by the XI Additional Special Judge, CBI Cases (CBI Cases relating to Banks and Financial Institutions) Chennai against the appellant.

For Appellant : Mr.Swami Subramanian

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI

Crl.A.No.310 of 2013

T.Arul Phakyaraj ...Appellants/A4

Vs.

State Represented by
The Inspector of Police,
SPE/CBI/ACB,
Chennai. ... Respondent

PRAYER:

Criminal Appeal filed under Section 374(2) of Criminal Procedure Code., against the conviction and sentence passed by the XI Additional Special Judge, CBI Cases (CBI Cases relating to Banks and Financial Institutions) Chennai by his judgment dated 26.03.2013 made in C.C.No.38 of 2003.

For Appellant : Mr.K.Shankar

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI

COMMON JUDGMENT

These Criminal Appeals have been filed against the conviction and sentence passed by the XI Additional Special Judge, CBI Cases (CBI Cases relating to Banks and Financial Institutions) Chennai, by judgment dated 26.03.2013 passed in C.C.No.38 of 2003.

2. These batch of appeals are filed by the accused persons who were convicted by the trial Court in C.C.No.38 of 2003, a case investigated by the Inspector of Police Mr.K.S.V.D.Srinivas, attached to CBI/ACB/Chennai. F.I.R came to be registered on 05.03.2002 and the final report was filed on 19.06.2003. Eight persons were shown as accused and sent for trial. One accused was not sent for trial and shown as absconding. According to the final report, A1 is a public servant working as Manager, Canara Bank, Washermanpet, Chennai between 1998 and 2001. A2-K.Babu is a private individual who was used to be a contractor for arranging loan and also the proprietor of M/s.J.G.Traders, fictitious company. A3-P.Viji Rani is a Proprietor of M/s.K.K.Sweets, Chennai. A4-Arul Packiaraj is the Proprietor of M/s.Femina Resins &

Chemical Industries. A5-T.N.Prabakar is the Power of Attorney Holder of M/s.Pentagon Exports, which is a proprietorship concern, consisting of his wife Anitha Prabakar. A6-N.Natraj, who is the husband of Shyamala, partner of Pentagon Exports, Chennai (died pending trial). A7- Kalaimani is the Proprietor of M/s.Surya Offset Printers, Chennai. A8-S.Ramesh is the Proprietor of M/s.Sweeti Special, Chennai.

3. The sum and substance of the final report is that A2 to A8 by floating firms in different names, had availed loan from Canara bank, Washermanpet, by producing false document and the loan availed by them was not utilized for the purpose for which it was sanctioned by A1-the Branch Manager of Canara Bank, Washermanpet.

4. It is the specific case of the prosecution that A1-the Branch Manager of Canara Bank, Washermanpet, knowing well that these Firms are either fictitious firms or name-sake firms, dishonestly accepted the loan applications from the loanees/accused and sanctioned the same without proper scrutiny of the documents filed by the respective loanees.

Particularly, final report has indicated that in case of loan to JG traders, the CST and TNGST numbers furnished by the loanees, do not belong to the loanees. The loan sanctioned for purchase of machinery was handed over to A2 instead of supplier. Likewise, for the loan sanctioned to K.K.Sweets, Chennai, the Proprietor P.Viji Rani/A3, the machinery already with the loanees was shown as purchased out of loan amount and the invoice of JG Traders was utilised for sanctioning the loan.

5. The specific contention of the prosecution is that J.G.Traders is a fictitious company/Firm floated by A2 to accommodate the other accused to withdraw the loan amount by producing fake invoices. Regarding the loan sanction for M/s.Pentagon Exports, it is the specific case of the prosecution that this Firm was started in the name of the respective spouses by A5 and A6 (died). A1 extended OCC limit for Rs.5 lakhs for purchase of machinery and overdraft facility for Rs.2 lakhs, whereas, the machineries already purchased had been shown as machineries purchased out of loan amount and invoices raised by J.G.Traders, being fictitious firm floated by A2, was paid the cost of

machinery. As far as M/s.Surya Offset Printers is concerned, it has availed the loan for purchase of machinery and for over draft facility. Similar MOP been adopted and for the old machinery already purchased, the loan amount been shown as the source and invoice of JG Traders is produced. Regarding M/s.Sweeti Special, Proprietorship concern by A8, it is stated in the final report that after availing the over draft facility, the same was mis-utilized for purchase of machinery. Alleging that knowing fully well loans were sanctioned based on the documents given in support of loan applications which are forged/fabricated. The loan money has not been utilized for the purpose for which loan was sanctioned. The Bank Manager conspired with the other accused to cheat the Bank and thereby caused the pecuniary loss to the Bank.

6. The Trial Court, after taking into consideration the materials collected during the investigation, has framed the following charges and after appreciating the evidence placed, found the accused guilty and sentenced them as below:

Accused	***Offence***	***Sentence***
A1	Under Section 120-B r/w 420, 467 r/w 471, 468 r/w 471 IPC and Section 13(2) r/w13(1)(d) of PC Act	Rigorous Imprisonment for three years and to pay fine of Rs.2,000/- in default to undergo simple imprisonment for one year.
A2 to A5 & A8	Under Section 120-B r/w 420, 467 r/w 471, 468 r/w 471 IPC and Section 13(2) r/w13(1)(d) of PC Act	Rigorous Imprisonment for one year each and to pay fine of Rs.1,000/- each in default to undergo simple imprisonment for three months.
A7	Under Section 120-B r/w 420, 467 r/w 471, 468 r/w 471 IPC and Section 13(2) r/w13(1)(d) of PC Act	Rigorous Imprisonment for three years and to pay fine of Rs.5,000/- in default to undergo simple imprisonment for one year.
A1	Under Section 420 IPC	Rigorous Imprisonment for three years and to pay fine of Rs.2,000/- in default to undergo simple imprisonment for one year.
A2 to A5 & A8	Under Section 420 IPC	Rigorous Imprisonment for one year each and to pay fine of Rs.1,000/- each and in default to undergo simple imprisonment for three months.
A7	Under Section 420 IPC	Rigorous Imprisonment for three years and to pay fine of

Accused	***Offence***	***Sentence***
		Rs.5,000/- in default to undergo simple imprisonment for one year.
A1	Under Section 467 r/w 471 IPC	Rigorous Imprisonment for three years and to pay fine of Rs.2,000/- in default to undergo simple imprisonment for one year.
A2 to A5 & A8	Under Section 467 r/w 471 IPC	Rigorous Imprisonment for one year each and to pay fine of Rs.1,000/- each and in default to undergo simple imprisonment for three months.
A7	Under Section 467 r/w 471 IPC	Rigorous Imprisonment for three years and to pay fine of Rs.5,000/- in default to undergo simple imprisonment for one year.
A1	Under Section 468 r/w 471 IPC	Rigorous Imprisonment for three years and to pay fine of Rs.2,000/- in default to undergo simple imprisonment for one year.
A2 to A5 & A8	Under Section 468 r/w 471 IPC	Rigorous Imprisonment for one year each and to pay fine of

Accused	***Offence***	***Sentence***
		Rs.1,000/- in default to undergo simple imprisonment for three months.
A7	Under Section468 r/w 471 IPC	Rigorous Imprisonment for three years and to pay fine of Rs.5,000/- in default to undergo simple imprisonment for one year.
A1	Under Section 13(2) r/w 13(1)(d) of PC Act	Rigorous Imprisonment for three years and to pay fine of Rs.5,000/- in default to undergo simple imprisonment for one year.

7. Being aggrieved, the present batch of appeals are filed by the respective accused.

8. Mr.R.Rajaratnam, learned counsel appearing for A1. Mr.K.Shankar, learned counsel appearing for A2, A3, A4, A5 & A7 and Mr.Swami Subramnian, learned counsel appearing for A8, submitted that the investigation conducted by P.W.28 without placing all the materials collected during the investigation is singularly enough to set aside the

conviction. The trial court had not taken into consideration the evidence of P.W.6 who infact had prepared the loan applications, processed the loan applications and placed all the documents for consideration by A1. The investigation report and the legal scrutiny report given by the Panel Laywer, which has been taken into account by A1 before sanctioning the loan, clearly shows that the loan was disbursed only after satisfaction of the documents produced by the borrowers and except for few lapse regarding the nature of identical invoice from JG Traders, there were no other suspicious materials to decline the loan request.

9. Furthermore, it is submitted that the allegation of the prosecution that the machineries found in the premises of the loanees as per Ex.P7, though alleged to have been old machinery and not produced out of loan amount, there is no evidence to substantiate the said allegation. It is also contended that the loans were sanctioned based on collateral security and even before registration of F.I.R, substantial amount has been paid by the borrowers and few borrowers have cleared their loan, pending trial. When there is no element of deception at the

inception, the trial court ought not to have convicted them for the offence of cheating. In the absence of evidence that there was meeting of mind to do the illegal act by the accused, charge of conspiracy cannot sustain. It is further contended that when there is no culpable mental state on the part of the accused, the charges are imaginary and evidence let in by the prosecution does not prove or establish the ingredients required for cheating and conspiracy.

10. The learned Special Public Prosecutor Mr.K.Srinivasan, Senior Advocate appearing for CBI, submitted that repayment of loan either after registering the F.I.R or pending trial, can only have mitigating effect on sentence. But the fact that the loan was sanctioned by A1 for A3 to A8, based on bogus invoices of JG Traders floated by A2, is proved beyond any doubt. JG Traders, which has no commercial activity, issued their invoices which are marked as Exs.P68 and 72 and receipts Ex.P76 to 85. The very fact that, for all these loanees, A2 had issued invoices or receipts in the name of JG Traders and the same has been accepted by A1, discloses and proves the web between these

accused persons. It is an admitted fact that A8 secured over draft facility. Using invoice of A1 had utilised the fund for purchasing machineries and the diversion of loan amount is clearly admitted. A1 ought not to have permitted such diversion which is contrary to the Banking rules.

11. Heard the learned counsel appearing for the appellants and the learned Special Public Prosecutor appearing for the respondent and perused the materials available on record.

12. Learned counsel appearing for the appellants have presented a chart indicating the material documents which were collected during the investigation but not marked as exhibits, but only selective documents were marked and the Investigating Officer has not come out with any explanation for not marking those documents which are relevant to show that the loans were obtained in the normal course of Banking transaction.

13. It was contended that if at all there is any default in payment, it should be construed only as a breach of contractual obligation and not breach of trust or dishonest intention to cheat the bank. The chart indicates that the legal scrutiny report of all the five loans though available, was marked only in respect of two loanees namely, M/s.K.K.Sweets and M/s.Pentagon Exports. The product/purchase report which was scrutinized for sanction of loan in all the five cases though available, was not marked before the Court. The appraisal memorandum which is necessary to indicate that pre-sanction inspection had been conducted but was not produced for the four loanees except M/s.K.K.Sweets. It is pertinent to note that this appraisal memorandum is a main document to test as to whether A1 had applied his mind and had done his duty as Manager before sanctioning the loan. While P.W.7 the main witness whom the prosecution relied upon admits that the appraisal memorandum in all the five cases is available. However there is no explanation from the Investigating Officer as to why they were not marked as exhibits.

14. It is also the case of the defence that the money sanctioned was not disbursed directly to the loanees, but they were given to the suppliers by way of Pay Order or Demand Draft. Though it is contended by the prosecution and also accepted by the trial court, the majority of the loan amount had been paid to JG Traders based on the invoice or receipt given by A2. This fact is purely based on the Enquiry report of P.W.7 which is marked as Ex.P6. From the evidence of investigating Officer- P.W.28, it is obviously clear that he had not made any independent inspection of the documents that were all materials in the premises of the borrowers to clarify as to whether J.G Traders supplied the materials as per the invoices. To prove that those invoices are fake, there should have been some corroborative evidence, to the statement of P.W.7. Except the fact that TNGST and GST numbers furnished by J.G. Traders are not genuine, the other facts regarding the non-sale of materials are not proved. May be J.G Traders would have been floated by A2 and had no proper TNGST or CST Registration, but the said fact *per se* it will not lead to the inference that the said J.G Traders never involved in

manufacturing materials. In fact, the evidence of P.W.7 who has inspected also had not said that there is no establishment in the name of J.G Traders.

15. Yet another document heavily relied upon by the prosecution is the statement of A5 to P.W.7 which is marked as Ex.P6 in which A5 has stated that for availing the loan, he took the assistance of A2 who arranged the loan for consideration and he has also paid some percentage to A1. This letter of A5 addressed to P.W.7 is dated 29.12.2001. It is prior to registering the F.I.R. It is an extra-judicial confession, in the course of investigation conducted by Bank Official. This statement ought to be tested in the manner known to law, since the maker of the statement is one of the accused and the persons whom the statement addressed, are examined as witnesses who admitted in their cross examination that Ex.P7 statement dated 29.12.2001 was retracted by A5, vide letter dated 07.01.2002 and he has mentioned about this retraction in his report Ex.P6. Furthermore, in Ex.P7, this Court finds that the letter was not simply addressed to P.W.7, but there is a witness

by name Balasubramanian, who is one of the Bank staff who has affixed the seal and signature, but he was not examined by the prosecution. Therefore, the prior statement retracted subsequently has to be totally ignored for the reason that the prior statement proved through substantive and corroborating evidence.

16. This Court, at the beginning of the judgment itself, observed that the learned counsels alleged that the investigation done in perfunctory manner. This attack on investigation is well fortified by the fact elicited during the cross examination of P.W.28-Investigating Officer. Very crucial portion of the cross examination of P.W.28 which doubts the case of the prosecution to the Court, is extracted below:

> *If suggested that my investigation is based on Ex.P6 means. I deny. I collected Ex.P6 on 16.08.2002. On 06.03.2002 I have sent a letter to the Branch Manager,Tondaiyarpet to furnish relevant document for investigation purpose. I received the documents from Vijayakumar. Senior Manager on different dates. I do not remember*

whether I have given receipt memo for receiving the documents. I am not aware that before A1 joined the washermanpet branch, the branch was a loss making branch. I am not aware that A1 was posted to Washermanpet branch, he was instructed to make the branch as profitable branch and target was fixed on him. I am not aware that after A1 joined, the branch, he made the branch as profit making branch. I am not aware, how loans, A1 sanctioned in Washermanpet branch during his tenure. As per Ex.P6, I know how many accounts were taken into consideration for inspection. 22 accounts were taken into consideration for inspection in Ex.P6. I have stated 5 cases in the F.I.R. The 5 cases forms part of the 22 cases in Ex.P6. I am not aware out of the 5 cases in which F.I.R was registered in 4 cases the total amount was settled. In F.I.R, it is stated that loans were given in the year 2000-2001. In the year 2002 the F.I.R was registered. I do not know that since the amounts were not repaid, the account become NPA the case was registered. In the F.I.R, the source is shown as SPE/CBI/ACB. I do not remember in what form the information was given. In F.I.R one Rathnakar is shown as Accused No.3.

But the said Rathnakar is not shown as an accused in the final report nor as witness. I have not stated anything about Rathnakar in the charge sheet.

17. I do not remember whether I collected loan files and credit files. The documents required for processing the loan it is called as loan file. The bank required certain documents for sanctioning the credit is called credit file. I have collected check list for scrutiny and approval of LSR by branches pertaining to 2 units, namely M/s.Femina Resins & Chemical Industries and M/s.Sweeti Special. One is dated 20.12.2000 and other is dated 23.02.2002. For others I have not collected the LSR. I am not aware who was the Panel Advocate for Canara Bank. Tondaiyarpet branch. I have not collected the Equitable Mortgage Transaction EMT Register from Tondiarpet branch. In page No.4 of Ex.P6, it is stated that Hari visited Surya Offset Printers on 26.12.2001 and found the machinery was available there. At page 19, it is stated that sewing machines pertaining to Pentagon Exports were available in its premises. In this case P.W.6 Ramcharan was the loan officer and he has processed the loan application of all the five cases and has put up the

> *office note with his recommendations to the Manager. I am not aware that pre-sanction and post-sanction inspection report are available in the credit file. For J.G.Traders the loan amount was given in the form of demand drafts and pay orders. I am not aware that the loan documents such as invoices, proforma and other documents are to be taken on the face value.*

17. Though the prosecution case that documents emanating from same source for sanctioning loans points the needle of suspension towards the appellants who had availed the loan relying upon those documents, there suspicion is not sufficient to convict. The allegations not been established and proved beyond doubt in the manner known to law. Further, on account of the fact that, the loan amount paid by four of the borrowers before registration of F.I.R and the fifth loanee had paid the amount pending trial, the element of criminality has also been diluted though whatever materials are available against them. The above extract of evidence will show that the prosecution had failed to establish the charges against the accused beyond reasonable doubt.

18. Hence, the appeals are allowed. Conviction and Sentence passed by the learned XI Additional Special Judge, CBI Cases by judgment dated 26.03.2013 passed in C.C.No.38 of 2003 is set aside. Fine amount paid by the appellants, if any is ordered to be refunded. The bail bond, if any is executed by the accused, shall stand cancelled.

11.08.2023

mfa

To

1. The XI Additional Special Judge,
   CBI Cases (CBI Cases relating to Banks and Financial Institutions)
   Chennai.

2. The Inspector of Police,
   SPE/CBI/ACB,
   Chennai.

3. The Public Prosecutor,
   High Court,
   Chennai.

DR.G.JAYACHANDRAN,J.,

mfa

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