# IN THE HIGH COURT OF JUDICATURE AT MADRAS

| Reserved on : 13.09.2023 | Pronounced on : 27.09.2023 |
|---|---|

Coram:

**THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN**

Criminal Appeal Nos.292, 319, 320 and 354 of 2013

**Crl.A.No.292 of 2013**

R.Srinevass Rao,
Son of Late N.Ramakrishna Rao,
Formerly Branch Manager,
Indian Overseas Bank,
Choolai Branch
Permanent R/o.20, Kripa Sankari Street,
West Mambalam,
Chennai-33

... Appellants/Accused No.1

**/versus/**

State,
Represented by Inspector of Police,
ACB/CBI/SPE, Chennai.
R.C.No.17 (A)/2003/SPE/CBI/ACB/Chennai ... Respondent/Complainant

**Prayer:** Criminal Appeal has been filed under Section 374 (2) of Cr.P.C., r/w.27 of the Prevention of Corruption Act, pleased to set aside the conviction and sentence passed against the appellant in the judgment dated 08.04.2013 made in C.C.No.68 of 2004 on the file of the Court of XI Additional Special Judge [CBI Cases relating to Banks and Financial Institutions], Chennai and allow this Criminal Appeal

For Appellant : Mr.E.V.Chandru @ E.Chandrasekaran
Legal Aid Counsel

For Respondent : Mr.K.Srinivasan, Senior Counsel
Special Public Prosecutor (C.B.I).

**Crl.A.No.319 of 2013**

Kamalakannan
Son of Late Swaminathan,
No.48, Loganathan Street,
Krishnamoorthy Nagar,
Chennai-600 118. ... Appellant/Accused No.2

**/versus/**

Inspector of Police,
CBI (ACB Wing),
Chennai. ... Respondent/Complainant

**Prayer:** Criminal Appeal has been filed under Section 374 of Cr.P.C., pleased to call for the records in C.C.No.68 of 2004 on the file of the XI Additional Special Judge and set aside the order of conviction.

For Appellant : Mr.N.R.Elango (SC)
Mr.Mr.E.V.Chandru @ E.Chandrasekaran
Legal Aid Counsel

For Respondent : Mr.K.Srinivasan, Senior Counsel
Special Public Prosecutor (C.B.I)

**Crl.A.No.320 of 2013**

R.Jayakumar
Son of Ramudu Chettiar,
New No.5, Erikkarai Street,

Nerkundrum, Chennai-600 107 ... Appellant/Accused No.5

**/versus/**

Inspector of Police,
Central Bureau of Investigation,
Anti Corruption Branch,
Chennai-600 006. ... Respondent/Complainant

**Prayer:** Criminal Appeal has been filed under Section 374 of Cr.P.C., pleased to set aside the order of conviction and sentence dated 08.04.2013 made in C.C.No.68 of 2004 on the file of the XI Additional Special Judge (CBI Cases relating to Banks and Financial Institutions), Chennai.

For Appellant : Mr.A.S.Balaji

For Respondent : Mr.K.Srinivasan, Senior Counsel
Special Public Prosecutor (C.B.I)

**Crl.A.No.354 of 2013**

K.Govindarajan
S/o.Late Kumarasamy,
F-1, Doshi Housing,
No.74, Gandhi Road,
Gill Nagar Extension,
Choolaimedu, Chennai-94. ... Appellant/Accused No.4

(***Abated on his dead.)***

**/versus/**

The State rep.by
Inspector of Police,
Anti Corruption Branch,
Central Bureau of Investigation,

Chennai. ... Respondent/Complainant

**Prayer:** Criminal Appeal has been filed under Section 374 of Cr.P.C., pleased to set aside the order of the XI Additional Special Judge (CBI Cases relating to Banks and Financial Institutions), Chennai in C.C.No.68 of 2004 dated 08.04.2013 and acquit the appellant.

For Appellant : Mr.M.Mohammed

For Respondent : Mr.K.Srinivasan, Senior Counsel
Special Public Prosecutor (C.B.I)

**COMMON JUDGMENT**

On reliable information, SPE/CBI/ACB/ Chennai registered a case in RC No: MA 1 2003A0017 dated 27.03.2003 under sections 120 B r/w 420 IPC and Section 13(2) r/w.13(1)(d) of P.C.Act against (1) P.R.Srinivasa Rao (Senior Manager, Indian Overseas Brank, Choolai Branch, Chennai), (2) Kamalakannan and (3) Varadappa Naicker both Partners of M/s Sri Lakshmi Freight Carriers, Kannapparthidal, Chennai and (4) K.Govindarajan, Approved Valuer of IOB.

**2.** The gist of the complaint:-

The above named accused during the period 2000-2001 entered into a criminal conspiracy to cheat Indian Overseas Bank, Choolai Branch and pursuant to the said conspiracy, Srinivasa Rao (A-1), the Branch Manager by abusing his official position by illegal means released cash credit facilities, Letter of Guarantee limits to M/s Lakshmi Freight Carriers, represented by Kamalakannan (A-2) and Varadappa Naicker (A-3) on false collateral security produced by A-2 and A-3 and a false valuation certificate issued by Govindarajan (A-4). Based on the recommendation of A-1, the Regional Office of Indian Overseas Bank sanctioned Loan on 20.07.2000 and 31.07.2001. The collateral security of a landed property alleged to be owned by Varadappa Naicker (A-3) in fact a land sold by Varadappa Naicker prior to 09.12.1998 (i.e.,) much before offering it as collateral security. For a sold property, Govindarajan (A-4) gave valuation certificate in the name of A-3. The laon amount overdue till date and thereby caused wrongful loss to the Bank to a tune of Rs.22 Lakhs.

**3.** On completion of investigation, final report was filed against 5 persons by adding one more accused by name Jayakumar. It is alleged that, A-1 to A-5 pursuance to the conspiracy to cheat IOB, Choolai Branch to extend credit facility by A-1 for M/s.Lakshmi Freight Carriers owned by A-2 and A-3, A-5 introduced A-3 to A-2. He along with A-2 and A-3 fabricated Patta, Chitta and Adangal to get the loan. From the loan amount, A-5 and A-3 took commission from A-2. The final report was taken on file in C.C.No.68/2004. Pending trial, one of the accused Varadappa Naicker (A-3) absconded and the case against him got split up and numbered as C.C.No. 47/2012.

**4.** Charge for conspiracy against all the 5 accused were framed. Besides for substantive offences like cheating and forgery of documents and using it as genuine, Charges were framed against the respective accused. As far as A-1 is concern, he being a public servant specific charge for misconduct under P.C. Act also framed.

**5.** To prove the charges, the prosecution examined 15 witnesses (P.W.1 to P.W.15) and marked 106 documents (Ex.P.1 to Ex.P.106). On the side of defence, examined 3 witnesses (D.W.1 to D.W.3) and one document (Ex.D.1) was marked.

**6.** The XI Additional Special Judge for CBI cases at Chennai convicted all the four accused *vide* judgment dated 08.04.2013. They have been convicted and sentenced as below:-

| *Name and Rank of the Accused* | *Offence under Section* | *Conviction and Sentence imposed by the trial Court* |
|---|---|---|
| Srinivasa Rao (A-1) in Crl.A.No.292 of 2013 | 120-B r/w 420, 467, 467 r/w.471, 468, 468 r/w.471 of I.P.C and Section 13(2) r/w 13(1)(d) of P.C. Act | To undergo seven years R.I and to pay fine of Rs.10,000/- in default to undergo S.I for one year |
| | Section 13(2) r/w 13(1)(d) of P.C. Act | To undergo seven years R.I and to pay fine of Rs.10,000/- in default to undergo S.I for one year |
| Kamalakannan (A-2) in Crl.A.No.319 of 2013 | 120-B r/w 420, 467, 467 r/w.471, 468, 468 r/w.471 of I.P.C and Section 13(2) r/w 13(1)(d) of P.C. Act | To undergo seven years R.I and to pay fine of Rs.6,20,000/- in default to undergo S.I for one year |
| | U/s.467 r/w 471 of I.P.C | To undergo seven years R.I and to pay fine of Rs.6,20,000/- in default to undergo S.I for one year |
| | U/s. 467 of I.P.C | To undergo seven years R.I and to pay fine of Rs.6,20,000/- in default to undergo S.I for one year |
| | U/s.467 r/w 471 of I.P.C | To undergo seven years R.I and to pay fine of Rs.6,20,000/- in default to undergo S.I for one year |
| | U/s.420 of I.P.C | To undergo seven years R.I and to pay fine of Rs.6,20,000/- in default to undergo S.I for one year |
| K.Govindarajan A-4 in Crl.A.No.354 of 2013 | 120-B r/w 420, 467, 467 r/w.471, 468, 468 r/w.471 of I.P.C and Section 13(2) r/w 13(1)(d) of P.C. Act | To undergo three years R.I and to pay fine of Rs.5,000/- in default to undergo S.I for one year |
| | U/s.420 of I.P.C | To undergo three years R.I and to pay fine of Rs.5,000/- in default to undergo S.I for one year |

| | | |
|---|---|---|
| R.Jayakumar<br>A-5 in Crl.A.No.320 of 2013 | 120-B r/w 420, 467, 467 r/w.471, 468, 468 r/w.471 of I.P.C and Section 13(2) r/w 13(1)(d) of P.C. Act | To undergo one year R.I and to pay fine of Rs.5,000/- in default to undergo S.I for six months |
| | U/s.420 of I.P.C | To undergo one year R.I and to pay fine of Rs.5,000/- in default to undergo S.I for six months |

The period of substantive sentence was ordered to run concurrently. The period of imprisonment already undergo ordered to be set off under Section 428 of Cr.P.C

**7.** The gist of the prosecution case as spoken through its witnesses :-

When A-1 was working as its Senior Manager at IOB, Choolai Branch, N.Kumar (P.W-12) was serving under him as the Assistant Manager. P.W-12 had deposed that, he was looking after staff loans, pension loans and miscellaneous loans. Mr.Varaprasad, (P.W-15), the Assistant Manager was in-charge of Credit Department. A-1 was overall in-charge of the Branch. A-1 authorised to open the Current Account No:1576 of M/s.Lakshmi Freight Carriers. The account was opened on 18.03.1998. Initially, M/s.Lakshmi Fright Carrier was a Proprietor concern. Mr.Kamalakannan was its proprietor. Subsequently, it was converted into a partnership firm. Mr.Kamalakannan and one Sivaprakasam were its partners. Later, Sivaprakasam was relieved from the partnership and Mr.Varadappa Naicker was inducted as partner. The retirement-cum partnership deed dated 25.09.1998 is Ex.P-20. M/s.Lakshmi Fright Carrier was enjoying credit facility sanctioned by Regional Office on the recommendation of the Branch on the collateral security of the agricultural land owned by its partner Sivaprakasam and others. After Sivaprakasam relieved from the partnership and Varadappa Naicker inducted as its partner, the 66 cents of residential land of Varadappa Naicker was substituted as collateral security. In view of the new constitution of the partnership, A-1 forwarded a fresh advance proposal dated 30.11.1998 (Ex.P-23) treating the earlier limit sanctioned as withdrawn. Ex.P-19, the valuation report dated 22.09.1998 given by K.Govindarajan (A-4) as worth Rs.20 lakhs for the property of Varadappa Naicker relied by A-1 in his fresh proposal for the existing loan.

**8.** The documents in the loan file such as the parent document of the said property is marked as Ex.P-102 and the title deed of the property dated 28.08.1963 in the name of Varadappa Naicker is marked as Ex.P-46. Patta No:2052 dated 20.12.1996 (Ex.P-55), Chitta and Adangal issued by VAO (Ex.P-56 and Ex.P-57) and the Encumbrance certificates for the period

01.08.1963 to 31.05.1969 (Ex.P-72); for the period 01.06.1969 to 14.09.1994 (Ex.P-73); for the period 15.09.1994 to 03.11.1997 (Ex.P-69); and for the period 01.01.1997 to 10.12.1998 (Ex.P-71) indentified by PW-12.

**9.** As per the evidence of PW-12, the account was operated by Kamalakannan as Managing Partner. If the loan is within the Branch Manager limits, A-1 will sanction and if it is beyond his limit, he will sent the proposal to Regional Office with his recommendation. In the case of M/s.Lakshmi Freight Carriers, renewal proposals Ex.P-24 to Ex.P-27 were sent by A-1 to the Regional office and the regional office accorded sanction on 01.12.1999 for cash credit limit upto 10 lakhs. Ex.P-30 to Ex.P-32 are the request of A-2 and the letter of A-1 forwarding the request to the Regional office recommending to sanction Rs.2 lakhs Letter of Guarantee limit. Ex.P-34 to Ex.P-36 is the letter of A-1 for enhancement of CC limit. The recommendation of A-1 accepted at the regional office and the CC limit was enhanced from Rs.10 lakhs to Rs.18 lakhs *vide* the sanction advice dated 20.07.2000 (Ex.P-38). A-2 sought for adhoc limit of Rs.4 lakhs and same was sanctioned. The pro-note (Ex.P-79) jointly signed by A-2 and Varadhappa Naicker for enhancement of loan by Rs.8 lakhs on 29.07.2000. The credit limit was increased from Rs.10 lakhs to Rs.18 lakhs and the documentation was cancelled by A-1. The hypothecation of book debts dated 29.07.2000 signed by the partners of M/s Lakshmi Fright Carriers before A-1. The letter of guarantee Ex.P-83 was signed by both the partners. The supplementary mortgage was confirmed by Varadappa Naicker by the letter dated 11.01.2001 and that letter is Ex.P-84. For the adhoc limit of Rs 4 lakhs, both the partners jointly executed a demand pro-note Ex.P-88. A-1 used to deal with the customer Kamalakannan. Neither he (PW-12) nor Varaprasad, the Assistant Manager (Credit) had dealt the customer directly.

**10.** P.W.15 Varaparasad, the Assistant Manager (Credit) had deposed that, as a Credit Officer, he never dealt with the account of M/s.Lakshmi Freight Carrier. This account was independently handled by A-1 and inspection of the property given as security and the valuation of the property mentioned in the proposal was done by A-1.

**11.** P.W.4 Rajachandramohan, the Senior Branch Manager of IOB, Choolai Branch, during March 2001 to April 2004, had deposed about the Bank Guarantee to M/s.Lakshmi Freight Carrier for Rs.5 lakhs in favour of Hindustan Petroleum Corporation. Kamalakannan sought for enhancement of cash credit limit to the existing limit of Rs.18 lakhs, he offered a vacant land at Velacherry in the name of one Viswanathan as additional collateral security along with encumbrance certificate, valuation certificate and legal opinion. He took the document to his Higher Officials for guidance. Since the property belongs to third party, they adviced to make some more verification. He, then verified with the Sub Registrar office and found that, the Encumbrance certificate is not genuine. By the time, based on the documents enhanced credit limit was allowed. When this was reported to the Higher Authorities, they adviced him to verify the genuinenesses of the other documents furnished earlier by the borrower M/s.Lakshmi Freight Carrier. He applied for encumbrance certificate for the property of Varadappa Naicker given as collateral security. The E.C Ex.P-106, for the period 16/02/1996 to 28/03/2002 indicated 13 encumbrances. He visited the property and found it is not a vacant land but several houses constructed in it by the purchasers from Varadappa Naicker prior to the creation of EM with IOB. Thus, on his verification, he found Varadappa Naicker, who had given his 66 cents as collateral security and created EM with the bank was not the owner of the property and he had sold the property long back.

**12.** P.W-7, Mr.J.Loganathan, the VAO of Madipakkam Village during the period 26/07/2002 to 03/12/2006 had deposed that, Ex.P-55 patta not issued by the Saidapet Tahsildar. Only Deputy Tahsildar used to issue Patta. The signature in Ex.P-55 is not the signature of Maya Alagu the then Tahsildar. Likewise, Ex.P-56 Chitta, Ex.P-57 Adangal and Tax receipt Ex.P-58 are not genuine. During that time in Madipakkam Village, one Thirumalaiyandi and Krishnan were the VAO's. The signatures in Ex.P-56 to Ex.P-58 are not their signatures. There was no VAO by name Padmanaban during that period working in Madipakkam Office.

**13.** The deposition of PW-9, Mr.S.Swaminathan, the then Deputy Tahsildar (Head Quarters) corroborates the evidence of P.W-7. Further, P.W-9 had deposed that, Saidapet Taluk was bifurcated into two taluks namely Ambattur and Tambaram with effect from 01/01/1997. Hence, the patta Ex.P-55 issued in the name of Tahsildar, Saidapet is a forged document.

**14.** P.W-10, Mr.Chidambaram, the Sub Registrar, Velacherry had compared the EC produced by M/s.Lakshmi Freight Carriers at the time of availing loan and the EC obtained by PW-4, and deposed that, Ex.P.69 to Ex.P.73 are not issued by the SRO, Vellacherry or SRO, Alandur. They are forged documents affixed with rubber stamp seal. The genuine E.C will have metal seal affixed.

**15.** P.W-11, Mr.Balusamy the Assistant Government Examiner of Questioned Documents, on comparing the admitted writings and signatures of Kamalakannan (A-2) and Velayutham S/o.Varadappa Naicker had in his opinion Ex.P-97 and the reasoning Ex.P-98, stated that, in the hypothecation deed and letter of deposit of title deed, the signature of Varadappa Naicker been forged and it tallies with the signatures of Kamalakannan and Velayutham respectively.

**16.** To prove that, from the account of M/s.Lakshmi Freight Carriers, money transferred to the account of A-3 and his son Velayutham and to A-5, the prosecution has examined P.W-5 Mr.K.Ashok, Senior Manager, Syndicate Bank, Kodambakkam Branch, P.W-6 Mr.K.Venkateswaran, Senior Manager, Allahabad Bank, T.Nagar Branch and P.W-8, Praba Hariharan, Branch Manager ICICI Bank, Madipakkam Branch. (formerly Bank of Madura till 1999 and later merged with ICICI Bank)

**17.** Ex.P-48 is the cheque dated 14/12/1998 from M/s.Lakshmi Freight Carrier to M/s.Arul Sakhti Trade Links (Prop.Jayakumar A-5) for Rs.30,000/- Ex.P-49 is the cheque dated 30/01/1999 from M/s.Lakshmi Freight Carrier to M/s.Arul Sakhti Trade Links for Rs.25,000/-. Ex.P.50 is the statement of Current Account No:2251 maintained by M/s Arul Sakhti Trade Links which reflects the encashment of these two cheques.

**18.** Ex.P-52 is the cheque in favour of R.Jayakumar (A-5) for Rs.20,000/- dated 28/12/1998 and Ex.P-53 is the cheque in favour of R.Jayakumar (A-5) for Rs.25,000/- dated 04/01/1999. Both these cheques were encashed by R.Jayakumar through his account maintained in Allahabad Bank. The statement of Account is Ex P-54. Ex.P-61 is the Statement of Account in Bank of Madura (merged with ICICI Bank), Madipakkam maintained by Varadappa Naicker. Ex.P-62 is the statement of account in Bank of Madura (merged with ICICI Bank), Madipakkam maintained by his son Velayutham. Ex.P-63 is the cheque in favour of Varadappa Naicker dated 21/12/1998 for Rs.20,000/-. Ex.P.65 is the cheque in favour of Velayutham dated 18/01/1999 for Rs.25,000/-. Ex.P.67 is the cheque in favour of Velayutham dated

11/01/1999 for Rs.25,000/-.

**19.** Thus, through these witnesses and documents, the Trial Court being satisfied that, the A-1 had abused his official position to obtain wrongful gain to the partners of M/s.Lakshmi Freight Carriers and wrongful loss to the IOB. A-2 to A-5 cheated the bank by availing loan on forged documents using it as genuine. All these accused have committed the offence in furtherance of conspiracy to do an illegal act of cheating and by using the forged documents as genuine for the purpose of cheating.

**20.** Pending appeals, one of the accused/appellant Mr.Govindarajan (A4) died. Hence, his appeal in Crl.A.No.354/2013 gets abated. For Crl.A.No.292 of 2013 and Crl.A.No.319 of 2013, there was no representation when the matter was taken up for final hearing on 17/08/2023. Hence, Legal Aid Counsel Mr.E.Chandru was appointed by the Court. Meanwhile, the parties engaged Mr.N.R.Elango, Senior Counsel and he appeared and submitted the arguments. For the appellant in Crl.A.No.320 of 2013 Mr.A.S.Balaji appeared. This Court requested Mr.E.Chandru, the Legal Aid Counsel to assist the Court and he rendered his assistance by placing the law governing the reliability of documents placed before the trial Court.

**21.** The crux of the argument made by the respective counsels for the appellants are as below:-

A-1: Srinivasa Rao:-

The Account of M/s.Lakhsmi Freight Carriers is a satisfactory account in operation for more than 15 years with yearly turn over of more than Rs.120 lakhs per year. They had reputed clienteles like M/s.Brakes India, M/s.Hindustan Petroleum Corporation etc. The enhancement of cash credit facility and BG was sanctioned based on past performance, Book debts and the collateral security. Before accepting the collateral security of the property in the name of the Varadappa Naicker, legal opinion (Ex.P-18) from the Panel Lawyer Mr.V.Chandrakanthan was obtained. He, after perusing the title documents and the revenue records like Chitta, Adangal and the E.C furnished by the borrower had opined that, the property originally owned by Kannan. He sold it to Mrs.Karuppayee @ Muniammal on 13/08/1941. In turn, from Karuppayee, on 28/08/1963, Varadappa Naicker purchased it. Till 03/11/1997, there is no encumbrance for the property. Subject to production of NIL Encumbrance Certificate from 04/11/1997 to till date, the guarantor Mr.Varadappa Naicker has Clear and Marketable Title. A-4 had given his valuation report (Ex.P-19) the fair market value of the property mention as around Rs.22,50,000/-. Based on the legal opinion about the title and valuation certificate, loan was sanctioned and the letter of proposal Ex.P-26 by A-1 clearly states the reason for forwarding the proposal to the Regional office.

**22.** The prosecution failed to examine the Lawyer, who gave the opinion about the title. The VAO and the Tahsildar, who have deposed and spoken about the genuineness of the Patta, Chitta, Adangal and Tax Receipt are not competent witnesses to speak about its genuineness. The VAO, who served at the relevant point of time and the Tahsildar, who served during that time were not examined. As a Bank official, A-1 had gone by the opinion of the Panel Lawyer and there is no misconduct in sanctioning the loan based on the Panel Lawyer opinion and the Approved Valuer certificate. The prosecution witnesses had not said anything about dishonesty in sanctioning the loan or obtainment of any pecuniary advantage.

**23.** The evidence of P.W-12 and P.W-15 that, A-1 used to meet A-2 or A-1 used to independently deal the file of A-2 is not a material relevant to prove the fact of conspiracy. P.W-12 and P.W-15 are Assistant Managers, who were in-charge of credit exclusively and A-1 as Branch Manager, was over all in charge of the bank. P.W-4, the successor to the office, for some ulterior reason made allegation against M/s.Lakshmi Freight Carriers and about the collateral security offered by A-2 for additional loan. Though the account of A-2 Firm was active and profit earning. The trial Court erred in relying upon the evidence of P.W-4 a tainted witness and P.W-13, who filed the final report without proper investigation. The alleged offer of Velacherry property by one Viswanathan as collateral security followed by the Inspection of P.W-4 to the spot and his observation that the property was sold to several person and constructions found in the land of Varadappa Naicker are all only oral averments and not borne by documents. None of the so called present owners (13 in numbers) of the land examined, except the E.C marked as Ex.P.106, no other document collected by the Investigation Officer P.W-13 or his predecessor, who investigated the case to show to the Court, who sold the property to those 13 persons and how their vendors derived the title to that property. It is admitted fact that, Ex.P-46 is the genuine title deed of the property and the property stands in the name of Varadappa Naicker. P.W.3, N.Sekar, the Sub Registrar of Pallavaram, on examining Ex.P.46 had deposed that the property purchased by Varadappa Naicker from Muniammal. The document registered as No:1984/1963 in respect of land measuring 66 cents in S.No:128/3 in Madipakkam Village is a genuine document. In the year 1969, the jurisdiction of Madipakkam shifted to Alandur. He could not give any opinion about the genuineness of the E.C issued by SRO, Pallavaram in the year 1997, since records are kept only for 3 years.

**24.** Mr.E.Chandru, Legal Aid Counsel appointed by the Court to represent the appellant in Crl.A.No.292 of 2013 submitted that, the prosecution has failed to establish that, 66 cents of land owned by Varadappa Naicker sold to third parties before he created EM in favour of the IOB or thereafter. The E.C Ex.P.106 relied by the prosecution is in respect of part of the S.No.128/3. The 13 Encumbrance shown are between third parties and none of the transaction is by Varadappa Naicker the true owner of the property. There is no evidence placed by the prosecution to show that, Varadappa Naicker, who is the owner of the property as per Ex.P-46 sold it to the executants shown in the E.C marked as Ex.P-106 or to anybody else. There is no evidence placed before the Court to show that the transactions found in Ex.P.106 are in respect of the property mentioned in the schedule to the sale deed Ex.P-46. Even assuming those 13 transactions are part of the 66 cents land mortgaged by Varadappa

Naicker with the IOB, those sales are done not by Varadappa Naicker, but by some other third parties. The Investigating Officer had not collected the sale deeds of those transaction to test whether those transactions are genuine and the executants shown in the transactions are the true and bonafide title holders of the property.

**25.** According to the Leaned Counsel Mr.E.V.Chandru, the trial Court miserably failed to look into the fact that, the charge for conspiracy is not even remotely made out. The Banker and Customer relationship between A1 and A2 is misconstrued as meeting of mind to do an illegal act. The failure of the prosecution to examine the Lawyer, who had given clear opinion about the title upto 1997 and failure to produce documents to show the property transferred to third party by Varadappa Naicker before he created EM in favour of the Bank not taken note by the Trial Court.

**26.** P.W-4 evidence is vague and misleading. The Investigating Officer admits that, he did not collect documents from P.W-4 to substantiate his statements. Without supporting document, P.W-4 had deposed falsely before the Court regarding the property given as collateral security to prejudice the

Court. Further, the Learned Counsel also submitted that, the handwriting expert opinion not worth relying and it has to be ignored, since the sample signatures and writings from the suspected accused was not obtained by getting permission of the Court as per Section 311-A of Cr.P.C or the witness in whose presence the sample signatures obtained examined. Hence, the charge of fabrication of document and using it as genuine to cheat the bank fails.

**27.** Crl.A.No.319/2013 filed by A-2 Kamalakannan

In addition to the above argument, the Learned Counsel for A-2 submitted that, Varadappa Naicker is one of the partners of the firm M/s.Lakshmi Freight Carriers. He holds 20% of share and the money transferred into his personal account from the account of the firm is not even a suspicious transaction much less an illegal transaction. The property given by him as collateral security is his self acquired property under Ex.P-46. The witnesses to the prosecution admits that, it is genuine deed. No evidence produced by the prosecution that, Varadappa Naicker sold this property to anybody at any point of time before or after creating EM with IOB for the loan of M/s.Lakshmi Freight Carriers. The E.C Ex.P-106 and the testimony of PW-4 is not near the proof to show that, Varadappa Naicker sold his property. The testimony of PW-7 and P.W-8 without the details when the Patta from Varadappa Naicker got transferred to third party, who is that third party and whether it is still a vacant land or constructed with building are facts should have been proved with documents and oral evidence. Total absence of material to prove these facts, had missed the notice of the trial Court.

**28.** The official witnesses admit that, even they could not make out from the face of the documents any fabrication or forgery. They were not able to conclusively say Ex.P-55 to Ex.P-58 and Ex.P-69 to Ex.P-73 are not genuine. A forensic comparison with the original records alone can decide the genuineness of these documents. The prosecution has failed to conduct proper investigation regarding these documents. Particularly, when the title stands in the name of Varadappa Naicker and no document to show that, he sold away the property, the Patta, Chitta and Adangal in his name is natural and anything contrary to this fact ought to be proved beyond doubt and through reliable evidence. Merely the proof of payment to the partner or any third party cannot be ground to presume that, they were paid for creating false documents.

**29.** A-2 is a genuine businessman with aggregate business worth

Rs.3.62 crores as per Ex.P-47, giving profit to the bank about Rs.15 lakhs a year and having RD of Rs.10.14 lakhs. He had been falsely implicated to cripple his business, by malicious criminal action initiated by PW-4,who had animosity against A-2.

**30.** Crl.A.No.320/2013 filed by Jayakumar (A-5)

The Learned Counsel appearing for A-5, submitted that the case of the prosecution that for commission, A-5 introduced A-3 to A-2 is falsified through the evidence of D.W-2 Varadarajan, who is a land broker and friend of A-3. In the cross examination of D.W-2, he admits that, he arranged A-3 property at Madipakkam for the bank loan of A-2. Even A-3 was not aware of the transaction of his property only after A-2 brought to his notice that the documents given by A-3 were fabricated documents, he enquired with A-3 and found the truth.

**31.** The opinion of the hand writing expert P.W-11 is not conclusive as far as the sample writing of this accused and the writings and signatures found in the disputed documents. No specific overt act attributed by the prosecution witnesses incriminating this accused. The prosecution theory of

A-5 introducing A-3 to A-2 demolished through DW-2 cross examination. The encashment of the cheques given by M/s.Lakshmi Freight Carrier is not a proof for conspiracy or cheating or forgery.

**32.** The Learned Counsels finally submitted that the perfunctory investigation with truncated documents has resulted in erroneous finding. To buttress this allegation, the Learned Counsel refers the admission of PW-13 (IO), that he during the investigation did not make any attempts to verify the genuineness of the documents referred by P.W.4. He did not cite the Counsel, who gave the opinion about the title. He did not take any steps to find out who filed the loan documents. He did not verify the book debts against which the credit limit was sanctioned. He has not tried to collect any rule to show that the valuer has a duty to verify the ownership of the property for which he give the valuation certificate.

**33.** Submission by Special Public Prosecutor:-

The Learned Special Public Prosecutor for CBI, submitted that, though there are few loose ends in the prosecution case, the prosecution evidence, on the whole had established the fact that, the A-1 enhanced the Cash

Credit limit for M/s.Lakshmi Freight Carriers from Rs.10 lakhs to Rs.18 lakhs and issued Bank Guarantee for Rs.5 lakhs, taking the property document (Ex.P-46) of Varadappa Naicker (A-3) as collateral security. This property proved to be sold to third parties through the E.C marked as Ex.P.106. The Patta Ex.P.55, Chitta Ex.P-56 and Adangal Ex.P-57 are fake documents produced by A-2 and A-3 the partners of M/s.Lakshmi Freight Carriers Ltd for the purpose of getting enhancement of loan dishonestly. Through P.W-7 and P.W-8, the revenue documents given in support of the title documents proved to be fabricated documents through the Sub-Registrar of the concern SRO, the E.C produced by A-2 and A-3 is proved to be false document.

**34.** The hand writing expert opinion point the makers of the false documents as A-2 and A-5. The agreement between the accused persons to do illegal act of cheating by using fabricated documents as genuine is proved through the manner in which the loan sanctioned based on fake documents and the sharing of the loan amount among them. Therefore, the trial Court has rightly held them all guilty and convicted.

**35. Heard the Learned Counsels for the appellants and the**

**Special Public Prosecutor for CBI. Records perused.**

**36.** The prime contention of the appellant counsels is that, there is no proof placed before the Court to show that, the 66 cents residential land of Varadappa Naicker which he purchased in the year 1963, *vide* Ex.P-46 was sold by him to third parties. It is contended that, Ex.P.106 is not a proof for the alienation of the property mentioned in Ex.P.46.

**37.** Ex.P-46 is the original title deed in the name of Varadappa Naicker. P.W-3, the Sub Registrar of Pallavaram had deposed that, Ex.P-46 is a genuine document. To prove the allegation that, Varadappa Naicker sold away his property to 13 individuals, the prosecution has not produced any sale deeds or examined seller or buyer found in Ex.P.106 as witness to prove Varadappa Naicker sold away his property to them. P.W-5 had deposed that, when he visited the site, he found several constructions and the occupants claimed ownership over the property. Surprisingly, the IO had not collected any document or recorded the statements of those occupants to prove this allegation. Through P.W.7 and P.W.8, the prosecution has attempted to prove that, Ex.P-55 to Ex.P.58 are not genuine documents and Varadappa Naicker is not the Patta holder of the property. If so, the prosecution ought to have placed on record, who is the present Patta holder and when the Patta got transferred from the name of Varadappa Naicker.

**38.** Mere oral allegations on the part of the prosecution witnesses, denying the title of Varadappa Naicker contrary to Ex.P-46 is not worth reliable unless document divesting the title from Varadappa Naicker is placed. Ownership of a person over the property is based on the title deed and not based on E.C or Patta or Chitta or Tax Receipts. Except the title document which is the primary document, all other documents like patta or chitta or tax receipts are supplementary in nature for revenue collection purpose and not a proof for title. They are not decisive piece of material evidence to decide the title.

**39.** As far as the Bank Manager A-1, who had advanced the loan based on the documents produced and the past record of the borrower, this Court finds no apparent dishonesty in advancing the loan. The Lawyer, had given his opinion (Ex.P-18) confirming that, till 1997, there is NIL encumbrance and the valuation certificate (Ex.P-19) are the documents relied by A-1 before sanctioning the loan. When the prosecution has not doubted the honesty of the Lawyer, who had given opinion about the title and when it is difficult even to a trained mind to find out the alleged fabrications in the documents, the same benefit has to be extended to A-1.

**40.** A-2 is the partner of M/s.Lakshmi Freight Carriers. Ex.P-47 is the statement of account maintained in IOB by M/s.Lakshmi Freight Carriers. The entries both debit and credit indicates that the account been active through out. Payment around Rs.2 Lakhs had been transferred to the account of Varadappa Naicker and his son Velayutham as well as to Jayakumar and his firm M/s.Arul Sakthi Trade Links. According to the prosecution, these payments were the commission given to Varadappa Naicker (A3) and Jayakumar (A5) for arranging fake collateral security and fake revenue documents and E.C. Contrarily on the side of the accused it is contended that, these money was transferred in the ordinary course of business and nothing illegality in the transactions.

**41.** To suspect the legality of these transactions, the prosecution ought to have proved that the property given as collateral security was not owned by Varadappa Naicker and the revenue documents and E.C., are fabricated documents. As pointed out by the defence counsels, the Investigating Officer had not placed necessary documents to prove these two facts. First of all, the EC marked as Ex.P-106 does not contain details whether it is in respect of entire 66 cents of land in S.No.128/3. Next, it is admitted fact that the said property was purchased by Varadappa Naicker in the year 1963 under the registered sale deed Ex.P-46. While so, the prosecution which alleges that Varadappa Naicker sold the property much prior to the mortgage of title deed with IOB, ought to have placed documents to prove the fact when he sold the property and to whom he sold and to what extend he sold. Not a piece of document placed before the Court by I.O prove these facts. Without specific date of alienation and the person to whom the property was alienated, the trial Court has accepted the case of the prosecution that A-1 to A-5 dishonestly mortgaged property not owned by Varadappa Naicker.

**42.** The trial Court has relied on the oral evidence of P.W-4 and P.W-13, besides the EC marked as Ex.P-106. The testimony of the Bank Manager and the Sub Registrars examined as PW-3, PW-9 and PW-10 respectively are not adequate to hold Varadappa Naicker mortgaged property, which he sold or the revenue documents and EC produced by him are forged documents. The reading of the testimony of these witnesses, this Court finds that in the cross examination PW-3 admits that, he did not collect any documentary evidence to show that, houses were constructed on the land in S.No.128/3. Likewise, PW-9, in his cross examination admits that, he did not furnish to the Investigating Officer the revenue records he verified regarding the genuineness of Ex.P.55 to Ex.P-58. Also, PW-10 in the cross examination admits that there is no rule which says that only metal seal should be used in registration office. He had not taken any forensic opinion to confirm his opinion about the genuineness of the EC marked as Ex.P-69 to Ex.P-73.

**43.** The incompleteness in the investigation and the loose end in the investigation is fatal to the prosecution. The core of the prosecution case that the property given as collateral security by Varadappa Naicker is not his property, itself not proved by the prosecution. The investigation Officer examined as PW-13 admits that he during the investigation did not make any attempts to verify the genuineness of the documents referred by PW-4. He did not cite the counsel as witness or accused, who gave the opinion about the title. He did not take steps to find out who filled up the loan documents. He did not verify the book debts against which the credit limit was sanctioned. He has not tried to collect any rule to show that the valuer has a duty to verify the ownership of the property for which, he give the valuation certificate. He had not taken steps to verify from the Head of the Registration department whether rubber stamp seals were used in the SRO office at the relevant point of time and he did not sent the seals for forensic examination to verify whether it is genuine or not. Above all, Investigating Officer had not event taken steps to correlate and show that the property in the schedule to Ex.P-46 and the properties mentioned in Ex.P-106 are one and the same. Even if a portion of the property in S.No.128/3 is assumed to have been sold, the total extend of land sold under these 13 entries found in Ex.P106 is about 19,000 sqft. Which fall under different survey numbers:- S.Nos.128/3, 126 B, 126 A, 128 B and 138 D. Where as, Varadappa Naicker own 66 cents of land in S.No.128/3 alone which is equal to about 28,749 sq.ft and that was mortgaged and EM created in favour of IOB for the loan sanctioned to M/s.Lakshmi Freight Carriers. No evidence collected by the IO to show that there are buildings in S.No.128/3 and those buildings were constructed by persons having lawful title.

**44.** Regarding A-5, PW-13 admits that, the signature of A-5 does not find anywhere in the loan documents. He also admits that, he did not ranked the panel advocate as an accused. He had given his opinion based on the documents therefore, he was not ranked him as an accused. For processing the loan application, legal opinion is to be obtained first to determine credit worthiness and the valuation certificate is to be obtained to determine the credit limit. P.W.13 admits, no material objects seized from A-5. PW-13 had ascertained that his investigation revealed that A-5 introduced A-3 to A-2 and got service charge from A-2. Contrary to his evidence, DW-2, M.S.Varadarajan, a land broker had deposed that he arranged the property of Varadappa Naicker as collateral security for the loan purpose, Varadappa Naicker was taken as a partner in M/s.Lakshmi Freight Carrier by A-2. This is supported by the partnership deed of M/s.Lakshmi Freight Carriers.

**45.** The FIR in this case registered on 27/03/2003 based on reliable source. Final report filed in the year 2004 alleging that the accused have cheated the bank to a tune of Rs.22 lakhs. To show that the investigation is defective and superficial, the accused had summoned N.Kumar, the Manager of IOB, Choolai Branch to produce the statement of account of M/s.Lakshmi Freight Carriers. The said N.Kumar was examined as DW-3 and the certified copy of the statement of account is marked as Ex.D-1. From the evidence of

D.W-3 and the statement of account Ex.D-1, it is elicited that the outstanding in the loan account of M/s.Lakshmi Fright Carriers was only Rs.14,90,931.69 as on 01/02/2003 after, the Bank had appropriated the money to a tune of Rs.10 lakhs in the reinvestment deposit account of M/s.Lakshmi Freight Carrier during the month of September 2002.

**46.** Thus, from the above facts, it is clearly established by the defence that the Investigation Officer has not collected entire material essential for the Court to appreciate the case of the prosecution. Even the correct outstanding and alleged overdue to the bank not been collected and placed before the Court. Ex.P-106 is not a proof of title to hold that Varadappa Naicker is not the owner of the property in S.No.128/3. The alleged forging of documents to attract offence under Section 467 r/w 471 of IPC not conclusively proved in the manner known. The prosecution has miserably failed to collect appropriate evidence to prove the forgery. On the opinion of the officials without documentary proof to support their opinion, however, strong the suspicion, it cannot take the place of proof beyond doubt. The best evidence not been collected and the loose ends in the Investigation give room to believe that Vaaradappa Naicker hold the title and ownership of the property given by him as collateral security. The Patta, Chitta & Adangal and the Tax Receipt marked as Ex.P-55 to Ex.P-58 not been disproved through the witness competent to speak about it. Without furnishing documents and records maintained in the office, P.W-9 and P.W-10 had deposed about these documents and their evidence is more in the nature of opinion rather than based on documents maintained in the office.

**47.** Therefore, this Court holds that, this is a civil transaction between the banker and the borrower, in haste CBI had registered the case on the instigation of unknown person who had not furnished the full and correct details about the loan transaction. This has caused filing of half baked investigation report and erroneous conviction.

**48.** For the reason stated above, the ***Criminal Appeals C.A.No.292, 319 and 320 of 2013 are allowed.*** The conviction and sentence imposed by the trial Court in C.C.No.68 of 2004 is set aside. Fine amount paid if any to be refunded to the appellants. Bail Bond if any shall stand cancelled.

27.09.2023

Index :Yes/No.
Internet :Yes/No.

Speaking order/non speaking order
rpl

To:-

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

2.The Inspector of Police,
Anti Corruption Branch,
Central Bureau of Investigation,
Chennai.

3.The Special Public Prosecutor (CBI), High Court, Madras.

**DR.G.JAYACHANDRAN,J.**

rpl

Pre delivery common Judgment made in
Criminal Appeal Nos.292, 319, 320 and 354 of 2013

27.09.2023