IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

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

Crl.A.Nos.338, 339, 340, 341 & 342 of 2013

T.Kandasamy ...Appellant in all Crl. Appeals

-vs-

The Deputy Superintendent of Police,
SPE/CBI/ACB,
Chennai
In R.C.60(A)/2002. ... Respondent in all Crl.Appeals

PRAYER: Criminal Appeals filed under Section 374(2) Cr.P.C., to set aside the order passed in C.C.No.3 of 2004, C.C.No.5 of 2004, C.C.No.4 of 2004, C.C.No.6 of 2004, C.C.No.7 of 2004 on the file of the II Additional District Judge (CBI Cases), Coimbatore, dated 27.03.2013.

For Appellant : Mr.R.John Sathyan, Senior Counsel
for Mr.S.N.Arunkumar

For Respondent : Mr.K.Srinivasan,
Senior Counsel and
Special Public Prosecutor

COMMON JUDGMENT

These Criminal Appeal Nos.338, 339, 340, 341 and 342 of 2013 have been filed against the judgments dated 27.03.2013 passed in C.C.No.3 of 2004, C.C.No.5 of 2004, C.C.No.4 of 2004, C.C.No.6 of 2004 and C.C.No.7 of 2004 respectively, on the file of the II Additional District Judge (CBI Cases), Coimbatore.

2. During the Month of December, 2002, Superintendent of Police, SPE, CBI,ACB, Chennai received a reliable information that, T.Kandasamy, working as Rural Development Officer in Indian Bank, Udumalaipet Branch between 1995-2002 had fraudulently and dishonestly withdrew nearly Rs.53,34,000/- by creating 72 false agricultural loans in the name of different persons not in exisence and appropriated the money of the Bank.

3. On completion of the investigation, the final report disclosed 15 fake agricultural loan accounts were dishonestly opened by the accused Kandasamy by abusing his official position and using false documents and forging the signatures of the fictitious loanees and falsified records as if they received the loan amount. The money routed to fictitious Saving Bank Accounts opened by the accused and the money withdrawn.

4. Five separate final reports (for three fictitious accounts each) filed and taken up for consideration by the Learned Special Court in C.C.Nos.3 to 7 of 2004. The trial Court framed charges under sections 420, 467, 468 and 471 I.P.C and Section 13(2) r/w 13(1)(e) of PC Act, 1988. After trial, the Special Court held the accused guilty and convicted.

5. The gist of the F.I.R is that the appellant with an intention to cheat the Bank, had created 72 agricultural loans in fictitious names and misappropriated a total sum of Rs.53,34,000/-. The loan applications, vouchers for debit notes and withdrawal slips were prepared by the accused and he forged signatures of fictitious persons and using it as genuine, he had withdrawn a total sum of Rs.53,34,000/- and out of which, he had periodically remitted the amount to the tune of Rs.2,66,589/- in the name of those fictitious persons to prevent early detection and to make believe the Bank that the loanees/real persons have repaid it to the Bank. After investigation, the prosecution agency found that, out of 72 loan files, 35 are missing and from and out of 42 loans, they could make out a *prima facie* case as against the accused in 15 cases. In all the five cases, almost the witnesses and evidence are same and common.

6. When the misappropriation of Bank money by opening fictitious loan accounts came to light, the accused himself voluntarily come forward to confess his guilt and his confession statement was recorded in the presence of a Notary Public by name Mr.Kanagasundaram. That apart, Investigating Officer forwarded the handwriting and the signatures found in the disputed documents were sent to expert for comparison with the signature of the accused. The opinion given by Mr.A.Balsami, Assistant Government Examiner of Questioned Documents, had clinchingly proved that the accused had signed in the vouchers and withdrawal slips for the loan accounts created in the name of fictitious persons. The trial Court had gone at length and discussed the testimony of each of the prosecution witnesses and documents connected with the loan accounts and finally found the accused guilty of the charges and sentenced him.

7. Being aggrieved by the conviction and sentence passed by the Learned Additional District Judge/Special Judge for CBI cases, Coimbatore, the Criminal Appeals have been filed by the appellant.

8. The Learned Senior Counsel appearing for the appellant submit that the trial Court has heavily relied upon the confession statement given by the appellant, which is a make belief document created by the respondent. The falsity of the document manifest on the face of the document, The lengthy confession statement with wealth of details, particulars, numbers and date as found in the alleged confession statement of the accused is unbelievable since, according to the prosecution, it has been given voluntarily by the accused on a Sunday in the presence of Notary Public. That apart, the alleged confession statement is dated 10.11.2002. Even thereafter, the Chief Manager or any Senior Officer of IOB, Udumalpet Branch had initiated criminal prosecution. It appears, the Investigating Officer, on his own appears, have registered the complaint based on the source information. Further, the Learned Counsel for the Appellant, submit that the Investigating Officer had not done the investigation in a fair and unbias manner. He had not secured about 30 loan files, which would have brought to light the true fact and the real culprit.

9. The learned Senior Counsel referring the testimony of Mr.Soundaian, Veterinary Assistant Surgeon who was examined as P.W.2 in C.C.No.3 of 2004 submitted that this witness has categorically deposed that he has seen the cattle as well as the loanee. Therefore, his evidence is against the testimony of P.W.10-Postman T.Murugan, P.W.11-Sub Post Master R.Sivakarthikeyan, P.W.5-The Deputy Tahsildar, P.W.6-The Village Administrative Officer, P.W.7-V.Kuppusamy, the Salesman of the Ration shop and P.W.8-K.Rajendran, the resident of the village, had supported the case of the prosecution by deposing that there was no person in the village by name Ramasamy Gounder, Kuppusamy Gounder and Selvaraj. (the ranking of the witnesses may differ in some cases). Therefore, benefit of doubt ought to have been given to the accused.

10. Per contra, Mr.Srinivasan, Learned Special Public Prosecutor for the respondent submitted that the confession statement of the accused is voluntary containing wealth of details as to how he misappropriated the bank funds from 1995 and what for he misappropriated the money. These are the information which are with in the special knowledge of the accused and disclosed voluntarily in the presence of Notary Public, hence the statement carries the character of extra judicial confession given voluntarily without any force or coercion. Hence it is admissible in evidence. That apart, the charges like falsification of document, forging the valuable security and using it as genuine, are well proved by examining the disputed documents with the specimen signature of the accused. The handwriting expert has categorically opined that the handwriting and signature found in the loan documents are that of the accused and particularly, the pro-notes executed in the name of loanee bears the signatures of the accused. To prove those loanees are not real persons, the prosecution has examined Revenue officials as well as local residents.

11. The prosecution has proved through its witnesses that the loanee's are not residence of that village. If the accused want the existence of fact, he has to be prove the existence. In this case, the accused who pleaded that the loanee's are real and existing persons and not fictitious persons, has the burden to prove that they are residents of the village and they availed loan. Having failed to prove the existence of the fact that the loanees are real persons who came to Bank to avail loan, the negative evidence let in by the prosecution by examining Deputy Tahsildar, VAO, Ration Shop staff, Postman and Post Master of the area, is sufficient to prove the case of the prosecution. Therefore, he sought for confirmation of the impugned judgement passed by the trial Court.

12. The above common submissions made by the Learned Counsel and facts of the case being same, this Court passes the following judgement:-

C.A.No.338 of 2013

13. This Criminal Appeal is directed against the judgement passed in C.C.No.3 of 2004 by the II Additional District Judge (CBI Cases), Coimbatore.

14. In this case, totally 15 charges were framed (5 charges for each one of the three incidents). In order to prove the case of the prosecution, on the side of the prosecution, as many as 21 witnesses were examined as P.W.1 to P.W.21 and 52 exhibits were marked as Ex.P.1 to Ex.P.52. On the side of the defence, no oral and documentary evidence was produced. The trial Court has convicted the appellant for five charges as stated below:-

Charges	Sentence
420 IPC	Two years Rigorous Imprisonment and to pay fine of Rs.3,000/- in default to undergo Simple Imprisonment for 6 months.
467 IPC	Three years Rigorous Imprisonment and to pay fine of Rs.5,000/- in default to undergo Simple Imprisonment for 6 months.
468 IPC	Two years Rigorous Imprisonment and to pay fine of Rs.3,000/- in default to undergo Simple Imprisonment for 6 months.
471 IPC	Two years Rigorous Imprisonment and to pay fine of Rs.3,000/- in default to undergo Simple Imprisonment for 6 months.
13(2) r/w 13(1)(d) of P.C Act	Three years Rigorous Imprisonment and to pay fine of Rs.6,000/- in default to undergo Simple Imprisonment for 6 months.

15. For a moment even assuming the contention of the Learned Senior Counsel appearing for the appellant regarding the confession statement of the accused alleged to have been given in the presence of P.W.9-Kanagasundaram is not voluntary, and the confession statement Ex P-34 is eschewed, even then, the prosecution through other oral and documentary evidence had able to establish the guilt of the accused in respect of charges of cheating, forging valuable security and using the valuable security as genuine for misappropriating the Bank funds. The loanee's K.Ramasamy Gounder, S.Selvaraj and Kuppursamy Gounder are non existing persons of the said village. This fact is proved by the prosecution through Ex.P.31, Ex.P.32 and Ex.P.33. Preparation of false documents such as loan applications in the name of K.Ramasamy Gounder, S.Selvaraj and Kuppursamy Gounder , creation of vouchers in the name of those fake loan applicants by the accused is proved through hand writing experts opinion. It may not be inappropriate for the Bank staff to fill the forms and to assist the customer for affixing the signature, but the forms and vouchers prepared in the name of non-existing persons attracts the criminal prosecution and the accused being a banker / public servant, misconduct to obtain pecuniary advantage by abusing his position, warrants conviction under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988.

16. The hand writing expert's opinion Ex.P-46 and the reasons for the said opinion Ex.P-47 categorically points the guilt of the accused for creating the valuable security, namely Demand Draft and creating false documents such as loan applications. This proves and satisfies the necessary ingredients required to punish the accused under Sections 467, 468 and 471 IPC., In this case, the total loan amount under three applications is Rs.35,000/- which has been drawn by the accused by preparing withdrawal slips and thereby, the ingredients of cheating gets attracted. This Court finds that the conviction by the trial Court is to be confirmed. Accordingly, confirmed.

C.A.No.339 of 2013

17. Appeal is direct against the Judgement passed in C.C.No.5 of 2004. This case relates to crop loans in the name of Karuppasamy, Ranganayagi and Subramanian. The accused as Rural Development Offier, had opened loan accounts in the above fictitious persons. For the said purpose had prepared false documents such as:- application for agricultural loans, Application for renewal of crop loans, Appraisal note for sanction, disposal for proceeds letter, Hypothecation letter, assets and liability reports and letter of acknowledgement of loan of opening the account and to sanction loans, The accused through these documents had raised loan in the name of those fictitious persons, has misappropriated a sum of Rs.73,000/-. The trial Court has framed 15 charges against the accused. In order to prove the case of the prosecution, on the side of the prosecution, as many as 24 witnesses were examined as P.W.1 to P.W.24 and 37 exhibits were marked as Ex.P.1 to Ex.P.37. On the side of the defence, no oral and documentary evidence was produced. The trial Court has convicted the appellant for the following offences:-

Charges	***Sentence***
420 IPC	Two years Rigorous Imprisonment and to pay fine of Rs.3,000/- in default to undergo Simple Imprisonment for 6 months.
467 IPC	Three years Rigorous Imprisonment and to pay fine of

Charges	*Sentence*
	Rs.5,000/- in default to undergo Simple Imprisonment for 6 months.
468 IPC	Two years Rigorous Imprisonment and to pay fine of Rs.3,000/- in default to undergo Simple Imprisonment for 6 months.
471 IPC	Two years Rigorous Imprisonment and to pay fine of Rs.3,000/- in default to undergo Simple Imprisonment for 6 months.
13(2) r/w13(1)(d) of Prevention of Corruption Act	Three years Rigorous Imprisonment and to pay fine of Rs.6,000/- in default to undergo Simple Imprisonment for 6 months.

18. The Chief Manager of Indian Bank has been examined as P.W.8. The non-existence of loanees had been spoken by the residents of the village as well as the Revenue Officials and the Post man who were examined as P.W.2 to P.W.7. Their reports are marked as Ex P-3 to Ex P-9. The specimen signature of the accused had been collected and sent for comparison with disputed documents and they have been examined by the Deputy Government Examiner P.W.19 and his report Ex.P32 proved the guilt of the accused forging the signature of non-existing persons.

19. The learned counsel for the appellant submit that the evidence of the village residents and Revenue officials not adequate, unless the voter list of the village produced. In this connection, the Investigating Officer, who was cross-examined, answered in negative and he has not provided any explanation for not collecting the voters' list. The absence of villagers cannot be the reason to presume that they are non-existing persons.

20. After considering the rival submissions made by the learned counsel, this Court finds that non-production of voters' list is not fatal to the case of the prosecution, when the non-existence of loanee has been proved through other evidence. The accused who wants to prove the existence of the villagers, has not let in any evidence, and in fact, this Court finds that most of the witnesses were not cross examined by the accused to probabilize his defence. Hence, Court upholds the conviction by the trial Court.

C.A.No.340 of 2013

21. This Criminal Appeal is directed against the judgment dated 27.03.2013 passed in C.C.No.4 of 2004 on the file of the II Additional District Judge (CBI Cases), Coimbatore. In this case, to avail crop loans fictitious accounts in the name of S.Kuppusamy Gounder, Sivasamy and R.Subbaiyan was opened. Totally Rs 74,500/- misappropriated. The trial Court framed 15 charges. In order to prove the case of the prosecution, on the side of the prosecution, as many as 24 witnesses were examined as P.W.1 to P.W.24 and 35 exhibits were marked as Ex.P.1 to Ex.P.35. On the side of the defence, no oral and documentary evidence was adduced.

22. Crop loans in the name of Kuppusamy Gounder for a sum of Rs.25,000/-, Sivasamy for a sum of Rs.24,500/- and Subaiyan for a sum of Rs.25,000/- sanctioned based on the false documents prepared and presented by the accused. The trial Court found the accused guilty of the following charges and sentenced him as below:

Charges	***Sentence***
420 IPC	Two years Rigorous Imprisonment and to pay fine of Rs.3,000/- in default to undergo Simple Imprisonment for 6 months.
467 IPC	Three years Rigorous Imprisonment and to pay fine of Rs.5,000/- in default to undergo Simple Imprisonment for 6 months.
468 IPC	Two years Rigorous Imprisonment and to pay fine of Rs.3,000/- in default to undergo Simple Imprisonment for 6 months.
471 IPC	Two years Rigorous Imprisonment and to pay fine of Rs.3,000/- in default to undergo Simple Imprisonment for 6 months.
13(2) r/w 13(1)(d) of P.C Act	Three years Rigorous Imprisonment and to pay fine of Rs.6,000/- in default to undergo Simple Imprisonment for 6 months.

23. The argument placed in C.A.No.339 of 2013 was adopted by the learned counsels. In addition, the learned Special Public Prosecutor submitted that in this three loans as well as in many other loans, the loan account was introduced by the accused without obtaining photograph of loanee to facilitate the withdrawal of money dishonestly.

24. By examining the Revenue officials P.W.2-Manickavasagam, Village Administrative Officer and P.W.4-Dhandapani, Village Administrative Officer, as well as P.W-11 to P.W-15, the Sub-Post master, Postman of the two villages and the sales woman and sales man of local ration shop, the prosecution has established that the loanees are not residents of the village and they are non existing persons. The Hand writing expert opinion, proves the fact that all the loan documents including payment vouchers were prepared by the accused and payment vouchers Ex.P.9, Ex.P.12, Ex.P.15 having been signed by the accused. The opinion of the expert is marked as Ex.P.28 and the reasons given him which has been marked as Ex.P.29, this Court finds that no error in the impugned judgement of the trial Court. Hence the conviction is confirmed.

C.A.No.341 of 2013

25. This Criminal Appeal is against C.C.No.6 of 2004 on the file of the II Additional District Judge (CBI Cases), Coimbatore. The trial Court on perusing the records, has framed 15 charges. In order to prove the case of the prosecution and on the side of the prosecution, as many as 28 witnesses were examined as P.W.1 to P.W.28 and 46 exhibits were marked as Ex.P.1 to Ex.P.46. On the side of the defence, no oral and documentary evidence was produced. The trial court being convinced by the prosecution evidence, held the accused guilty and sentenced him as below:-

Charges	***Sentence***
420 IPC	Two years Rigorous Imprisonment and to pay fine of Rs.3,000/- in default to undergo Simple Imprisonment for 6 months.
467 IPC	Three years Rigorous Imprisonment and to pay fine of Rs.5,000/- in default to undergo Simple Imprisonment for 6 months.
468 IPC	Two years Rigorous Imprisonment and to pay fine of Rs.3,000/- in default to undergo Simple Imprisonment for 6 months.
471 IPC	Two years Rigorous Imprisonment and to pay fine of Rs.3,000/- in default to undergo Simple Imprisonment for 6 months.
13(2) r/w 13(1)(d) of P.C.Act	Three years Rigorous Imprisonment and to pay fine of Rs.6,000/- in default to undergo Simple Imprisonment for 6 months.

26. Being aggrieved, the appeal is filed. The Learned Senior Counsel for the appellant, adopted his arguments made in the connected appeals.

27. This case pertaining to crop loan to three fictitious persons. The payment of agricultural/crop loan in the name of Krishnasamy, Muralikrishnan and Bakkiyam had been established by the prosecution through Exs.P11 to P19. In this case the accounts are opened in the name of loanee on the introduction of the accused. The loan amount was drawn by the accused and the said fact has been proved by the expert opinion Ex.P37. The Registered Post sent to the loanee D.Krishnasamy, Muralikrishnan and M. Bakkiyam were returned as unserved with an endorsement “no such person” and the returned covers are marked as Exs.P31 to 33 to buttress the fact that the three loanee's are non existing persons, the prosecution has examined P.Ws.2 to 9-who are the Revenue officials and the local residents. The fabrication of documents such as loan applications, application of renewal of loans, hypothecation letter, letter of acknowledging the liabilities are prepared by the accused in his hand and produced to the Bank for sanction of loans. Therefore, this Court finds that the conviction by the trial Court to be confirmed and accordingly the same confirmed.

C.A.No.342 of 2013

28. This Criminal appeal is directed against the judgment dated 27.03.2013 passed in C.C.No.7 of 2004 on the file of the II Additional District Judge (CBI Cases), Coimbatore.

29. In this case, on completion of investigation, final report has been filed as against the accused alleging that the accused had sanctioned crop loans in the name of Arumugam, a sum of Rs.25,000/-, in the name of Nagaraj a sum of Rs.25,000/- and in the name of Indrani, a sum of Rs.24,000/-, by creating false documents, and had withdrawn the said money. All these three loanee's are non existing persons. For sanctioning the loan, the accused had prepared false documents and used it as genuine, he had forged signatures in the pro-notes in the name of fictitious persons. The trial Court framed 15 charges and in order to prove the case of the prosecution, on the side of the prosecution, as many as 27 witnesses were examined as P.Ws.1 to 27 and 35 exhibits were marked as Exs.P1 to P 35. On the side of the defence, no oral and documentary evidence was produced. On appreciating the evidence, the trial Court found the accused guilty of the following charges and sentenced him as below:

Charges	***Sentence***
420 IPC	Two years Rigorous Imprisonment and to pay fine of Rs.3,000/- in default to undergo Simple Imprisonment for 6 months.
467 IPC	Three years Rigorous Imprisonment and to pay fine of Rs.5,000/- in default to undergo Simple Imprisonment for 6 months.
468 IPC	Two years Rigorous Imprisonment and to pay fine of Rs.3,000/- in default to undergo Simple Imprisonment for 6 months.
471 IPC	Two years Rigorous Imprisonment and to pay fine of Rs.3,000/- in default to undergo Simple Imprisonment for 6 months.
13(2) r/w13(1)(d) of P.C.Act	Three years Rigorous Imprisonment and to pay fine of Rs.6,000/- in default to undergo Simple Imprisonment for 6 months.

30. Considering the submissions made by the learned counsel appearing for the appellant as well as the learned Special Public Prosecutor appearing for the respondent and on perusing the evidence in the light of judgement rendered by the trial Court, this Court finds that the trial Court's findings require no interference, since the prosecution witnesses had spoken about the non-existence of loanee, creation of loan accounts in the name of those non-existing persons by the accused and withdrawal of money by the accused. PW-4 to PW-7 are the Revenue Officials, Postman in the area and the resident of the locality. They had clearly deposed that there is no such person in the village. Withdrawal of loan amount sanctioned to these loanee's, creation of Bank accounts and loan transaction including encashment of the loan amount had been spoken by PW-8 to PW-13. The signatures and hand writing found in the documents pertaining to the loan transactions, the ledgers entries are by the accused and the same is proved through the evidence of the handwriting expert P.W.23 and his opinion Ex.P33 and reasoning Ex P-34. The accused in fact, had periodically paid paltry amount towards the loan accounts to show as if it is a genuine transaction. This further strengthens the case of the prosecution that the accused had opened the loan account with dishonest intention to cheat the Bank and screen the crime he was repaying the loan due occasionally. The trial court has rightly convicted the accused after considering the evidence. Hence the conviction of the trial court in CC No. 7/2004 is confirmed.

31. The learned Senior counsel appearing for the appellant finally submitted that presently the accused is 68 year old and he had substantially repaid the amount which is alleged to have been misappropriated. In any event, the fraud of opening 72 accounts might not have occurred without the connivance of senior bank officials and others, however, this appellant alone was made as scape goat. Taking into consideration of this fact and substantial repayment of money lost by the Bank, the period of sentence imposed on the accused may be considered sympathetically and also taking note of the fact that all the five charge sheets had emanated on the common F.I.R allegedly by source of information, the period of sentence in all the five cases may be ordered to run concurrently by exercising power under Section 427 Cr.P.C.

32. The learned Special Public Prosecutor appearing for the respondent, per contra, submit that misappropriation of the Bank fund had been dishonestly been carrying on by the accused for nearly seven years and the scheme which was meant for farmers had been defaulted and misappropriated by him for his personal use. Hence the sentences need not be interfered with.

33. After considering the contra submissions made by the learned counsels on either side, this Court is of the view that the period of three years Rigorous Imprisonment imposed for the offences under Section 467 IPC and 13(2) r/w13(1)(d) of Prevention of Corruption Act in all cases be reduced into two years Rigorous Imprisonment. While confirming the fine amounts and default sentences, taking into consideration the sentence imposed in each case, in exercise of power under Section 427 Cr.P.C., the period of sentences imposed in C.C.No.5 of 2004, C.C.No.4 of 2004, C.C.No.6 of 2004 and C.C.No.7 of 2004 on the file of the II Additional District Judge (CBI Cases), Coimbatore, dated 27.03.2013 is ordered to run concurrently along with C.C.No.03/2004.

34. In the result, while confirming the conviction in C.A.Nos, 338, 339, 340, 341 & 342 of 2013, the sentence of two years R.I for the offences under Sections 420, 468 and 471 IPC is confirmed. The sentence of three years R.I imposed for the offences under Sections 467 IPC and 13(2) r/w13(1)(d) of Prevention of Corruption Act alone is reduced to two years R.I. The period of sentence in all the cases shall run concurrently.

35. With the above modification of sentence, Crl.A.Nos.338, 339, 340, 341 & 342 of 2013 are partly allowed. Consequently connected miscellaneous petitions if any, are closed.

03.07.2023

Index :Yes/No.
Internet :Yes/No.
Speaking Order/Non-Speaking Order
mfa

Copy to:-
1. The II Additional District Judge (CBI Cases), Coimbatore,
2. The Deputy Superintendent of Police, SPE/CBI/ACB, Chennai
3. The Public Prosecutor, High Court, Chennai.

DR.G.JAYACHANDRAN,J.,

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Crl.A.Nos.338, 339, 340, 341 & 342 of 2013

03.07.2023