IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 23.03.2023	Pronounced on : 28.04.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.Nos.47 & 80 of 2013

Crl.A.No.47 of 2013 against C.C.No.25 of 2008

1. R.Kasi,
2. M.Jayabalan, ... Appellants/Accused No.1 to 2

/versus/

Inspector of Police,
CBI, EOW, Chennai. ... Respondent/Complainant

Prayer in Crl.A.No.47 of 2013: Criminal Appeal has been filed under Section 374 of Cr.P.C., against the judgement dated, 27.12.2012 passed by the Learned XI Additional Judge for CBI cases, Chennai in the above C.C.No.25 of 2008 in R.C.No.4/E/2007/CBI/EOW, Chennai convicting the first accused R.Kasi under Section 120-B, r/w 420 I.P.C and 13(2) r/w 13 (1)(d) of PC Act 1988 and Section 420 IPC convicting and sentencing to undergo rigorous imprisonment for 1 year and to pay a fine of Rs.2,000/- and second appellant M.Jayabalan for an offence punishable under section 120B r/w 420 IPC and 13 (2) r/w 13 (1) (d) of PC Act 1988 convicting and sentencing to undergo rigorous imprisonment for 1 year and to pay a fine of Rs.2,000/- for the first charge of conspiracy under 120-B and 3 years and to pay a fine of Rs.5,000/- under section 13 (2) r/w 13 (1) (d) of PC Act 1988.

For A1 : Mr.R.Vijayaraghavan

For A2 : Mr.G.R.Hari,
for Mr.R.Baskar.

For Respondent : Mr.K.Srinivasan, Senior Advocate,
Special Public Prosecutor (CBI).

Crl.A.No.80 of 2013 against C.C.No.25 of 2008

K.Prakash, ... Appellant/Accused No.3

/versus/

Union of India,
Represented by CBI, Chennai.
(RC.No.4E/007/CBI/EOW/Chennai) ... Respondent/Complainant

Prayer in Crl.A.No.80 of 2013: Criminal Appeal has been filed under Section 374 of Cr.P.C., pleased to allow this appeal and set aside the judgment of conviction imposed by XI Additional Special Judge, (CBI Cases), relating to Banking and Financial Institutions, Chennai in C.C.No.25 of 2008, dated 27.12.2012 sentencing him to undergo R.I for one year and pay fine of Rs.2,000/- in default to undergo S.I for 6 months for the offence under Section 120 B r/w Section 406, 420, 467 and 471 of I.P.C and under Section 13(2) & 13(1)(d) of P.C Act 1988 and also sentenced him to undergo R.I for one year and pay a fine of Rs.2,000/-, in default to undergo S.I for 6 months for the offence under Section 420 of I.P.C.

For Appellant : Mr.R.M.Meenakshisundaram, for A3

For Respondent : Mr.K.Srinivasan, Senior Advocate, Special Public Prosecutor (CBI).

COMMON JUDGMENT

These two Criminal Appeals are filed against the judgment passed by XI Additional Sessions Court, (CBI cases relating to Banks and Financial Institutions) Chennnai, in C.C.No.25 of 2008 in R.C.No.4E/2007/CBI/EOW/Chennai. Crl.A.No.47 of 2013 preferred by the appellants/Kasi (A1) and Jayabalan (A2). Crl.A.No.80 of 2013 is preferred by 3rd accused/Prakash. Yet another accused by name V.K.Ravichandran arrayed as 3rd accused absconded pending trial. The case against V.K.Ravichandran splitted and numbered as C.C.No.43 of 2001 then the ranking of the accused persons rearranged.

2. For the sake of convenience, the appellants are referred as per their ranking before the trial Court.

According to the prosecution A-1/Kasi Proprietor of M/s.Netra Infosys, A-2/Jayabalan, the Branch Manager of Indian Bank, South Usman Road Branch, Chennai. V.K.Ravichandran, Proprietor of M/s.Prithive Utilities (accused in the split up case in C.C.No.43 of 2001) and A3/Prakash, a person known to A-1/Kasi, with an intention to cheat the Indian Bank, entered into a criminal conspiracy during the year 2005–2006. Pursuant to the conspiracy with the help of A2/Jayabalan, Branch Manager, application for credit facilities in the name of M/s.Prithive Utilities for a tune of Rs.5 lakhs by way of submitting manipulated documents. A-2/Jayabalan, by abusing his official position as Manager, released the loan without verifying the genuineness of the documents and without collecting vital details for which the loan sought for. A-2/Jayabalan sanctioned the credit facilities to the tune of Rs.5 lakhs in favour of M/s.M/s.Prithive Utilities owned by V.K.Ravichandran without conducting the mandatory pre-sanction inspection of the business. The said loan amount was credited into the account of M/s.Prithive Utilities, on 24.01.2005. For the said purpose, bank account bearing Current Account No.1677 was opened on the same day. The account opening form and the loan application were filed by A3/K.Prakash. The address of M/s.Prithive Utilities, supporting documents for opening the bank account later found to be false. The loan amount of Rs.5 lakhs credited into the account of M/s.Prithive Utilities was withdrawn through cheques on the following dates:-

25.01.2005	Self Cheque Rs.2,50,000/-
27.01.2005	To T.Krishnamoorthy Rs.1,00,000/-
28.01.2005	To Prithive Utilities Rs.1,44,950/-

3. V.K.Ravichandran, gave the cheque in the name of T.Krishnamoorthy and K.Prakash on the instruction of A1/Kasi. After availing the loan furnishing false address and documents, V.K.Ravichandran failed to repay the loan. The account become Non-Performing Assets. A2/Jayabalan, the Bank Manager transferred and was succeeded by one A.G.Sundaram.

4. The crime came to light when A.G.Sundaram (P.W.2), who succeeded A-2/Jayabalan as Branch Manager of Indian Bank, South Usman Road, found that, the account of M/s.Subramanian and Company running in outstanding and instalments were not properly paid. Therefore, the account was declared as 'Non-Performing Assets' (NPA). 15 accounts under the Annapoorna Arogya loan also become NPA and it was noticed by the bank higher Officials that, serious irregularities has been committed by the Branch Manager Jayabalan/A-2 in disbursing the credit facilities even without conducting pre-sanction inspection. Therefore, K.B.Nagendra Moorthy, General Manager and Circle Head of Indian Bank, Circle Office, gave a written complaint, on 20.12.2006 before the Deputy Superintendent of Police, CBI, EOW, Chennai, along with in-house investigation report submitted by Bank's Investigating Officer Mr.K.Radhakrishnan. When the matter was taken up for investigation and final report was filed by the Inspector of Police, Loverson Kuruvila. Out of 15 accounts, in eight cases, evidence of fraudulent disbursement of loan amount has been adequately found and therefore, eight final reports were filed. The case involving M/s.Subramanian and Company of D.Gunasekaran is one among them.

5. As far as the subject matter of the present appeal is concerned, final report dated 16.03.2009 was taken cognizance by the Court in C.C.No.25 of 2008 against four accused, who are appellants namely R.Kasi(A-1), M.Jayabalan(A-2), V.K.Ravichandran and Prakash (A-3). In column No.2 of the final report, R.K.Vasu, S.Ramesh, Sounderajan and D.Ranganathan were shown as accused persons not sent up for trial.

6. The trial Court, on perusal of the documents and final report, framed charges against each of the accused persons as below:-

Rank of the Accused	***Charge framed under Section against the accused***
A1 to A3	120-B r/w 420 of I.P.C and 13(2) r/w 13(1) (d) of P.C Act
A1 and A3	420 of I.P.C
A2	13(2) r/w 13(1)(d) of PC Act, 1988.

Due to split up of the case against A-3 V.K.Ravichandran, A-4 K.Prakash was ranked as A-3.

7. To prove the charges, the prosecution has examined 15 witnesses

(P.W.1 to P.W.15) and marked 58 exhibits (Ex.P.1 to Ex.P.58). On behalf of the appellants, one K.Jayaraman, I.P.S, Superintendent of Police, EOW, CBI, Chennai, received the complaint on 20.12.2006 from Nagendra Moorthy, General Manager, Indian Bank, been examined as D.W.1.

8. The Trial Court, on appreciating the evidence held all the accused persons are guilty of the charges mentioned above and sentenced them to undergo the punishment mentioned below:-

Accused	***Offences***	***Conviction and Sentence imposed by the Trial Court***
A1 to A3	120-B r/w 420 of I.P.C and 13(2) r/w 13(1) (d) of P.C Act, 1988.	To undergo R.I for one year and to pay fine of Rs.2,000/- each, in default to undergo S.I for six months.
A1 and A3	420 of I.P.C	To undergo R.I for one year and to pay fine of Rs.2,000/- each, in default to undergo S.I for six months.
A2	13(2) r/w 13(1)(d) of PC Act, 1988.	To undergo R.I for three years and to pay fine of Rs.5,000/-, in default to undergo S.I for one year.

The sentences of imprisonment ordered to run concurrently and the period of imprisonment already undergone ordered to be set off under Section 428 of Cr.P.C.

9. Aggrieved by the above conviction and sentence passed by the trial Court, the appellants/A1 and A2 have jointly preferred present appeal in C.A.No.47

of 2013. A3/Prakash has preferred present appeal in C.A.No.80 of 2013.

10. According to the appellants, the trial Court failed to consider that the credit facilities was extended to M/s.Prithive Utilities as a trade loan and not a term loan. The procedure for disbursing the trade loan is different from the procedure for disbursing term loan. In respect of trade loan, it is not necessary that loanee to furnish documents for purchase of machineries or raw materials. There is no necessity to pay any margin money of 25% on the cost of the machinery. In case of term loan, the loan amount will be directly paid to the suppliers of the machinery or raw materials. Whereas, under the trade loan, on submission of the application by the loanee along with relevant records and a deed guarantee for the loan amount executed by the guarantor, loan is disbursed into the account of loanee for managing his trade. The application for trade loan will be scrutinised by the loan Officer Mr.Soundarajan and only after his verification and recommendation, the loan will be sanctioned. The Loan Officer is responsible for scrutinising the documents and recommending for the loan. The said Soundarajan though shown as accused, but not sent for trial.

11. As a Branch Manager A-2/Jayabalan, not expected to scrutinize the application before sanctioning the loan. The person direct in-charge and responsible for disbursement of the loan is the Loan Manager and not the Branch Manager, who is the Superior Officer. When the complaint Ex.P.1 dated 20.12.2006 was lodged, the needle of suspicion was only against the loan Officer. However, after completion of investigation, his name was placed under Column No.2 of the charge sheet. As per the procedure for term loan, on the recommendation of the loan Officer, loan was disbursed and deposited in the account of the loanee directly and thereafter, Branch Manager has no control over the money, except to ensure the repayment of the loan. It is not correct to say that, M/s.Prithive Utilities is a fictitious Company and the document furnished by the Company for availing trade loan are fabricated documents. There is no evidence to show that, A1 to A3 along with V.K.Ravichandran conspired to cheat the Indian Bank.

12. V.K.Ravichandran, Proprietor of M/s.Prithive Utilities was introduced to open an account in the Indian Bank by Mr.R.Kasi/A1. R.Kasi being an current account holder in the name of M/s.Netra Infosys, to open a new current account in the Indian Bank, South Usman Road, Chennai and there is nothing wrong in introducing a person for opening the account. The handwriting expert had opined the account opening form is written by A-3/Prakash. There is nothing crime in assisting a person who wants to open an account in the Bank by filing up the application, the account holders default subsequently will not be a reason to presume A3/Prakash is a party to the conspiracy. Particularly, when the prosecution failed to prove A3/Prakash was anyway monetarily benefited. For availing loan, V.K.Ravichandran has furnished all necessary documents along with surety. On verification of the documents, V.K.Ravichandran was allowed to open the account and operate it. The loan amount of Rs.5 lakhs has been fully secured by equitable mortgage created in favour of the bank and there was no intention to cheat the bank at the time of applying for the loan or while availing the loan.

13. The complaint given by K.B.Nagendra Moorthy (P.W.1) was based on the in-house enquiry report submitted by K.Radhakrishnan (P.W.5). The complaint was given by a person, who did not have direct knowledge about the content of the complaint. The suspicion of Radhakrishnan (P.W.5) as found in his report is that for disbursing the loan, commission was paid to Branch Manager. This allegation or suspicion not been substantiated by the prosecution. Therefore, the trial Court ought to have concluded that there is no case made out under Section 120 B of I.P.C for criminal conspiracy or under Section 420 of I.P.C for cheating or under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act for misconduct.

14. It was purely a financial transaction and the loan was disbursed after scrutiny of the documents by the Loan Officer and securing the property for repayment of the loan, in case there is any default in repayment of the loan. M/s.Prithive Utilities availed trade loan furnishing necessary documents to prove his business and has furnished necessary security to ensure recovery.

15. A1/Kasi introduced V.K.Ravichandran to open the account and for that reason, he cannot be suspected to be a conspirator to cheat the Bank in connivance with the other accused. A2/Jayabalan, the Branch Manager, who is the senior most officer at the Branch level had no direct responsibility regarding scrutiny of loan applications. It is the duty of P.W.4 Soundarajan to scrutiny the applications and verify its genuineness. A3/Prakash had no role in this case and the prosecution has not placed any document to implicate him in the scheme of conspiracy. Even assuming, A-3/Prakash has written Ex.P.2 and Ex.P.4, the account opening form and loan application, this act cannot be construed as abetting or aiding to commit any offence to bring Prakash/A3 as a co-conspirator in the alleged crime.

16. Mr.K.Srinivasan, Learned Special Public Prosecutor appearing for the State submitted that this is not an isolated case where the loan was sanctioned bonafidely by A-2/Jayabalan without conducting pre-sanction inspection or based on fake document to a fictitious firm, incidentally A-1/Kasi introduced V.K.Ravichandran, to open the bank account. This case is one episode of multiple case of fraud and cheating. The *modus operandi* adopted by the accused A-1/Kasi in connivance with Jayabalan/A-2 the Branch Manager, Indian Bank, was that the people who were desperately in need of loan were enticed to hand over their property document and made to sign in the loan application form and other documents. Using those documents, trade loan were granted in the name of fictitious or non-existing firm without proper and careful scrutiny of the documents A-2/Jayabalan, Branch Manager, is the final authority for sanction and disbursement of the trade loan. He, without proper scrutiny of the documents, knowingly sanctioned the loan and allowed the loanee to withdraw the money for purposes not meant for. When nearly 15 trade finance accounts under the scheme of Annapoorna Arogya become as Non-Performing Asset (NPA), suspicion arose about the manner in which these loans were sanctioned and therefore, an in-house enquiry was ordered to be conducted by K.Radhakrishnan, Senior Manager, Vigilance Department. On scrutiny of the records and after spot visit to the address of the loanee, K.Radhakrishnan gave his report with the following findings:-

"*1. The H.O Guidelines regarding the term loans was not followed.*

2. The rule allowes payment vide DD or pay order but in *the present case cash was directly paid to the loanee and in some cases amount credited to the respective accounts.*

3. The margin factor was not followed.

4. As per the term loan condition invoice to be obtained from the supplier of the equipments and stamped receipts should have been obtained and kept with the documents.

5. Before release of the loan amount, business place should have been verified by the Manager."

17. In this case, third party property was obtained as security without the approval from the higher Authorities. The guarantors, who has given the property as security were not informed that the title deed of their property had been utilized as security for the purpose of loan sought by V.K.Ravichandran and his report marked as Ex.P.20. Radhakrishnan P.W.5 has explained how the fraud and cheating has been committed.

18. A-1/Kasi, who had to pay one T.Krishnamoorthy (P.W.10), had utilised the loan amount sanctioned to M/s.Prithive Utilities made V.K.Ravichandran to issue cheque for Rs.1 lakh in favour of T.Krishnamoorthy. Ex.P.10, Ex.P.11 and

Ex.P.12 are the cheques for withdrawal. Ex.P.31, the Statements of accounts of M/s.Prithive Utilities and the testimony of P.W.2 (A.G.Sundaram) and P.W.10 (T.Krishnamoorthy)

19. According to the Learned Special Public Prosecutor for the respondent submitted that, P.W.3 (A.Kumar), the Loan Officer had identified Ex.P.5 the appraisal memo and Ex.P.6 the assets and liabilities statement, both signed by A2/Jayabalan. The loan amount of Rs.5 Lakhs transferred to the account of M/s.Prithive Utilities and through cheques Ex.P.10, Ex.P.11 and Ex.P.12 for a sum of Rs.1,44,950/-, Rs.2.50,000/- and Rs.1,00,000/- respectively has been withdrawn. A2/Jayabalan, as a Branch Manager, after disbursement of amount, wrote a letter marked as Ex.P.13, calling upon the borrower namely M/s.Prithive Utilities, to furnish the guarantors photo and stock statement and also to pay the over due amount, indicating that, without the guarantors photos and stock statements loan been disbursed and the instalments for the said loan has not been paid. The money withdrawn from the account been utilised by A1/Kasi to discharge his debt with T.Krishnamoorthy and that fact been spoken by P.W.10 (T.Krishnamoorthy).

Similarly, a sum of Rs.1,44,950/- been utilised by A1 and this fact is proved through the statement of account indicating that a sum of Rs.1,44,950/- been given to M/s.Prithive Utilities. Further, as a collateral security accepted by A2/Jayabalan, is defective on the face of the document and it was accepted by A2/Jayabalan that, even without the photograph of the guarantors security has been accepted. Precisely, for the said reason, A2/Jayabalan wrote a letter Ex.P.13 requesting the loanee V.K.Ravichandran to furnish the photograph of the guarantors. This should have done before disbursement of the loan and not after the sanction of loan. Therefore, the contention of the accused/appellants that the loan was granted after getting due security is false. Further, the Learned Special Public Prosecutor for the respondent submitted that, the documents furnished by V.K.Ravichandran to show that, he is trading a Mineral water supply and has engaged stockist is falsified from the evidence of Valli P.W.12, who has denied any knowledge about M/s.Prithive Utilities and letter Ex.P.45 furnished in the name of her (Valli Omana) is a fake document and the signature found in that letter is not her signature. Similarly, P.W.13 Devaraj has denied Ex.P.48 and signature found in Ex.P.49 and Ex.P.50 which are alleged to have given by Devaraj Proprietor of M/s.Balaji Enterprises and obviously A2/Jayabalan, for purpose of sanctioning the loan in the name of M/s.Prithive Utilities had accepted the forged documents. A3/Prakash had an active role and knowledge about the conspiracy and he cannot claim ignorance that, he has only filled up the introduction form and loan application form for V.K.Ravichandran since, this is not only case, he has actively involved in the loan process but in other cases also his involvement been proved and for his contribution in the conspiracy, he had been monetarily benefited.

20. Further, the Learned Special Public Prosecutor for the respondent submitted that, the scheme of conspiracy to cheat the bank been well knitted and for the said purpose, A1/Kasi has acted as broker taking the assistance of A3/Prakash to do all the clerical work, in some cases, forged signatures of non-existing person To enable V.K.Ravichandran to open a bank account in the name of M/s.Prithive Utilities having business at No.5/3, Arcot Road, II floor, Govindappa Naicken Complex, Janaki Nagar, Valasaravakkam, claiming as if he is in business of manufacturing Mineral Water from 1998. The hand writing expert opinion P.W.11 Mr.Ravi, Principal Scientific Officer-cum-Assistant Chemical Examiner, in his report marked Ex.P.43 has opined that the signatures and writings found in Ex.P.2, questioned document Q.1 to Q. 224, the specimen signatures along with the current account form were all written by A3/Prakash. Therefore, A3/Prakash cannot claim that, he has innocently filled up this application.

21. P.W.5. K.Radhakrishnan, had categorically submitted in his report that, third party security cannot be obtained without permission of the higher Officials, wherein, in this case the property of one Padmavathi has been received as security and the said Padmavathi was not even aware that her property been utilised for sanctioning loan in favour of the M/s.Subramanian and Company.

22. Mr.K.Srinivasan, Learned Special Public Prosecutor (CBI) for the respondent/State submitted that, if it is case in isolation, there may be some iota of doubt which could be extended in favour of these accused persons. But, similar MoP has been adopted in 15 other loans and the loan amount sanctioned for one firm has been utilised for other purpose like a) to satisfy the surety, who have given their property unknowingly that the property been charged as a collateral security and for the loan availed by unknown third parties.

23. Heard the Learned Counsel for the appellants and the Learned Special Public Prosecutor (CBI) for the State/respondent. Records perused.

24. Precisely the prosecution case is that, more than 12 fictitious firms were created pursuant to the conspiracy hatched by Kasi/A1, private individual retired RBI employee and Jayabalan/A2, Branch Manger, Indian Bank, South Usman Road, Chennai. The parties who were in need of loan, their property documents were utilised for creating collateral security for the loans sanctioned in the name of the fictitious firms. Their signatures were obtained and the loan was sanctioned to those fictitious firm by Branch Manager A-2. After sanctioning the loan and releasing the amount into the loanees account, money has been withdrawn and disbursed to the person of their choice and never been utilised for the trading purpose, for which the loan was granted. The loanees naturally failed to pay the instalments and the assets become 'Non-Performing Assets'. In this scheme of conspiracy, some of the loanees have sought for loan knowingly that they are not in trade for which they seek loan and the loan amount is not meant for any promotion of trade and they never have intention to repay the loan. These category of borrowers by joining with A1 and A2 became parties to the conspiracy and their documents were used for sanctioning loans to the fictitious firms. Some of the loanees were innocent loan seekers, who were mislead by Kasi/A1 in connivance with Branch Manager A-2/Jayabalan and thereby used fabricated documents to disburse the loan.

25. The Learned Counsels appearing for the appellants in general submitted that the transactions were genuine and they never had intention to cheat and there was no element of conspiracy namely an illegal agreement to do an illegal act or any act by illegal means.

26. Further, the Learned Counsel appearing for the A2/Jayabalan at length had argued to impress upon this Court that, all these transactions were only done bonafidely in normal course of discharging the duty and there was no agreement whatsoever between A-2/Jayabalan, Kasi/A-1 or any other loanee.

27. The Learned Counsel appearing for A-2/Jayabalan, the Branch Manager, who has sanctioned the term loan which later become as Non-Performing Assets submitted that, on the basis of circumstantial evidence on presumption, the appellants have been held guilty though he is not directly responsible for scrutiny of the loan application. He has sanctioned the loan based on the recommendation of the Loan Officer P.W.4 (Soundarajan). Further submitted that, when each and every incriminating circumstances not establishes guilt of the appellants and the chain of events are broken, the appellants cannot be convicted. In support of his argument, the Learned Counsel for the A2/Jayabalan, rely upon the judgment of the Hon'ble Supreme Court in ***Tanviben Pankajkumar Divetia -vs- State of Gujarat*** reported in ***(1997) 7 SCC 156,*** wherein, it has held that;

> "***45.*** *The principle for basing a conviction on the basis of circumstantial evidences has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn*

and no other hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the Court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. It has been indicated by this Court that there is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions. (Jaharlal Das v. State of Orissa [(1991) 3 SCC 27 : 1991 SCC (Cri) 527])"

46. *We may indicate here that more the suspicious circumstances, more care and caution is required to be taken otherwise the suspicious circumstances may unwittingly enter* *the adjudicating thought process of the Court even though the suspicious circumstances had not been clearly established by clinching and reliable evidences. It appears to us that in this case, the decision of the Court in convicting the appellant has been the result of the suspicious circumstances entering the adjudicating thought process of the Court."*

28. The Learned Counsels submitted that for criminal conspiracy, the essential requirement is an agreement between two or more persons to do an illegal act or an act by illegal means. An unlawful agreement is a *sine qua non* for constituting offence under Section 120-B of I.P.C. There must be an express or implicit agreement between the accused persons, who was charged for conspiracy and further submitted that, the prosecution in this case has not let in any evidence for sanctioning the said loan there was a prior agreement either implicitly or explicitly between the parties to constitute an offence under Section 120-B of I.P.C. In support of this argument, the judgment of the Hon'ble Supreme Court in ***K.R.Purushothaman and State of Kerala*** reported in ***(2005) 12 SCC 631***, is relied wherein, it has held that;

"***13.*** *To constitute a conspiracy, meeting of minds of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of the conspiracy. Neither is it necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implication. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. The existence of conspiracy and its objects are usually deduced from the circumstances of the case and the conduct of the accused involved in the conspiracy. While appreciating the evidence of the conspiracy, it is incumbent on the court to keep in mind the well-known rule governing circumstantial evidence viz. each and every incriminating circumstance must be clearly established by reliable evidence and the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn, and no other hypothesis against the guilt is possible. Criminal conspiracy is an independent offence in the Penal Code. The unlawful agreement is sine qua non for constituting offence under the Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more* *persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the plan would not perse constitute conspiracy. The offence of conspiracy shall continue till the termination of agreement.*

14. *Suspicion cannot take the place of legal proof and prosecution would be required to prove each and every circumstance in the chain of circumstances so as to complete the chain. It is true that in most of the cases, it is not possible to prove the agreement between the conspirators by direct evidence but the same can be inferred from the circumstances giving rise to conclusive or irresistible inference of an agreement between two or more persons to commit an offence. It is held in Noor Mohd. Mohd. Yusuf Momin v. State of Maharashtra [(1970) 1 SCC 696 : 1970 SCC (Cri) 274 : AIR 1971 SC 885], that: (SCC pp. 699-700, para 7).*

> *"In most cases proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material."*

29. Further, the Learned Counsels also rely upon the judgment of the Hon'ble Supreme Court in ***Central Bureau of Investigation, Hyberabad -vs-***

K.Narayana Rao reported in ***(2012) 9 SCC 512***, wherein, it has held that:

> "***24.*** *The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence."*

30. And the judgment of the Hon'ble Supreme Court in ***Parveen @ Sonu -vs- State of Haryana*** reported in ***2021 SCC Online SC 1184***, wherein, it has held that;

"12. It is fairly well settled, to prove the charge of conspiracy, within the ambit of Section 120-B, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. At the same time, it is to be noted that it is difficult to establish conspiracy by direct evidence at all, but at the same time, in absence of any evidence to show meeting of minds between the conspirators for the intended object of committing an illegal act, it is not safe to hold a person guilty for offences under Section 120-B of IPC. A few bits here and a few bits there on which prosecution relies, cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy. Even the alleged confessional statements of the co-accused, in absence of other acceptable corroborative evidence, is not safe to convict the accused. In the case of Indra Dalal v. State Of Haryana1, this Court has considered the conviction based only on confessional statement and recovery of vehicle used in the crime. In the said case, while setting aside the conviction, this Court has held in paragraphs 16 & 17 as under:-

"16. The philosophy behind the aforesaid provision is acceptance of a harsh reality that confessions are extorted by the police officers by practising oppression and torture or even inducement and, therefore, they are unworthy of any credence. The provision absolutely excludes from evidence against the accused a confession made by him to a police officer. This provision applies even to those confessions which are made to a police officer who may not otherwise be acting as such. If he is a police officer and confession was made in his presence, in whatever capacity, the same becomes inadmissible in evidence. This is the substantive rule of law enshrined under this provision and this strict rule has been reiterated countlessly by this Court as well as the High Courts.

17. The word "confession" has nowhere been defined. However, the courts have resorted to the dictionary meaning and explained that incriminating statements by the accused to the police suggesting the inference of the commission of the crime would amount to confession and, therefore, inadmissible under this provision. It is also defined to mean a direct acknowledgment of guilt and not the admission of any incriminating fact, however grave or conclusive. Section 26 of the Evidence Act makes all those confessions inadmissible when they are made by any person, whilst he is in the custody of a police officer, unless such a confession is made in the immediate presence of a Magistrate. Therefore, when a person is in police custody, the confession made by him even to a third person, that is, other than a police officer, shall also become inadmissible."

31. The judgment of the Hon'ble Supreme Court in ***Ram Sharan Chaturvedi -vs- The State of Madhya Pradesh*** reported in ***2022 SCC Online SC 1080***, wherein, it has held that;

> *"**24.** The principal ingredient of the offence of criminal conspiracy under Section 120B of the IPC is an agreement to commit an offence. Such an agreement must be proved through direct or circumstantial evidence. Court has to necessarily ascertain whether there was an agreement between the Appellant and A-1 and A-2. In the decision of State of Kerala v. P.Sugathan, this Court noted that an agreement forms the core of the offence of conspiracy, and it must surface in evidence through some physical manifestation:*
>
> > *"**12.** As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. ...<u>A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy...</u>*
> >
> > ***13.** ...<u>The most important ingredient of the offence being the agreement between two or more persons to do an illegal act.</u> In a case where criminal conspiracy is alleged, the court*

> *must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient…"*

***25.** The charge of conspiracy alleged by the prosecution against the Appellant must evidence explicit acts or conduct on his part, manifesting conscious and apparent concurrence of a common design with A-1 and A-2. In State (NCT of Delhi) v. Navjot Sandhu, this Court held:*

> *"**101**. One more principle which deserves notice is that the cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Of course, each one of the circumstances should be proved beyond reasonable doubt. Lastly, in regard to the appreciation of evidence relating to the conspiracy, the Court must take care to see that the acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution."*

32. The Learned Counsel for the appellant/A2 also submitted that there is no proof that pursuant to the conspiracy, A-2/Jayabalan, the Branch Manager has obtained any valuable things or pecuniary advantage by illegal or by corrupt means. Hence charge under Section 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988 will not get attracted. Therefore, even assuming that, loans were sanctioned without proper scrutiny of documents *per se* will not be proof of obtaining illegal gratification or pecuniary advantage. None of the witness examined by the prosecution had deposed that, A-2/Jayabalan Branch Manager, by sanctioning the loan in favour of V.K.Ravichandran, Proprietor of M/s.Prithive Utilities had obtained any pecuniary advantage illegally. Further, the act of A-2/Jayabalan, sanctioning the loan in discharge of his official duty, presumed to be done in good faith. In support of this argument, he relies upon the judgment of Gauhati High Court in ***M.L.Sharma and another -vs- Central Bureau of Investigation CBI*** reported in ***(2019) 6 Gauhati Law Reports,*** wherein, it has held that;

> *"64. The learned counsel for the appellants strenuously argued that to convict an accused for an offence under Section 13 (1) (d) and 13 (2), the prosecution must establish that by*

corrupt and legal means the accused has obtained for himself or for any other person any valuable things or pecuniary advantage but in the present case there is no evidence on record the appellants/the public servants obtained any amount by corrupt or illegal means and conviction of the public servants/the two appellants is not sustainable in absence of such requisite evidence. The decision of Subash Parbat Sonvane v. State of Gujarat, (2002) 5 SCC 86, is relied on the aspect.

65. In the aforesaid decision, para 6, it has been held that for convicting the person under Section 13 (1) (d) that there must be evidence on record that the accused obtained for himself or others any valuable things or pecuniary advantage either by corrupt or illegal means or by adducing his position as a public servant without any public interest. In the present case, there is a lack of evidence on the above aspect.

66. On the next, the appellants have relied upon the decision rendered by the Hon'ble Apex Court in 2014 (3) JCC 1552, B. Jayaraj v. State of A.P., wherein it has been held that the presumption under Section 20 of the P.C. Act can be drawn only in respect of offence under Section 7 and not the offences under Section 13 (1) (d) (i) (ii) of the Act. In any event it is only on the proof of acceptance of illegal gratification presumption *can be drawn under Section 20 of the Act that such gratification was received or doing or for bearing any official act. Applying the proposition laid by the aforesaid decision, the statutory presumption also cannot be drawn against the public servant/the appellants herein."*

33. The Learned counsel appearing for the A-2/Jayabalan finally submitted that, in all the cases A-2/Jayabalan, the Branch Manager is arrayed as an accused and the maximum sentence to undergo 3 years R.I for the offence under Section 13(2) r/w 13(1) (d) of P.C Act. Since the matter is of same nature and been heard, tried simultaneously, the accused who were found guilty must be given the benefit of Section 427(1) of Cr.P.C and he must be ordered to undergo the sentence simultaneously in all the cases. In support of his submission, he relies upon the judgment of the Hon'ble Supreme Court in ***P.N.Mohanan Nair -vs- State of Kerala*** reported in ***(2017) 14 SCC 719***, wherein, it has held that;

"***7.*** *We have considered the respective submissions, and are of the opinion that essentially the allegations constituted a single transaction between the same parties for a block period* *split up by the prosecution, presumably for its convenience, into three different cases. The evidence also was common and so is the conviction. Section 427(1) CrPC stipulates that where a person undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, it shall commence at the expiration of the imprisonment previously sentenced, unless the court directs that the subsequent sentence shall run concurrently with such previous sentence. The jurisdiction being discretionary must be exercised on fair and just principles in the facts of a case.*

8. *We do not consider it necessary to further elucidate or enter into an exposition of the law, in view of the precedents noticed above. Suffice it to observe that in the facts of the case, the exercise of discretion under Section 427(1) of the Code of Criminal Procedure, mandates that the substantive sentences imposed upon the appellant in the three separate prosecutions, are directed to run concurrently, except the default sentence, if the fine by way of compensation as imposed has not been paid by him. The appellant would naturally be entitled to all consequential reliefs for release from custody as available in law based on the present discussion."*

34. For the same point, the Learned Counsel for the appellant/A2 also relies upon the judgment of the Hon'ble Supreme Court in ***M.R.Kudva -vs- State of Andhra Pradesh*** reported in ***(2007) 2 SCC 772,*** wherein, it has held that;

> "***12.*** *However, in this case the provision of Section 427 of the Code was not invoked in the original cases or in the appeals. A separate application was filed before the High Court after the special leave petitions were dismissed. Such an application, in our opinion, was not maintainable. The High Court could not have exercised its inherent jurisdiction in a case of this nature as it had not exercised such jurisdiction while passing the judgments in appeal. Section 482 of the Code was, therefore, not an appropriate remedy having regard to the fact that neither the trial Judge, nor the High Court while passing the judgments of conviction and sentence indicated that the sentences passed against the appellant in both the cases shall run concurrently or Section 427 would be attracted. The said provision, therefore, could not be applied in a separate and independent proceeding by the High Court. The appeal being devoid of any merit is dismissed."*

35. The prosecution through evidence had proved that there was conspiracy between the accused person to cheat the bank and in pursuant to the conspiracy, Current Account in the name of M/s.Prithive Utilities showing V.K.Ravichandran as Proprietor was opened and on the same day loan was sanctioned and credited in the said account. The application for opening the bank account, specimen signature form, the application for advance to trade loan showing V.K.Ravichandran as Proprietor of M/s.Prithive Utilities were all proved through handwriting expert that they were filled up by A3/Prakash. The account was introduced by A1/Kasi. The loan amount has been transferred to the account of V.K.Ravichandran, which was opened on the day of disbursing the loan. The credit report and sanctioning ticket based on the appraisal memorandum which are marked as Ex.P.5 to Ex.P.7 were all prepared and signed by A2/Jayabalan and most of the entries found in these documents are false and not supported by genuine documents.

36. These proven facts indicates that loan in the name of M/s.Prithive Utilities was sanctioned by A2 knowing fully well that, the said M/s.Prithive Utilities not entitled for any trade loan. This could be seen from the letter of A2 written to M/s.Prithive Utilities on 21.11.2005 which is marked as Ex.P.13. In this letter, A2/Jayabalan has asked the borrower to furnish photograph of the guarantor and the stock statements and also to pay the over due amount. This is sufficient to hold that the deposit of title deed of the guarantors property was accepted even without his photograph and much after the disbursement of loan A2/Jayabalan has thought fit to collect the photograph of the guarantor.

37. P.W.10 T.Krishnamoorthy in his testimony has clearly stated that, Ex.P.12 cheque for Rs.1 lakhs was drawn in the name of Krishnamoorthy and given to P.W.10 by Kasi/A1 to discharge his personal debt. Therefore, from the evidence, it could be seen that, the appellants herein had conceived the design to cheat the Indian Bank by disbursing loan amount to persons, who had no real trading but only to cheat the bank, documents were created and for opening the account and for process the application in the name of loanee A1/Kasi and A3/Prakash had played a prominent role in connivance with A2 the Bank Manager/Jayabalan, who knowing fully well that account are opened only for the purpose of availing loan and loan are availed based on false documents and with intention of not to repay it and collateral security furnished by the loanee's are not with valid consent of the guarantors.

38. For the said reasons, this Court finds that the conviction and sentence imposed on A1 to A3 are bound to be confirmed.

39. Insofar as A-2/Jayabalan being a public servant, evidence placed proves that A2/Jayabalan, Branch Manager, had knowingly sanctioned the loan to V.K.Ravichandran without proper document and thereby by abusing his position as a public servant facilitated A1 & A3, to have pecuniary advantage by illegal means. He had misconducted himself to get a pecuniary advantage for others by abusing his official position. Therefore, liable to be punished for the offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and the conviction and sentence imposed by the trial Court against this accused is confirmed.

40. In the result, the conviction and sentence imposed by the trial Court in C.C.No.25 of 2008 are confirmed.

Accused	*Offences*	*Conviction and Sentence imposed by the Trial Court*
A1 to A3	120-B r/w 420 of I.P.C and 13(2) r/w 13(1) (d) of P.C Act, 1988.	To undergo R.I for one year and to pay fine of Rs.2,000/- each, in default to undergo S.I for six months.

Accused	***Offences***	***Conviction and Sentence imposed by the Trial Court***
A1 & A3	420 of I.P.C	To undergo R.I for one year and to pay fine of Rs.2,000/- in default to undergo S.I for six months.
A2	13(2) r/w 13(1)(d) of PC Act, 1988.	To undergo R.I for three years and to pay fine of Rs.5,000/- in default to undergo S.I for one year.

The period of imprisonment already undergone shall be set off under Section 428 of Cr.P.C.

41. These three appellants, who are accused in C.C.No.25 of 2008 are also found guilty in C.C.No.27 of 2008 for similar offences. Therefore, the sentence imposed in these accused shall run concurrently together with the period of sentence imposed on these accused in C.C.No.27 of 2008 arrayed as A1, A2 and A6 for similar offence and identical period.

42. Accordingly, the ***Criminal Appeal Nos.47 & 80 of 2013 are dismissed.*** The trial Court shall secure the accused persons/A1 to A3 and commit them to prison to undergo remaining period of sentence. The bail bond executed, if any, shall stand cancelled.

28.04.2023

Index :Yes/No.
Neutral Citation :Yes/No.
Speaking order/Non-speaking order
bsm

To,

1. The Learned XI Additional Special Judge, (CBI Cases), Chennai.
2. The Inspector of Police, CBI, EOW, Chennai.
3. The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN,J.

bsm

Pre-Delivery common judgment made in

Crl.A.Nos.47 & 80 of 2013

28.04.2023