IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :22.06.2023	Pronounced on: 24.07.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Criminal Appeal Nos.479, 487 and 511 of 2013

[Crl.A.No.479 of 2013 against C.C.No.20 of 2005]

Antoney Xavier,
Son of Late V.J.Xavier,
Age 61 years,
Partner, M/s.Emerald Sea Food Exports, Chennai,
No.5/3, Robinson Park Company,
Old Vannarapettai,
Chennai – 600 021. ... Appellant/Accused No.2

/versus/

State represented by:
Additional Superintendent of Police,
SPE/CBI/Chennai. ... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 (2) of Cr.P.C., pleased to allow the above criminal appeal set aside the judgment of conviction and sentence imposed on this appellant/accused No.2 in the case in C.C.No.20 of 2005 on the file of the Court of the XI Additional Special Judge, (CBI cases relating to Banks and Financial Institutions), Chennai and pass orders.

For Appellant : Mr.T.Sivananthan

For Respondent : Mr.R.Sudeve Kumar,
Senior Public Prosecutor (C.B.I).

[Crl.A.No.487 of 2013 against C.C.No.20 of 2005]

S.Rajaram,
Assistant General Manager,
Indian Overseas Bank, Central Office,
Chennai,
Chief Manager, Mount Road Branch,
Chennai. ... Appellant/Accused No.1

/versus/

The Additional Superintendent of Police,
CBI/ACB/Chennai.
(R.C.No.7 (A) 2003) ... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 of Cr.P.C., pleased to set aside the order of the Hon'ble XI Additional Special Judge, (CBI cases relating to Banks and Financial Institutions), Chennai, in C.C.No.20 of 2005 dated 27.06.2013 and acquit the appellant.

For Appellant : Mr.L.V.Rohith

For Respondent : Mr.R.Sudeve Kumar,
Senior Public Prosecutor (C.B.I).

[Crl.A.No.511 of 2013 against C.C.No.20 of 2005]

N.Bharath,
S/o.K.Nagappan,
No.169, V.V.Giri Street,
Ramakrishna Nagar,
Chennai – 600 087. ... Appellant/Accused No.3

/versus/

The State rep. by
Inspector of Police,
Anti Corruption Branch,
Central Corruption of Investigation,
Chennai.
(R.C.No.7 (A) 2003/CBI/ACB/Chennai) ... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 (2) of Cr.P.C., pleased to set aside the order of the Hon'ble XI Additional Special Judge, (CBI cases relating to Banks and Financial Institutions), Chennai, in C.C.No.20 of 2005 dated 27.06.2013 and acquit the appellant.

For Appellant : Mr.B.Kumar, Senior Counsel,
for Mr.M.Mohammed Rafi

For Respondent : Mr.R.Sudeve Kumar,
Senior Public Prosecutor (C.B.I).

***

COMMON JUDGMENT

On 04.02.2003 based on the reliable information received in the Office of Superintendent of Police, SPE, CBI, ACB, Chennai, a regular case in R.C.MA 1/2003A/0007 was registered by the Inspector of Police Mr.V.Ashok Kumar against 12 suspected person including Assistant General Manager, Indian Overseas Bank Mr.S.Rajaram, who was the Chief Manager, Mount Road Branch, Chennai, at the relevant point of time. The information received to the effect that said Mr.S.Rajaram, the Chief Manager and N.R.Chandrasekar, Assistant Manager, Mount Road Branch, Indian Overseas Bank, Chennai, in connivance with partners of M/s.Sree Ambal Expo Inc., and M/s.Sastha Exports and the proprietor of M/s.Maruthi Exports, M/s.Bright and Co and M/s.Emarald Sea Food Exports, conspired to cheat the bank and had advanced loan to these entities by fraudulently altering the documents and creating fake documents by using it as genuine and thereby, caused loss of Rs.3.26 crores to the Bank and corresponding wrongful gain to the private parties.

2. On completion of investigation and obtaining sanction to prosecute for each entity, which has alleged to have availed loan by producing fake documents and defaulted, separate final reports were filed in all these cases, the valuer, the Chief Manager and the Assistant Manager were shown as accused besides the respective borrowers.

3. Based on the five final reports, the trial Court took cognizance of the offence, reports were taken on file and assigned C.C.Nos.16 to 20 of 2005.

4. C.C.No.20 of 2005 pertains to the loan sanctioned to

M/s.Emerald Sea Food Exports. As per the F.I.R, M/s.Emerald Sea Food Exports is a proprietor ship concern with Antony Xavier as Proprietor. Rajaram and Chandrasekar by abusing their official positions colluded with Antony Xavier and Balraj a real estate broker, accepted the forged title document of a property extend of 17.81 cents in Survey No.40/1 (New survey No: 40/1 B2) in No.101, Valasaravakkam Village, Chennai which is in the name of Balraj. Kumara Raja, Approved Panel Advocate gave opinion for the property as it is worth for taking collateral security. Bharath, the approved valuer gave the valuation certificate as if he had inspected the property and it worth Rs.41,40,000/-. Thereby, all knowing well that, there is no property in the name of Balraj at S.No.40/1 village No:101, Valasaravakkam sanctioned credit facilities to M/s.Emerald Sea Food Exports based on the false valuation certificate and legal opinion for a property which is not in existence. The loan availed was not repaid and thereby, caused loss to the Bank for about Rs.49 lakhs.

5. The Assistant General Manager S.Rajaram shown as 1st accused in the final report. Mr.Antony Xavier, the Proprietor of M/s.Emerald Sea Food Exports, Chennai shown as 2nd accused. Mr.N.Bharath who is the approved valuer who gave valuation for the property not in existence is arrayed as 3rd accused. One Thiru.Balraj, Real Estate broker was arrayed as A4, however, the charges against him got abated in view of his death, pending trial.

6. The trial Court, on considering the materials placed, framed the following charges.

> ***<u>Charge No.1:-</u>*** *FIRSTLY, that you Al who functioning as Chief Manager Indian Overseas Bank, Mount Road Branch, Chennai entered into a Criminal conspiracy with you A-2 Proprietor of M/s. Emerald Sea Foods, 43 the then approved valuer of Indian Overseas Bank, Chennai and A4 Real Estate Promoter during 2001 to 2002 to cheat the Indian Overseas Bank, Mount Road at Chennai and other places in the matter of sanctioning and availing credit facilities in the form of Packing credit to the tune of Rs.40 lakhs on 18.12.2001 in favour of M/s Emerald Sea Foods a Proprietary concern of A2 on the basis of false and forged collateral securities, and you A-1 obtained a pecuniary advantage of Rs.1,25,000/- from A-2 for showing and official favour and pursuant to which you A2 with the active connivance A4 dishonestly and fraudulently created/obtained bogus land documents relating to*

lands an extent of 17.81 cents of land bearing Survey No.40/1 (New Survey No.40/1 B2) at No.101, Valasaravakkam village, Chennai-87, in the name of A4 knowing that no such property was in existence at No.101, Valasaravakkam Village, Chennai is existing in the name of A4 and paid Rs.1,90,000/- to A4 and you A2 used the same as genuine knowingly or having reasons to believe that they are forged documents before the Indian Overseas Bank, Chennai and you A-3 dishonestly and fraudulently submitted false valuation certificate certifying the valuation of the non existing property at Valasaravakkam village to the tune of Rs.41.40 lakhs and you A-1 by abusing your official position as Public servant by ignoring/violating the rule and regulations of the Bank regarding the pre-sanction and post sanction verification sanctioned cash credit to the tune of Rs.40 lakhs on 18.12.2001 and A2 after availing the said credit facilities have failed to repay the loan amount which caused a wrongful loss of Rs.45,87,496/- to the Indian Overseas Bank, Chennai and Corresponding wrongful pain to yourselves thereby you A1 to A4 have committed offences punishable u/s 1208 r/w 420, 468, 471 IPC and U/s 13(2) r/w 13(1)(d) of Prevention Of Corruption Act 1988 and is within my cognizance.

Charge No.2:- *SECONDLY, in furtherance of the aforesaid criminal conspiracy and in the course of the* *same transaction you A2 with active connivance of A4 dishonestly and fraudulently created bogus/forged land documents relating to lands an extent of 17.81 cents of land bearing survey No.40/1 (New Survey No.40/1 B2) at No.101, Valasaravakkam village, Chennai-87, in the name of A4 knowing that no such property was in existence at No.101, Valasaravakkam Village, Chennai-87, after paying Rs.1,90,000/- to A-4 and you A2 used the same as genuine knowingly or having reasons to believe that they are forged documents before the Indian Overseas Bank, Chennai and induced the bank to part with its funds and availed the packing credit facility of Rs.40 lakhs on 18.12.2001 by paying Rs.1,25,000/- to Al for showing an official favour and the said credit facilities was sanctioned by Al dishonestly and by abusing the official position as public servant. You A2 after availing the said credit facilities have failed to repay the loan amount which ultimately caused a wrongful loss of Rs.45,87,496/- to the Indian Overseas Bank, Mount Road Branch, Chennai and corresponding wrongful gain to yourselves. There by you A2 and A4 have committed offence punishable u/s420, 468 and 471 IPC and within my cognizance.*

<u>Charge No.3:-</u> *THIRDLY, in furtherance of the aforesaid criminal conspiracy and in the course of the same transaction you A3 dishonestly and fraudulently* *submitted false valuation certificate to the tune of Rs.41.40 lakhs relating to lands an extent of 17.81 cents of land bearing survey No.40/1 (New Survey No.40/1 B2) at No.101, Valasaravakkam village, Chennai-87, knowing fully well that no such property was in existence at No. 101, Valasaravakkam Village, Chennai-87, in the name of A4 which enabled A2 to avail the packing credit limit of Rs.40 lakhs on 18.12.2001 which ultimately caused a wrongful loss of Rs.45,87,496/- to the Indian Overseas Bank, Mount Road Branch, Chennai and corresponding wrongful gain to yourselves. There by you A3 have committed offence punishable u/s 468 IPC and is within my cognizance.*

<u>Charge No.4:-</u> *FOURTHLY, in furtherance of the aforesaid criminal conspiracy and in the course of the same transaction you Al by abusing your official position as Public Servant dishonestly and fraudulently and by accepting the bogus/forged property documents not worthy of being mortgaged and by ignoring/violating of the rule and regulations of the Bank regarding the Pre-sanction and post sanction verification sanctioned packing credit of Rs.40 lakhs on 18.12.2001 in favour of M/s Emerald Sea Foods represented by A2 and received Rs.1,25,000/- as pecuniary advantage from A2 and accepted the false valuation certificate issued by A3, A2 after availing the* *credit facilities have failed to repay the loan amount which ultimately caused a wrongful loss of Rs.45,87,496/- to the Indian Overseas Bank, Mount Road Branch, Chennai and corresponding wrongful gain to yourself thereby you Al have committed offences punishable u/s.13(2)r/w13(1)(d) of Prevention of Corruption Act 1988 and is within my cognizance.*

7. To prove the charges, the prosecution examined 14 witnesses (P.W.1 to P.W.14) and marked 27 Exhibits (Ex.P.1 to Ex.P.27). On the side of the defence, 2 Exhibits were marked (Ex.D.1 and Ex.D.2). The documents from CBI was summoned and 7 Exhibits (Ex.C.1 to Ex.C.7) were marked through Court.

8. Pending trial, the 4th accused Balraj died. The charges against him got abated. At the end of the trial, the Court held accused 1 to 3 guilty for the charges tried and sentenced them to undergo following punishment:-

Accused	***Offences***	***Conviction and Sentence passed by the Trial Court***
A1	u/s.120-B r/w 420, 468, 471 of IPC and u/s.13(2) r/w 13(1)(d) of P.C Act, 1988.	To undergo R.I for three years and to pay fine of Rs.2,000/-, in default to undergo S.I for one year.
A2 & A3	u/s.120-B r/w 420, 468, 471 of IPC and u/s.13(2) r/w 13(1)(d) of P.C Act, 1988.	To undergo R.I for One year each and to pay fine of Rs.1,000/-, in default to undergo S.I for three months.

Accused	***Offences***	***Conviction and Sentence passed by the Trial Court***
A2	U/s. 420 of I.P.C	To undergo R.I for One year and to pay fine of Rs.1,000/-, in default to undergo S.I for three months.
A2	u/s. 468 of I.P.C	To undergo R.I for One year and to pay fine of Rs.1,000/-, in default to undergo S.I for three months.
A2	u/s. 471 of I.P.C	To undergo R.I for One year and to pay fine of Rs.1,000/-, in default to undergo S.I for three months.
A3	u/s. 468 of I.P.C	To undergo R.I for One year and to pay fine of Rs.1,000/-, in default to undergo S.I for three months.
A1	U/s.13(2) r/w 13(1)(d) of P.C Act, 1988.	To undergo R.I for three years and to pay fine of Rs.2,000/-, in default to undergo S.I for one year.

The above sentences shall run concurrently, but the default sentences shall run consecutively. The period of imprisonment already undergone, if any, is ordered to be set off.

9. Being aggrieved by the judgement of the trial Court in C.C.No.20 of 2005, the following Criminal Appeals are filed by the appellants.

A1/S.Rajaram has preferred Crl.A.No.487 of 2013,
A2/Antony Xavier preferred Crl.A.No.479 of 2013 and
A3/N.Bharath has preferred Crl.A.No.511 of 2013.

10. Crl.A.No.487 of 2013

The Learned Counsel for the appellant/2nd accused S.Rajaram a public servant submitted that, the prosecution is liable to be set aside since the sanction upon which the Court has taken cognizance is non est in law submitting that, the request of the Investigating Agency namely C.B.I to grant sanction was declined by the Sanctioning Authority. Drawing the attention of this Court to Ex.C.1 to Ex.C.7 which are the communications between C.B.I and the Bank higher Officials regarding sanction to prosecute the Learned Counsel submitted that the sanctioning authority after perusing the records has taken a conscious decision and declined to accord sanction. While so, without any new facts and documents, C.B.I has forwarded a draft sanction order and pressurised the sanctioning authority P.W.1 to give order for prosecution which is marked as Ex.P.1. It is a clear case of sanction issued without application of mind at the dictation of the prosecuting agency and therefore, conviction has to be set aside for want of proper sanction. To buttress his submission, the Learned Counsel rely upon the following judgements:-

(i). ***M.S.Vijayakumar -vs- The Chairman and Managing Director, Indian Overseas Bank and others*** reported in ***2010 SCC Online Mad 6237***.

(ii). ***State of Himachal Pradesh -vs- Nishant Sareen*** reported in ***(2010) 14 SCC 527***.

(iii). ***Vijay Rajamohan -vs- State Represented by the Inspector of Police, CBI, ACB, Chennai*** reported in ***2022 SCC Online SC 1377***.

11. Further, the Learned Counsel for the appellant/A1 submitted that the grant of sanction based on the legal opinion and the valuation certificate cannot be termed as misconduct or abuse of official power. It is neither wilful negligence. As a Chief Manager of the branch, A1 had discharged his duty and sanctioned the loan after being satisfied with the report given by the field officer and opinion of experts. Therefore, his action will not fall within the definition of any of the offences for which he was tried and convicted. In support of this preposition, the Learned Counsel for the appellant rely upon the following judgment of the Hon'ble Supreme Court in ***Subbammal alias Rajammal and others -vs- The President, The Tenkasi Co-operative Urban Bank, Ltd*** reported in ***1976 SCC Online Mad 122***.

12. Crl.A.No.511 of 2013

The Learned Counsel for the 3rd accused/appellant in Crl.A.No.511 of 2013 submitted that, he is a valuer for the bank. Based on the legal opinion about the title, he has given the valuation certificate after inspecting the property identified by the Bank Manager and the borrower. It is not his duty to look into the authenticity of the title document. He, on inspection of the field and the property identified by the borrower and the bank Manager had assessed the value. He had no criminal intention of any kind to cheat the bank. There is no contra valuation for the property for which he has given valuation or evidence to show his valuation is incorrect or inflated or for non existing property. The valuer engaged by the prosecution had not valued the property but had given an evasive report that he was not able to identify the property. P.W.5 Seshadri appointed by the Bank to value the property in his report Ex.P.4 had stated that ownership, extent and location does not tally. Balraj is the promoter of the Kamakshi Nagar unapproved layout. He admits that, Balraj has produced Encumbrance certificate for the property and revenue official has to be examined. His enquiry with the Revenue officials indicates the property referred in the deed furnished by the borrower falls under Urban Land Ceiling. The Chitta and Patta are not genuine. The exercise taken by P.W-5 is not in fact the role of a valuer. Except valuing the property, he has done other exercise which are not expected from a valuer. Thus no incriminating materials against him put forth by the prosecution to convict him for the offence of conspiracy, cheating or for making false documents. In support of his argument, he rely upon the judgment of the Hon'ble Supreme Court in ***Central Bureau of Investigation, Hyderabad -vs- K.Narayana Rao*** reported in ***(2012) 9 SCC 512.***

13. <u>Crl.A.No.479 of 2013:-</u>

The Learned Counsel for the 2nd accused/appellant Antony Xavier submitted that, the appellant is the Proprietor of M/s.Emerald Sea Food Exports, Chennai. To avail loan at IOB, Mount Road Branch, Chennai, he furnished collateral security of a land at S.No.40/1, New S.No.40/1B2 at No.101, Valasaravakkam village, Saidapet Taluk, which apparently stood in the name of S.Balraj (4th accused since died pending trial). For the said property, Bharath (A3) approved valuer had certified that the property is worth Rs.41.40 lakhs and fit for taking it for mortgage to advance loan. Based on his valuation certificate and the legal opinion given by the approved Panel Advocate, A1 the Chief Manager of the Bank had advanced loan to Antony Xavier, Proprietor of

M/s.Emerald Sea Food Exports, Chennai. For the loan, his property at Minjur and a property at No.1469, Kumaran Street, Bhavani Nagar, Paidanallur, Chennai was offered as collateral security. Later, the property of Perumal was released and property of S.Balraj (A-4) was offered as collateral security. The substitution was accepted by the Bank after being satisfied on title and valuation. If at all any defect in title, the responsibility is on Bharath to explain and the lawyer who gave opinion that this property is fit to take as mortgage. While so, the trial Court wrongly relied upon the evidence of PW-5, PW-6 and PW-7 who had not actually and truly inspected the property before arriving at the opinion that there is no property existing in S.No 40/1. PW-7 admits that, he did not take the assistance of Surveyor to identify and measure the property. Therefore, it is clearly established that without making any genuine attempt to identify the property, the prosecution has proceeded on assumption and presumption that the property given as collateral security by this accused is not in existence.

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

On behalf of the respondent/C.B.I it is submitted that the sanction order Ex.P-1 dated 21/02/2005 is valid and there is no infirmity in it. P.W.1

had deposed that, on application of his mind, he granted the sanction to prosecute A-1 after perusing the documents and in consultation with CVC. There is no bar for the sanctioning authority to have a consultation with CVC. Even, if there is any defect in the sanctioning order, it cannot be a reason to acquit the bank Manager, who had knowingly accepted false property documents and valuation certificate to advance credit facility to M/s.Emerald Sea Foods. With knowledge of the fake deeds related to property offered as collateral security the Branch Manager, Rajaram, had extended packing credit facilities to M/s Emerald Sea Foods upto Rs.40 lakhs.

15. The property at S.No 40/1, Valasaravakkam Village is a large extend of agricultural land later developed as a layout by Balraj a real estate broker. It is not an approved layout. Without proper plot numbers title deeds were created, fake EC, Chitta and Patta were produced by the borrower to avail loan. Same was accepted by A-1 as genuine. He cannot claim innocence because property in the same survey number offered as security for other loans also. Without proper description of the property, document were created with intention to cheat. The ownership as well as the existence of the property not traceable.

16. N.Bharath, the Valuer had dishonestly and fraudulently submitted his valuation certificate dated 05.03.2002, estimating the forced sale value of non-existing plot as Rs.41.40 lakhs. Assigned plot numbers and street name, which is not available in the parent deed. He claim that he inspected the property on 03/03/2002.

17. Balraj the deceased accused for extraneous reasons had stood as guarantor. He had fraudulently created documents in respect of land bearing S.No.40/1 at No.101, Valasaravakkam Village, in his name. The said property is a non-existing property and same is proved by examining the VAO of Valasaravakkam and Sub-Registrar, Virugambakkam. That apart, the field verification was done with Valuer Vijayaraghavan and Bank officials, who had categorically stated that, the property is not identifiable. Contrarily, A1 had recorded that, he inspected the field on 19.04.2002 and the property given as collateral security is worthy to take as mortgage.

18. Thus, the prosecution has proved through P.W-1 to P.W-14 and Exhibits that, these accused had in pursuant to the criminal conspiracy had created fake title deeds, revenue documents and induced the Bank to grant loan to M/s.Emerald Sea Foods Exports, Chennai.

19. Point for consideration:-

Whether the trial court has appreciated the evidence fairly and in accordance with law?

20. Thiru.J.K.Gupta (P.W.1), General Manager of IOB is the authority who has accorded the sanction to prosecute. Mr.Rajaram (A1) is a public servant viz., Chief Manager of IOB. The competency of P.W.1 to grant sanction not been disputed. His claim that he accorded sanction after perusing the records and after applying the mind is disputed for following reasons:-

(i). Ex.P.1, Sanction order does not disclose the earlier proceedings (Ex.C.4) of P.W.1 refusing to accord sanction. No reason assigned for receiving the earlier rejection order.

(ii). In the Chief examination P.W.1 admits that the Vigilance Department in the Bank forwarded his observation to Chief Vigilance Commissioner (CVC). In response, CVC replied that material evidence available with CBI to prosecute Rajaram (A1). What are those material evidence, whey they were not furnished earlier and whether was furnished atleast subsequently for P.W.1 to review his earlier observation were not found in any of the documents placed before the Court.

(iii). P.W.1 admits after his refusal to grant sanction vide proceedings dated 27.10.2004 with reasoning, he received letter from the Vigilance Department to accord sanction enclosing Draft Sanction order Ex.C.6.

21. The first draft sanction order Ex.C.3 and the second draft sanction order Ex.C.6 are identical. To reverse or reconsider the observation made in Ex.C.4, concluding permission to prosecute S.Rajaram and N.R.Chandrasekar were not warranted. The C.B.I ought to have produced additional material evidence and same should have been considered by P.W.1 before according sanction. In the absence of any such material evidence, it has to be presumed, the sanction order lack application of mind.

22. No fresh material placed by C.B.I before P.W.1 while reiterating their request to accord sanction. No reason found in Ex.P.1, why the earlier order of rejection been reconsidered.

(i). ***M.S.Vijayakumar -vs- The Chairman and Managing Director, Indian Overseas Bank and others*** reported in ***2010 SCC Online Mad 6237,*** wherein it has held as below:-

> "*34. It is seen that it is because of the joint sitting of the CBI, CVC along with the Indian Overseas Bank (Sanctioning Authority), the Sanctioning Authority has changed its view. It is not the case of the bank that these materials which are insisted by either the CBI or CVC were not available on earlier two occasions when the order declining sanction of prosecution was passed. Therefore, it is manifestly clear that the change in mind on the part of the Sanctioning Authority has occurred only at the instance and instigation of the CBI and CVC. In the light of the well settled legal principle that the Sanctioning Authority has to independently decide before granting sanction on the materials available, we have no hesitation to hold on the facts and circumstances of the present case that the change of mind on the part of the Sanctioning Authority is certainly not independent. Moreover, it is astonishing to note that in the impugned sanction orders passed by the competent authority there is not even a reference about the earlier order declining to grant sanction and there is*

absolutely nothing to show that the impugned order has been passed based on any new materials, which were brought to the notice of the authority competent.”

(ii). ***State of Himachal Pradesh -vs- Nishant Sareen*** reported in ***(2010) 14 SCC 527,*** wherein it has held as below:-

“***12.*** *It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us a sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known* *to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise.*

13. *In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such a course."*

(iii). ***Vijay Rajamohan -vs- State Represented by the Inspector of Police, CBI, ACB, Chennai*** reported in ***2022 SCC Online SC 1377,*** wherein, it has held as below:-

"***18.13.*** *The appropriate Government or the competent authority is obligated, under the 2018 Amendment to the PC Act, to endeavour to convey the decision on the proposal for sanction within three months with an extended period of one more month when legal consultation is required. For this purpose,* *guidelines may be prescribed. CVC has, in fact, issued necessary guidelines in furtherance of this duty. [Proviso to Section 19(1) of the PC Act].*

19. *It is evident from the above referred formulation that the position of law and the legal regime obtained by virtue of the five legislations on the subject of corruption, operates as integrated scheme. The five legislations being the CrPC, the DSPE Act, the PC Act, the CVC Act, and the Lokpal Act, must be read together to enable the authorities to subserve the common purpose and objectives underlying these legislations. The Central Vigilance Commission constituted under the CVC Act is specifically entrusted with the duty and function of providing expert advice on the subject. It may be necessary for the appointing authority to call for and seek the opinion of CVC before it takes any decision on the request for sanction for prosecution. The statutory scheme under which the appointing authority could call for, seek and consider the advice of CVC can neither be termed as acting under dictation nor a factor which could be referred to as an irrelevant consideration. The opinion of CVC is only advisory. It is nevertheless a valuable input in the decision-making process of the appointing authority. The final decision of the appointing authority must be of its own by application of independent mind. The issue is, therefore, answered by* *holding that there is no illegality in the action of the appointing authority, the DoPT, if it calls for, refers, and considers the opinion of the Central Vigilance Commission before it takes its final decision on the request for sanction for prosecuting a public servant."*

23. P.W.1 Mr.J.K.Gupta, who has accorded sanction to prosecute had admitted that, the Officials in the Branch had obtained all the relevant documents to safeguard the interest of the bank. He refused to grant sanction for the reasons stated in the rejection order, but without any further additional evidence, he reviewed his earlier order. No special reason given for his satisfaction to prosecute the accused.

Section 19 (3) of P.C. Act, 1988 reads as below:-

"19. Previous sanction necessary for prosecution:-

(1)......

(2).......

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the

absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) No court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) No court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings."

24. This is a case whether disbursement of loan is the duty and responsibility of the Chief Manager. First, to discharge his duty, he has to depend on the legal opinion and the valuer opinion to ascertain credibility of the borrower. In this case, A2/Rajaram, Chief Manager, IOB, Mount Road Branch, had disbursed the loan to 5 entities who had defaulted and the collateral security offered by them were found to be fake. This certainly amounts to dereliction of duty and lack of alacrity. However, the Competent Authority P.W.1 had thought fit that, it is not fit case for prosecution and he has given enough reason for his conclusion for not according sanction. Contrary to Ex.C.4 reasoning and conclusion, P.W.1 has issued sanction order Ex.P.1 but without referring about earlier dismissal and reasoning for reviewing his own decision. Therefore, Section 19 (3) of the P.C Act, 1988, condone, error, omission or irregularity a topsy turvy opinion without any new material facts enabling prosecution of a public servant who had discharged his duty certainly had resulted in failure of justice. Therefore, the Criminal Appeal No.487 of 2013 is allowed.

25. As far as A3 Bharath, the appellant in Crl.A.No.511 of 2013 is concerned. He is Valuer by Profession. His report Ex.P.9 dated 05.03.2002, is in respect of property at Plot No.145, Thilagar Street, Kamatchi Nagar, Valasaravakkam, Chennai. In the covering letter, he has stated that, Fair Marked Value and Open Market Value of the property shall be of Rs.35,87,430/- & Rs.51,75,000/- respectively. The forced sale value of the property is estimated as Rs.41,40,000/-. In this report, he had mentioned S.Balraj as its owner. He has inspected the property on 03.03.2002 in the presence of the owner of the property. The four boundaries of the property mentioned along with Survey numbers. According to the valuer, the property was identified by S.Balraj the owner. The legal opinion dated 04.03.2002 has ascertained that the property belongs to S.Balraj based on the four boundaries mentioned in the opinion. He was able to identify the plot number. The sale deed marked as Ex.P.11 indicates that, on 08.05.1985 one Mr.Perumal had sold the property to S.Balraj, the agricultural land extended 17.81 cents in S.No.40/1. The four boundaries showing valuation certificate as well as legal opinion is one and the same.

26. P.W.6. K.Venkatagiri, AGM, IOB, who took charge of Indian Overseas Bank, Mount Road, after 1st accused had found that some of the loan sanctioned by his predecessor (A1) Rajaram was over due for long time and the borrowers did not respond to the communications. M/s.Emarald Sea Food Exports, Chennai, is owned by A2 Antony Xavier was one such account where A1 has sanctioned packing credit limit of Rs.20 lakhs and bill purchase limit of Rs.20 lakhs based on the application marked as Ex.P.6. A1 has appraised the proposal and sanctioned Packing credit limit upto Rs.20 lakhs and Bill purchase limit of Rs.20 lakhs. After he took charge, inspected the property in the month of October – 2002 but he was not able to located the property. He sought for another Panel Valuer Mr.P.R.Seshadri (P.W.5) to inspect the property and value it. In turn, P.R.Seshadri (P.W.5) inspected one Rani Elizabeth who happens to be an owner of Plot No.145, Thilagar Street adjacent to Kamatchi Nagar, Valasaravakkam, Chennai. The document given to the bank and the property for which A3 Bharath identified and given his valuation certificate does not tally with ownership, extent and location. The other Valuer P.W.7 Thiru.Vijaya Raghavan had deposed that, he has inspected the property situated at S.No.40/1, Valasaravakkam Village, in the presence of Venkatagiri, Chief Manager, A.S.Shanmuganathan, Chief Manager-II, Mr.Rajendiran, Assistant Manager, Mr.C.R.Venkateswaran, Chief Inspector IOB, Mr.Venkatarathinam, Inspector IOB, Mr.Bharath (A4) Valuer and Antony Xavier (A2) the borrower. The property was identified by A2 and measured. The boundaries were cross checked with the documents. The boundaries on ground did not tally with the boundaries and measurements of the property in the document. There was notice board at the site stating that, site belongs to Matha Engineering College. The description of the properties mentioned in document is agricultural land whereas the property on the ground is a house site. So, he did not value the property. His report marked as Ex.P.20.

27. P.W.7 has inspected the property on 25.09.2003. Whereas, A3 Bharath had inspected the property on 03.03.2002 nearly 1 ½ years earlier. By efflux of time, the physical features of the property might have been changed. P.W.5 in his report had stated that, Plot No.145, Thilagar Street, Kamatchi Nagar, Valasaravakkam is owned by Rani Elizabeth and not by Balraj. However, to substantiate this statement no document has been collected by the prosecution. P.W.5 has also not collected any document. Therefore, from the evidence, this Court finds that the prosecution lack material evidence to hold conspiracy or meeting of mind between A1, A2 and A3. The valuation given by A3 Bharath was based on the title document given by the Lawyer and the loan sanctioned by A2 based on the legal opinion as well as valuation certificate, hence on the face of the record does not appears to have been done with any malafide intention or dishonest intention. Therefore, the evidence contrary to the valuation given by the appellant does not disprove the content of the valuation certificate marked as Ex.P.9. Both P.W.5 and P.W.7 have gone to the spot without any assistance of the Revenue staff for ascertaining the identity of the property. In fact, P.W.5, though has identified the property, he had not valued the same on the excess that, the property stands in the name of Rani Elizabeth. These evidences are not sufficient to prosecute a Professional, who had given his opinion based on opinion of another expert regarding title. In the absence of contra evidence, the value stated by A3 in Ex.P.9 cannot be held as inflated or exaggerated. One cannot infer that, there is no such property. Change of physical features of a property from agricultural land to residential or *vis-a-vis* cannot be construed as non-existing property in the field. The prosecution has done the said mistake, for their mistake, A3 Bharath cannot be prosecuted. Accordingly, the Criminal Appeal No.511 of 2013 is allowed.

28. As far as Antony Xavier (A2), Proprietor of M/s.Emerald Sea Food Exports, Chennai, is one such defence that, the bank had recovered the money before the Debt Recovery Tribunal, Chennai, and the property has been attached. This is purely Civil dispute to pressure the borrower (A2). The criminal prosecution has been launched. This Court enable the countenance of the said submission because, A2 is the Proprietor of M/s.Emerald Sea Food Exports, has applied for the loan in the Bank and got Packing Credit Limit and Bill Purchase Limit Facility for Rs.20 lakhs each. The loan has been sanctioned on 18.12.2001 for collateral security of the property in the name of S.Balraj produced to the bank, Valuer and Panel Advocate. Based on the document, collateral security has been created and loan was sanctioned to around Rs.45

lakhs is over due from the appellant (A2) for which, the bank had resorted to DRT proceedings. The said proceedings, payment in the proceedings, have no bearing in the prosecution case. There is no specific allegation against this accused (A2) that, to avail loan and to cheat the bank, he had produced the false document namely title deed in the name of Balraj, for the property at Survey No.40/1, Valasaravakkam. The said property is identified as Plot No.145. However, the Encumbrance certificate for the period 01.06.1982 to 08.10.2001 proved to be fake and examining VAO of Valasaravakkam. The patta Ex.P.13 produced by this accused for availing loan found to be a fake document. Thus, dishonest intention to induce the bank to advance loan based on false document is clearly made out. Therefore, the accused Antony Xavier (A2) is liable to be punished for the offences under Section 420, 468 and 471 of I.P.C. For the rest of the charges, the appellant/Antony Xavier (A2), is entitled for acquittal for want of proof. Hence, the Criminal Appeal No.479 of 2013 filed by Antony Xavier (A2) is partly allowed. The sentence against A2 for the said offences are as below:-

Accused	*Offences*	*Conviction and Sentence passed by the Trial Court*
A2	U/s. 420 of I.P.C	To undergo R.I for One year and to pay fine of Rs.1,000/-, in default to undergo S.I for three months.
A2	u/s. 468 of I.P.C	To undergo R.I for One year and to pay fine of Rs.1,000/-, in default to undergo S.I for three months.
A2	u/s. 471 of I.P.C	To undergo R.I for One year and to pay fine of Rs.1,000/-, in default to undergo S.I for three months.

29. To sum up, the ***Criminal Appeal No. 487 of 2013 filed by S.Rajaram (A1) is allowed.*** The judgment of conviction passed by the trial Court in C.C.No.20 of 2005 by XI Additional Special Judge, (CBI cases), is hereby set aside. Fine amount paid if any by the appellant, shall be refunded to him. Bail bond if any executed by the appellant shall stand cancelled.

30. The ***Criminal Appeal No. 511 of 2013 filed by N.Bharath (A2) is allowed.*** The judgment of conviction passed by the trial Court in C.C.No.20 of 2005 by XI Additional Special Judge, (CBI cases), is hereby set aside. Fine amount paid if any by the appellant, shall be refunded to him. Bail bond if any executed by the appellant shall stand cancelled.

31. The ***Criminal Appeal No.479 of 2013 is partly allowed.*** The judgment of conviction passed by the trial Court in C.C.No.20 of 2005 by XI Additional Special Judge, (CBI cases), is partly set aside. The trial Court is directed to secure the accused and commit him to the prison to undergo the remaining period of sentence. The period of substantive sentence shall run concurrently. The period of imprisonment already undergone by the accused shall be set off under Section 428 of Cr.P.C.

24.07.2023

Index :Yes/No.
Internet :Yes/No.
Speaking order/non speaking order
bsm

To:-
1.The XI Additional Special Judge, (CBI cases relating to Banks and Financial Institutions), Chennai.
2.The Additional Superintendent of Police, CBI/ACB/Chennai.
3.The Inspector of Police, Anti Corruption Branch,
Central Corruption of Investigation, Chennai.
4.The Special Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,J.

bsm

Delivery common judgment made in
Crl.A Nos.479, 487 and 511 of 2013

24.07.2023