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.No.48 of 2013

Crl.A.No.48 of 2013 against C.C.No.29 of 2008

1. R.Kasi,
2. M.Jayabalan,
3. T.Anna Pitchai, ... Appellants/Accused No.1 to 3

/versus/

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

Prayer in Crl.A.No.48 of 2013: Criminal Appeal has been filed under Section 374 of Cr.P.C., against the judgment dated, 27.12.2012 passed by the Learned XI Additional Judge for CBI cases, Chennai in the above C.C.No.29 of 2008 in R.C.No.4/E/2007/CBI/EOW, Chennai.

A-1 to A-3: Rigorous Imprisonment for one year and fine of Rs.2,000/- each in default, to undergo six months Simple imprisonment for the offence under Section 120-B r/w 420, 467 and 467 r/w 471 of I.P.C and 13(2) r/w 13(1)(d) of P.C Act 1988.

<u>**A-1 and A-3**</u>: Rigorous Imprisonment for one year and fine of Rs.2,000/- each, in default to undergo six months Simple imprisonment for the offence under section 420 I.P.C.

<u>**A-1 and A-3:**</u> Rigorous Imprisonment for one year and fine of Rs.2,000/- each, in default to undergo six months Simple imprisonment for the offence under section 467 I.P.C.

<u>**A-1 and A-3:**</u> Rigorous Imprisonment for one year and fine of Rs.2,000/- each, in default to undergo six months Simple imprisonment for the offence under section 467 r/w 471 I.P.C.

<u>**A-2:**</u> Rigorous Imprisonment for three years and fine of Rs.5,000/- in default, to undergo one year Simple Imprisonment for the offence under section 13(2) r/w 13(1)(d) of P.C Act 1988.

For A1	: Mr.R.Vijayaraghavan
For A2	: Mr.G.R.Hari, for Mr.R.Baskar.
For A3	: No appearance
For Respondent	: Mr.K.Srinivasan, Senior Advocate, Special Public Prosecutor (CBI).

JUDGMENT

The Criminal Appeal is filed against the judgment passed by XI Additional Special Court, (CBI cases relating to Banks and Financial Institutions), Chennai, in C.C.No.29 of 2008 in R.C.No.4E/2007/CBI/EOW/ Chennai.

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

3. The case of the prosecution is that, A-1/Kasi as Proprietor of M/s.Netra Infosys, A-2/Jayabalan, as the Branch Manager of Indian Bank, South Usman Road Branch, Chennai and A3/Annapitchai entered into a criminal conspiracy to cheat Indian Bank, South Usman Road Branch and accordingly A3/Annapitchai with the assistance of other accused persons fraudulently opened a Current Account and availed a trade finance loan of Rs.5 Lakhs, in the name of M/s.Annai Stores, Chrompet, Chennai, providing a invalid equitable Mortgage created using copy of a partition deed instead of the original. By way of cheating, forging a valuable security and using a forged document as genuine. A-2/Jayabalan, the Branch Manager abusing his official position as public servant, sanctioned and released credit facilities in the form of Trade Finance loan and transferred the loan amount to other accounts to be utilised for his personal use. The loan was not repaid and the account became Non-Performing Assets later. Thereby, caused loss to the bank to a tune of Rs.7,55,664/- and corresponding wrongful gain to A-1 and A-3.

4. 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 Section 420, 467 and 471 of I.P.C and under Section 13(2) r/w 13(1)(d) of P.C Act, 1988.
A1 and A3	Section 420 of I.P.C Section 467 of I.P.C Section 467 r/w 471 of I.P.C
A2	Section 13(2) r/w 13(1)(d) of P.C Act, 1988.

5. To prove the charges, the prosecution has examined 15 witnesses (P.W.1 to P.W.15) and marked 50 exhibits (Ex.P.1 to Ex.P.5). On behalf of the accused D.W-1 Mr.Ravichandran examined to speak about the fact that, A3/T.Annapitchai availed loan through one K.Prakash (accused in

C.C.No.24/2008). Subsequently, the loan was cleared by Mr.Annasekar, (P.W.13) the brother of A-3.

6. The Trial Court, on appreciating the evidence held the accused guilty of the charges mentioned above and sentenced them to undergo with the following punishment as below:-

Accused	*Offences*	*Conviction and Sentence imposed by the Trial Court*
A1 to A3	120-B r/w 420, 467 and 471 of I.P.C and 13(2) r/w 13(1) (d) of PC Act	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.
A1 and A3	467 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.
A1 and A3	467 r/w 471 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 year and to pay fine of Rs.5,000/-, in default to undergo S.I for one year.

The substantial sentence of imprisonment ordered to run concurrently and the period of imprisonment already undergone ordered to be set off.

7. Aggrieved by the above conviction and sentence passed by the trial Court in C.C.No.29/2008, the appellants/A1 to A3 namely, Kasi, Jayabalan and

Annapitchai have jointly preferred Criminal Appeal in C.A.No.48 of 2013.

8. The case of the prosecution is that, pursuant to the conspiracy, A-3/ Annapitchai submitted a Current Account opening form on 08/06/2005 (Ex.P-2) duly signed along with supporting documents like his photograph, PAN card, Family Card etc. A-1/Kasi signed in that application as introducer in the relevant column. A-2, the Branch Manager has accepted the application and Current Account No:1716 was opened in the name of M/s.Annai Stores, Proprietor Annapitchai. To get Advance loan application (Ex.P-3) submitted by A-3/T.Annapitchai seeking working capital of Rs.5 Lakhs. A-3/T.Annapitchai, has executed a demand pro-note for Rs.5 lakhs on 09/06/2005 with promise to repay it with 11.5% interest (Ex.P-6). A-3 also given a letter confirming the creation of equitable mortgage (Ex.P-9). Agreement of guarantee executed by one R.Subramaniam for the loan availed by T.Annapitchai is marked as Ex.P-10. The Legal opinion and Engineer's valuation certificate for the property marked as Ex.P-12 and Ex.P-13 annexed to the loan application. Thus, on the face of record, the loan sanctioned after obtaining security of a property and the opinion of the Lawyer and valuer. The loan, so sanctioned credited into the Current Account

No.1716 of M/s.Annai Stores on 09/06/2005. On the next day, Rs.3,95,000/- was withdrawn through using 'Self' cheque (Ex.P-18) and Rs.1,00,000/- by another cheque (Ex.P-19) drawn in favour of K.Prakash (Accused in few other connected cases). However, through valuation certificate (Ex.P-14), the prosecution has proved that the property accepted as security does not belong to A-3/Annapitchai absolutely. The original parent deed of the property has not produced consent of the co-owner Thiru.Annasekar (P.W.13) has not obtained before creating Equitable Mortgage. If A-2/Jayabalan, inspected the property and physically verified the site, he would have know the defect in the title and possession. A-2/Jayabalan, did not conduct pre-sanction inspection with intention to cheat the bank and help the co-accused to make unlawful gain. Likewise, through Mr.N.Nageswaran (P.W.14), the Income Tax Officer, Tambaram, the prosecution has proved that, for the accounting year 2004-2005, A-3/Annapitchai has filed IT returns (Ex.P-49) disclosing his income on ending of financial year 31.03.2004 was Rs.48,500/- and he had declared 'Nil tax'. Whereas, in Ex.P-3, application for trade loan, he has mentioned his income for the said period as Rs.1,48,550 and agricultural income of Rs.50,000/-. He has declared that, he has paid income tax Rs.4,700/-. Thus, the manipulation in the documents furnished to the bank for avail loan and intention to cheat the bank been proved.

9. The crime of conspiracy and cheating came to light only after when A2/Jayabalan, transferred from South Usman Road Branch. Mr.A.G.Sundaram (P.W.2) who succeeded A-2/Jayabalan as Branch Manager of Indian Bank, South Usman Road, found several trade facility loans sanctioned by A-2/Jayabalan, remain unpaid and the instalments were not properly paid. The accounts under the Annapoorna Arogya loan which become Non-Performing Assets noticed by the bank higher Officials on scrutiny disclosed serious irregularities committed by the then Branch Manager Jayabalan/A-2. Therefore, K.B.Nagendra Moorthy, General Manager and Circle Head of Indian Bank, Circle Office, gave a written complaint (Ex.P.1), on 20.12.2006 before the Deputy Superintendent of Police, CBI, EOW, Chennai, along with in-house investigation report submitted by Bank Investigating Officer Mr.K.Radhakrishnan (P.W.5).

10. The complaint was taken up for investigation, after registering a regular case in RC.No.4/E/2007/CBI/EOW, on 21/6/2007. Out of 15 accounts, in eight cases, evidence for fraudulent disbursement of loan amount sufficiently found and therefore, eight final reports are filed by the Inspector of Police, Shri.Loverson Kuruvila.

11. As far as the subject matter of the present appeal is concerned, final report dated 22/07/2008 was taken cognizance by the Court in C.C.No.29 of 2008 against three accused persons, who are the appellants herein.

12. According to the appellants, the trial Court failed to consider that the credit facilities was extended to M/s.Anna Stores, owned by Annapitchai (A3). He is not a imaginary person or his provision shop is a fictitious concern. Based on the documents, loan was sanctioned and also repaid while trial is pending. Therefore, the order of the trial Court has to be set aside.

13. A pure and plain financial transaction and disbursal of loan due to default in repayment, the accused persons are suspected to conspire to cheat the Indian Bank.

14. Mr.K.Srinivasan, Learned Special Public Prosecutor appearing for the State submitted that, this is not a stray case where the loan was sanctioned bonafidely by A-2/Jayabalan or incidentally A-1/Kasi introduced A-3/Annapitchai to open the bank account. This case is one episode of multiple 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 A-1 used to entice the people who were desperately in need of loan and get their property document and their signature in the loan application form and other documents. A-2/Jayabalan will sanction loan based on the supporting documents created by A-1 without proper scrutiny. Only 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, in-house enquiry was ordered to be conducted by K.Radhakrishnan, Senior Manager, Vigilance Department. On scrutiny of the records and spot visit to the addresses of the loanees, he gave a report with the following findings:-

> "*1. The H.O Guidelines regarding the term loans was not followed.*
> *2. The rule allows 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..”

15. Heard the Learned Counsels. Exhibits and testimony of witnesses perused. The documents related and relevant considered.

16. In this case, the property documents produced by A3/Annapitchai to avail loan and given as collateral security are not genuine. The Encumbrance Certificate furnished found to be fake document. P.W-11 Mr.D.Jeevanadam, Sub Registrar of Pallavaram had deposed that, the documents produced by A-3 to the Bank are not the original deeds. The property was purchased by A3/Annapitchai & P.W.13 and after partition with his brothers, he sold his share to his brother Annasekar (P.W.13) through his power of attorney. Thereafter, the power deed was cancelled and then given to the Bank as surety. This serious cloud over the title prevails.

17. The criminality of the accused persons clearly proved by the prosecution through the documentary and oral evidence. The web spin by the A1/Kasi and A2/Jayabalan to misappropriate the money after sanctioning loans could be fully understood if evidence in other cases also perused. The payment of Rs.1,00,000/- to K.Prakash in this case may in isolation appear an innocuous transfer, but the role of K.Prakash in other cases and the deposition of witnesses in this case (D.W-1) and in other cases prove that, the payment of Rs.1,00,000/- to K.Prakash from the account floated by A-1/Kasi using the documents of the 3rd accused, a loan seeker, is a share to K.Prakash for his contribution in the successful chain of cheating in connivance with A-2/Jayabalan, the Bank Manager.

18. Having signed in the applications and other documents like Ex.P-2 to Ex.P-9, A-3/Annapitchai has aided and assisted A-1/Kasi and A-2/Jayabalan in the conspiracy. A conspirator is not expected to know the entire scheme of conspiracy, he may be privy to a part of the chain. His *mens rea* to cheat the bank could be seen from, he using the document which is defective in title. He had enjoyed the loan and shared the loan with other conspirator (K.Prakash), who is not arrayed as an accused sent for trial in this case.

19. The contention of the Learned Counsels for the appellants fail to sustain in view of the overwhelming evidence against these appellants both in respect of conspiracy, forgery for cheating and using forged document as genuine. The repayment of the loan after prosecution will no way mitigate the offence for any of these appellants, because, the repayment was made not by the beneficiary of the crime, but by one Mr.Anna sekar, the brother of A3/Annapitchai, who had suffered the brunt of the crime. Therefore, this Court hold that the conviction and sentence passed by the XI Additional Special Judge, (CBI), Chennai against A1 to A3 has to be confirmed.

20. The period of sentence imposed on A1/Kasi & A2/Jayabalan by the trial Court in C.C.No.29 of 2008 shall run concurrently but shall commence after the completion of sentence imposed by the trial Court in C.C.No.27 of 2008.

21. Accordingly, the ***Criminal Appeal No.48 of 2013 is dismissed.*** The trial Court shall secure the accused persons A1 to A3 and commit them to prison to undergo the remaining period of sentence. The period of sentence already undergo shall be set off under Section 428 of Cr.P.C. 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 Judge, (CBI Cases), Chennai.
2. The Inspector of Police, CBI, EOW, Chennai.
3. The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN,J.

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Pre-Delivery judgment made in
Crl.A.No.48 of 2013

28.04.2023