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.483, 497, 505 & 507 of 2013

[Crl.A.No.483 of 2013 against C.C.No.16 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/CBI/ACB/Chennai) ... 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.16 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.497 of 2013 against C.C.No.16 of 2005]

G.Anbalagan,
S/o.Govindasamy (Late),
Partner, Shree Ambal Exports Inc.,
Chennai.
J-23 (New No.J-18) I Main Road,
Anna Nagar East, Chennai - 40. ... Appellant/Accused No.2

/versus/

The State through
The Additional Superintendent of Police,
SPE:CBI:ACB:Chennai.
(RC 07/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.16 of 2005 dated 27.06.2013 and acquit the appellant.

For Appellant : Mr.M.Palanivel

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

[Crl.A.No.505 of 2013 against C.C.No.16 of 2005]

B.Sivaramakrishnan,
Son of R.Balakrishnan,
Door No:25, Plot No.57,
4th Cross Street,
MKB Nagar,
Chennai – 600 039. ... Appellant/Accused No.3

/versus/

The State represented by
The Additional Superintendent of Police,
SPE: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.16 of 2005 dated 27.06.2013 and acquit the appellant.

For Appellant : Mr.K.Raja,
for Ms.M.Anitha

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

[Crl.A.No.507 of 2013 against C.C.No.16 of 2005]

N.Bharath,
S/o.K.Nagappan,
No.169, V.V.Giri Street,
Ramakrishna Nagar,
Chennai – 600 087. ... Appellant/Accused No.4

/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.16 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. To facilitate such fraudulent disbursement of loans, the approved valuer has given opinion for non-existing property or inflated value for the property. The panel Advocate has given opinion on title.

3. 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 valuer were shown as accused besides the respective borrowers.

4. One accused by name S.Rajendran who impersonated as a owner of a property given as collateral security was taken as approver.

5. 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.

6. C.C.No.16 of 2015 pertains to the loan sanctioned to M/s.Sree

Ambal Expo Incorporation. As per the F.I.R, M/s.Sree Ambal Expo Incorporation is a partnership firm A-3 Shri.G.Anbazhagan and A-4 Shri.B.Shivaramakrishnan were the partners in this firm. This firm was maintaining a current account in the Indian Overseas Bank, Mount Road branch bearing No. 2004. An bill was received through Bank of China on collection basis for US $ 24,570 on 4.2.2002, where the tenor of the bill stated was on sight delivery against payment (DP) basis.

7. On 23.3.2002, the drawee made a request to treat the tenor of the bill as 60 days delivery against acceptance of goods. The drawer bank namely Bank of China did not authorise for treating the bill's tenor for 60 days for delivery against acceptance (DA) terms. Shri.G.Anbazhagan and Shri.B.Sivaramakrsihnan submitted the forged advice from Bank of China which stated that the Bank of China has changed the payment term from Delivery against payment (DP) to Delivery against acceptance (DA) and the IOB will receive information in another 2 or 3 days time. Shri.S.Rajaram, Chief Manager and Shri.N.R.Chandarasekar, Assistant Manager of Indian Overseas Bank, Mount Road Branch, Chennai, abused their official position and committed criminal misconduct by conspiring with Shri.G.Anbazhagan and

Shri.B.Sivaramakrsihanan to cheat the bank by adopting the method that without properly verifying the genuineness of the letter, a note for releasing the documents was put up by Shri.N.R.Chandrasekhar and was approved by the then Chief Manager, Shri.S.Rajaram (A-1). They fraudulently altered the tenor of the bill, 60 days from delivery as 'against acceptance', without any authorisation from the drawer's bank namely Bank of China. The Bank was made to reimburse the bill amount creating overdraft in the account. The collateral securities given were found to be bogus with fake documents. A-1 and A-2 did not verify the genuineness of the said documents. Thus, the bank incurred a loss of about Rs.12 lakhs in reimbursing the bill amount to Bank of China.

8. The final report, confined to the production of false documents to create collateral security for the purpose of inducing the bank to sanction loan. In the final report, the Chief Manager S.Rajaram arrayed as 1st accused in the final report. G.Anbalagan and B.Sivaramakrishnan the partners of M/s.Sree Ambal Expo Incorporation arrayed as 2nd and 3rd accused respectively. Mr.N.Bharath who is the approved valuer who gave the value for the property alleged as not in existence is arrayed as 4th accused.

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

<u>Charge No.1:-</u> *FIRSTLY, That you A-1 who functioning as Chief Manager Indian Overseas Bank, Mount Road Branch, Chennai entered into a Criminal conspiracy with you A-2 & A-3 the partners of M/s.Ambal Exports Inc., Chennai and A-4 and then approved valuer of IOB Chennai and S.Rajendran, Approver during 2001 to 2002 to cheat the IOB Mount Road, Chennai in the mater of sanctioning/enhancing and availing credit facilities in the form of packing credit, bill discounting facilities on the basis of false and forged collateral securities, Pursuant to which you A-2 & A-3 dishonestly and fraudulently created bogus land documents relating to the plot of land at No. 139, Selaiyur village survey No.83/A, Patta No.387 (New Survey No. 83/3A1-New patta No.30/31) in the name of K.Rajendran (approver) knowing that no such property, was in existence at Selaiyur Village and also property documents relating to House at Door No.30 Mahadevan Street, West Mambalam, Chennai standing in the name of one K.N.Raghupathy and 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 the funds. You A-4 dishonestly and fraudulently submitted false valuation certificate certifying the valuation of the non existing property at Selaiyur to the tune of*

33.95 lakhs and also falsely accessed the value of property at West Mambalam to the tune of Rs.95.52 lakhs and you A-1 by abusing your official position as Public servant and without conducting pre-sanction and post sanction inspection, sanctioned packing credit to the tune of Rs.35 lakhs and bill discounting facility of Rs.20 lakhs on 20.8.2001 and thereafter enhanced the PC limit to Rs.90 lakhs on 05.11.2001 in favour M/s. Ambal Exports of You A-2 and A-3 on the basis of the very same false collateral security documents. You A-2 and A-3 after availing the said credit facilities have failed to repay the loan amount, which caused a wrongful loss of Rs.99.26 lakhs to the IOB Chennai and Corresponding wrongful gain to yourselves. Thereby, you A-1, A-2, A-3 and A-4 have committed offences punishable u/s 120B 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 A-2 & A-3 dishonestly and fraudulently created bogus land documents relating to the plot of land at No. 139, Selaiyur Village survey No.83/A, patta No.387 (New Survey No.83/3A1-new patta No.30/31) in the name of K. Rajendran (Approver) knowing fully well that No such property was in existence at Selaiyur Village, and You A-2 and A-3 also submitted property documents relating to House at Door No.30 Mahadevan Street, West Mambalam Chennai standing in the name of one K.N. Raghupathy knowing fully well that the property is not of the value as stated in the valuation certificate* *and used the same as genuine, knowingly or having reasons to believe that they are documents before the Indian Overseas Bank, Chennai and induced the bank to part with its funds and availed the packing credit limit of Rs.35 lakhs and Bill discounting limit of Rs.20 lakhs on 20.8.2001 and thereafter enhanced the PC limit to Rs.90 lakhs on 05.11.2001 which was sanctioned by A-1 dishonestly and abusing the official position as public servant thereby. You A-2 and A-3 after availing the said credit facilities have failed to repay the loan amount which ultimately caused wrongful loss of Rs.99.26 lakhs to the IOB, Chennai and Corresponding wrongful gain to yourselves. you A-2 and A-3 have committed offences punishable u/s 420, 468 and 471 IPC and is within my cognizance.*

Charge No.3:- *THIRDLY, In furtherance of the aforesaid criminal conspiracy and in the course of the same transaction You A-4 dishonestly and fraudulently, submitted false valuation certificate relating to the property at No.139, Selaiyur village survey No.83/A, patta No.387 (New Survey No. 83/3A1-New patta No.30/31) knowing fully well that no such property was in existence at Selaiyur village and that Rajendran was not the owner of the such property, to the tune of 33.95 lakhs and also You A-3 falsely assessed the valuation of the property relating to door No. 30, Mahadevan Street, West Mambalam, Chennai standing in the name of K.N. Raghupathy to the tune of Rs.95.52 lakhs, knowing fully well that value of the property was not worth as mentioned in the valuation certificate issued by you which enabled A-2 and A-3 to induce and to avail the packing credit limit of Rs.35 lakhs* *and bill discounting limit of Rs.20 lakhs on 20.8.2001 and subsequent enhancement to the tune of Rs.90 lakhs on the strength of the very same false valuation certificate submitted by you. Thereby you, A-3 have committed an offence punishable U/s 468 IPC and is within my cognizance.*

Charge No.4:- *FOURTHLY, In furtherance of the aforesaid criminal conspiracy and in the course of the same transaction You A-1 by abusing your official position as Public servant dishonestly and fraudulently and by accepting the false and bogus property documents not worthy of being mortgaged and by ignoring/violating the rules and regulations of the Bank regarding the pre-sanction and post sanction verification sanctioned Packing credit to the tune of Rs.35 lakhs and bill discounting facility of Rs. 20 lakhs on 20.8.2001 in favour of M/s.Ambal Export Inc represented by A-2 and A-3 and thereafter enhanced the PC limit to Rs.90 lakhs on 5.11.2001 on the basis of the very same false/forged collateral security documents submitted by A-4 and A-2, A-3 after availing the credit facilities have failed to repay the loan amount which caused a wrongful loss of Rs.99.26 lakhs to the IOB Chennai and Corresponding wrongful gain to yourself. Thereby you A-1 have committed offences punishable U/s.13(2) r/w 13 (1) (d) of Prevention of Corruption Act 1988 and is within my cognizance."*

10. To prove the charges, the prosecution examined 22 witnesses (P.W.1 to P.W.22) and marked 78 Exhibits (Ex.P.1 to Ex.P.78). Though in the charge one K.Rajendran shown as approver, he is not one among the witness examined by the prosecution. On the said of the defence, 4 witnesses (D.W.1 to D.W.4) and 9 exhibits were marked (Ex.D.1 to Ex.D.9). The documents from CBI was summoned and 4 exhibits (Ex.C.1 to Ex.C.4) were marked.

11. The trial Court held all the accused 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 to A4	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/- each, in default to undergo S.I for three months.
A2 and A3	u/s. 420 of I.P.C	To undergo R.I for One year each and to pay fine of Rs.1,000/-, each in default to undergo S.I for three months.
A2 and A3	u/s. 468 of I.P.C	To undergo R.I for One year each and to pay fine of Rs.1,000/-, each in default to undergo S.I for three months.
A2 and A3	u/s. 471 of I.P.C	To undergo R.I for One year each and to pay fine of Rs.1,000/-, each 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	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 ordered to run concurrently. The default sentences ordered to run consecutively. The period of imprisonment already undergone, if any, ordered to be set off.

12. Being aggrieved the judgment of the trial Court in C.C.No.16 of 2005, the following Criminal Appeals are filed by the appellants.

A1/S.Rajaram has preferred Crl.A.No.483 of 2013,
A2/G.Anbalagan preferred Crl.A.No.497 of 2013,
A3/B.Sivaramakrishnan has preferred Crl.A.No.505 of 2013 and
A4/N.Bharath has preferred Crl.A.No.507 of 2013.

13. <u>Crl.A.No.483 of 2013</u>

The Learned Counsel for the appellant/1st accused S.Rajaram a public servant submitted that, the prosecution case 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.4 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 judgments:-

(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***.

14. Further, the Learned Counsel for the appellant/A1 submitted that the grant of loan 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 the 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***.

15. Crl.A.No.507 of 2013

The Learned Counsel for the 4th accused/appellant in Crl.A.No.507 of 2013 submitted that, he is a valuer for the bank but it is his duty and 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. He, on inspection of the field and the property identified by the borrower and the bank had assessed the value based on his judgment and he had no criminal intention of any kind to cheat the bank. 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. This cannot be an incriminating materials against the valuer who had inspected the property and given its opinion about its value. No material evidence available to convict him for the offence of conspiracy to cheat or for any other offences. 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.***

16. Crl.A.No.497 of 2013 and Crl.A.No.505 of 2013

The Learned Counsels appearing for the partners of M/s.Sree Ambal Exports Incorporation, submitted that the case of the prosecution does not have legs to stand in view of the fact that the partners of M/s.Ambal Exports Incorporation are genuine traders and they have furnished documents of property which are in existence. Though the case was registered against them for fabricating the Exports Bill, in the final report, the prosecution found the said accusation is false. Yet final report filed charging for getting loan by furnishing fake collateral security with inflated value. Two properties given as collateral security one at Selaiyur and another at West Mambalam, Chennai. The prosecution itself has conceded that the West Mambalam property is a property in existence. However, they claim that the valuation is inflated inspite of the fact that there is no contra evidence on the said of the prosecution than the valuation certificate given by the borrower. Likewise, the case of the prosecution that the property of Rajendran shown as collateral security situated at Selaiyur is not the property of Rajendran and the said property is not in existence. This charge also not proved. It is only an allegation on surmises. In fact, the prosecution had examined Rajendran and he has taken as an approver after granting pardon. However, the said Rajendran not produced before the Court to testify his previous statement recorded by the Magistrate for granting pardon. The said Rajendran is an accused turned approver. He is a key witness to the prosecution. Failure to examine him as witness is fatal to the entire prosecution more particularly when the charge that bank was induced to sanction loan based on non-existing property.

17. The Learned Special Public Prosecutor appearing for respondent/CBI would submit that the sanction order given subsequently after proper appreciation of the documents is valid in eye of law. In this case, CVC was consulted and on consultation of CVC, sanction to prosecute was granted. The Prosecution witnesses has proved beyond doubt that before advancing loan, the properties were not inspected either by the valuer or by the Bank Chief Manager. To provide monetary advantage to the accused 2 & 3, loan was granted based on security of a non-existing property.

18. The evidence of P.W.7 R.Ganesan would clearly show that, the Patta dated 07.09.2000 bearing No.387 in the name of A.S.P.Iyer for property in Survey No.83/3A1 of Selaiyur Village measuring 0.25.0 hectares was signed by Zonal Deputy Tahsildar, Tambaram and it is marked as Ex.P.28. The patta dated 28.2.1977 bearing No.387 in the name of A.S.P.Iyer for property in Survey No.83/3A of Selaiyur Village measuring to an extent of 0.93 acres was signed by the then Deputy Tahsildar, Saidapet is marked as Ex.P.29, further the patta dated NIL bearing No.3031 in the name of K.Rajendran, S/o.S.Kannappan in respect of the property in survey No.83/3A1B of Selaiyur Village measuring 0.11.0 hectares, the same was purportedly signed by as Head Quarters Deputy Tahsildar, Tambaram, which is Ex.P.30. As per their official records of the Deputy Tahsildar Office of Tambaram, Ex.P.28 was issued from the Office of Deputy Tahsildar, Tambaram. Further Ex.P.30 had never been issued from the office of Deputy Tahsildar, Tambaram.

19. P.W.8, S.Muruganandam testimony had deposed that during the period from 2002 to 2004, he was working as VAO in Selaiyur Village, Tambaram Taluk and the Adangal issued by Mr.V.Seeyalan, VAO Selaiyur Village, who was his predecessor pertaining to property in Survey No.83/3A1 to the extent of 0.25.0 hectares of Selaiyur Village is Ex.P.31. The adangal issued by the then Headquarters Deputy Tahsildar. Saidapet pertaining to property in Survey No.83/3A to the extent of 0.93 cents of Selaiyur Village in the name of A.S.P.lyer, is marked as Ex.P.32 and the Adangal purportedly issued by the then Headquarters Deputy Tahsildar, Tambaram pertaining to property in Survey No.83/3A 1 B to the extent of 0.11.0 hectares of Selaiyur Village in the name of K.Rajendran. Ex.P.31 was not issued by his office and it does not contain the signature and seal of the VAO, Selaiyur Village, and Tambaram. There is no patta bearing No.3031 in the name of K.Rajendran in the office records of VAO, Selaiyur. The two Chittas issued by VAO, Selaiyur Village bearing No.387 in the name of A.S.P.Iyer for the property in Survey No.83/3A1 to the extent of 0.25.0 hectares and signed by B.Seeyalan. Ex.P.34 and Ex.P.35 were issued from the Office of VAO, Selaiyur.

20. Further, P.W.10 S.Swaminathan, Deputy Tahsildar, Tambaram, had identified Ex.P.30 patta as a document not issued by the Head quarters, Deputy Tahsildar, as it is found and it is a fake document. P.V.Geetha, Sub-Registrar, Tambaram was examined as P.W.12 had deposed that the property in S.No.83/3A1, Selaiyur Village, to an extent of 0.93 cents stands in the name of Thiru.M.S.Sukumar, Thiru.N.Mohan and Viji. Rajendran is not the owner of the said property. The Encumbrance Certificates Ex.P.41, Ex.P.42 and Ex.P.43 are fake documents which are produced to avail loan showing Rajendran as a guarantor. Though, Rajendran was not examined, the officials from the Revenue Department and Sub-Registrar Office, examined to prove that, loan was granted accepting the fake patta and chitta documents. Even if the borrower has subsequently cleared the loan due, the act of inducing the bank to advance loan by furnishing fake documents with dishonest intention will not exonerate the borrower or the persons who facilitate the borrower to get the pecuniary advantage dishonestly.

21. As far as the valuer is concerned, the Learned Special Public Prosecutor for the respondent/C.B.I submitted that, though the valuer may not be expected to test the title of the document but undoubtedly, he is vested with the responsibility of ascertaining the existence of the property in the field. Unless and until, he identifies the property, the valuation of the property cannot be ascertained. In this case, the property itself is unidentifiable and the alleged owner of the property, who had come forward to stand as a guarantor is a fake person and therefore, the judgment relied by the Learned Counsel for the 4th accused will not apply to the facts of the present case.

22. Heard the Learned Counsel for the appellants. Records perused. The submission made by the Learned Special Public Prosecutor for the respondent/C.B.I taken into consideration.

23. Point for consideration:-

Whether the first accused namely S.Rajaram, Chief Manager of Indian Overseas Bank was accorded sanction to prosecute without application of mind for any extraneous reasons and whether the evidence placed by the prosecution before the Court inadequate to held the accused guilty of the charges?

24. 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 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 not found in any of the documents placed for 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.

25. The first draft sanction order Ex.C.3 and the second draft sanction order are identical. To reverse or reconsider the observation made in Ex.C.4, concluding permission to prosecute S.Rajaram and N.R.Chandrasekar not warranted. The CBI 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.

26. No fresh material placed by CBI before P.W.1 while reiterating their request to accord sanction. No reason found in Ex.P.1, why the earlier order of rejection 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."*

27. Apart from defect in the sanction order for prosecution, the records shows, the Chief Manager A1 had sanctioned loan to M/s.Ambal Exports Incorporation, after being satisfied with the opinion of the panel Lawyer and the valuation certificates. Witnesses say, the properties offered as collateral security were inspected by Bank Officials. Ex.P.2 the loan sanction order for M/s.Ambal Exports Incorporation indicates, the loan was sanctioned subject to conditions which will ensure the loan is well secured. Therefore, *prima facie*, there is no material evidence to show A1 acted dishonestly in sanctioning loan. The prosecution who alleges the contrary, had failed to place material evidence. Neither evidence to prove A1 was aware that S.Rajendran who stood as guarantor is not the owner of the property or the value fixed by A4 for the West Mambalam property is an inflated value. Therefore, for the reasons stated above, the Criminal Appeal No.483 of 2013 is allowed.

28. As far as A4/N.Bharath, the case of prosecution is that, he had given valuation report Ex.P.36 and Ex.P.37. Those valuation reports are false documents since for non existing property and another with inflated value. These allegations are held to be proved by the trial Court based on the opinion given by one Vijayaragavan (P.W.14) the second valuer who visited the property on the request of Bank Manager. His report on the Selaiyur property in Ex.P.69. He had deposed that he could not value the property since he found variation in the extent (area) and boundaries. His report on West Mamabalam property is Ex.P.70. He had valued this property as Rs.76,46,000/-. P.W.14 admits while inspecting the Selaiyur land he did not take the assistance of officers from Revenue Department. He admits there is possibility of change is extent and boundaries over a length of period. Therefore, it is not correct to hold that Selaiyur property is not at all in existence, just because by P.W.14 he could not value it because of variation in boundaries and extent. Similarly, his opinion about the value of the West Mambalam property is based on his assessment since in his estimation it is less than the value assessed by A4, that cannot be a reason for the Court to conclude the valuation given by A4 for the West Mambalam property is inflated value.

29. As far as the borrowers, A2 and A3 the appellants in Crl.A.No.497 of 2013 and Crl.A.No.507 of 2013, it is contended that, when S.Rajendran offered to stand as third party guarantor, they believed him and accepted the same. The title documents were given to the Panel Lawyer

Kumararaja P.W.16 for his opinion and on obtaining his opinion Ex.P.58, loan was sanctioned. P.W.3 had deposed that, if Advocate had given adverse opinion about the property offered as collateral, the Bank would not have given the loan. The borrowers were not aware that, S.Rajendran has offered fake title deed and Revenue documents like Patta and Adangal.

30. This Court is of the view that, to prove A2 (G.Anbalagan) and A3 (B.Sivaramakrishnan) conspired with the said S.Rajendran to cheat the Bank and forged the title documents and revenue records, examination of A1/Rajaram is vital. The intention to cheat and knowledge of forged documents can be attributed to A2 and A3, only if material evidence is available. In this case, the material evidence such as testimony of the SRO documents like Patta, Chitta and Adangal, proves beyond doubt the Selaiyur property given as collateral security by S.Rajendran is not the property of S.Rajendran. However, whether this fact is known to A2 and A3, not proved beyond doubt by the prosecution. There is possibility of suppression of this fact to them by Rajendran. Except the statement of the approver S.Rajendran before the Magistrate, there is no other evidence to substantiate and attribute knowledge to A2 and A3 regarding Rajendran forgery. A-2 and A-3 had no opportunity to disprove the content of the previous statement of Rajendran recorded by the Magistrate. Had he been Examined as witness for prosecution, these two accused would have availed the right of cross examining S.Rajendran and proved their innocence. Having deprived of that valuable right, the benefit of doubt to be extended to A-2 and A-3.

31. Hence, for want of proof, the appellants are entitled for acquittal. In the result, the judgement of the trial Court passed in C.C.No.16 of 2005 dated 27.06.2013 by the XI Additional Special Judge, (CBI cases relating to Banks and Financial Institutions), Chennai, is hereby set aside. Hence, ***these Criminal Appeal Nos.483, 497, 505 and 507 of 2013 are allowed.*** Fine amount paid if any by the appellants, shall be refunded to them. Bail bond if any executed by the appellants shall stand cancelled.

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.483, 497, 505 & 507 of 2013

24.07.2023