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.484, 508 & 561 of 2013

[Crl.A.No.484 of 2013 against C.C.No.17 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.17 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.508 of 2013 against C.C.No.17 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.17 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).

[Crl.A.No.561 of 2013 against C.C.No.17 of 2005]

S.Senthilnathan,
Proprietor,
M/s.Maruthi Exports, Chennai.
R/o.J-61/5, Second Main Road,
Anna Nagar East, Chennai. ... Appellant/Accused No.2

/versus/

The State, Rep By:
The Inspector of Police,
Special Police Enforcement/CBI/ACB,
Chennai. ... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 of Cr.P.C., pleased to set aside the judgment and conviction and direct the acquittal of the appellant/A2 in C.C.No.17 of 2005 in the file of XI Additional Special Judge for CBI Cases, Chennai and grant such other equitable reliefs.

For Appellant : Mr.N.Jothi, Senior Counsel, for Mr.R.Prabakar

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 and inflated value for the property. The Panel Advocate has given opinion on title.

3. On completion of investigation, sanction to prosecute was obtained 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 and the Chief Manager were shown as accused besides the respective borrowers.

4. 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.

5. C.C.No.17 of 2015 pertains to the loan sanctioned to M/s.Maruthi Exports. As per the F.I.R. M/s.Maruthi Exports is proprietorship concern and A-5, Shri.S.Senthilnathan is the Proprietor of the Company. The photograph of A-3 Shri.G.Anbalagan is available in the account opening form of current account No.2007. A1/Shri.Rajaram and A2/Shri.N.R.Chandrasekar by abusing their official position colluded with A5/Shri.S.Senthilnathan, A3/Shri.G.Anbalagan and A12/Shri.N.Bharath, an approved valuer of the bank sanctioned a packing credit limit and bill discounting facility to M/s.Maruthi Exports for Rs.45 lakhs in IOB, Mount Road Branch. They availed the facility in excess of the sanctioned limit and the dues was Rs.51.71 lakhs in packing credit limit and Rs.23.23 lakhs in bill discounting facility. The party defaulted in repayment, and the collateral securities given were found to be bogus and the documents held by the bank have been found to be fake. The valuation of the property was done by A12/Shri.N.Bharath, the approved valuer of the bank, given inflated value for a non-existing property. A1/Shri.S.Rajaram and A2/Shri.N.R.Chandrasekar with dishonest intention did not verify the genuineness of the property given as collateral security, and they did not conduct proper enquiry regarding the genuineness and title of the properties.

These acts of criminal misconduct on the part of the accused caused loss to the bank to the tune of about Rs.75 lakhs, which led to the enrichment of private individuals at the cost of the bank.

6. 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, S.Senthilnathan as Proprietor of M/s.Maruthi Exports, Chennai arrayed as 2nd accused, Mr.N.Bharath who is the approved valuer, who gave the value for the property alleged as 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.

7. 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 A2 proprietor of M/s.Maruthi Exports, Chennai and A3 the approved valuer of Indian Overseas Bank and A4 the real estate promoter and*

absconding accused Hemamani Now absconding accused Shri A.Leo Christopher the guarantor during 2001-2002 at Chennai and other places to cheat the IOB Mount Road, Chennai in the matter of sanctioning and availing credit facilities in the form of Packing credit and bill discounting facilities to the tune of Rs.55 lakhs on 20.12.2001, on the basis of false and forged collateral securities. Pursuant to which you A2 dishonestly and fraudulently created bogus land documents relating to the plot of land at No.163, Senapathi street, Kamatchi Nagar, Valasaravakkam, Chennai-87 in survey No.40/1, New Survey No.40/1B in the name of absconding accused Leo Christopher knowing that no such property was in existence at No.163, Senpathi Street, Kamatchi Nagar, Valasaravakkam, Chennai-87 in survey No.40/1, New Survey No.40/1B and not worthy of being mortgaged and used the same as genuine knowingly or having reasons to believe that they are forged documents before the Indian Overseas Bank, Chennai and induce the bank to part with its funds. You A3 dishonestly and fraudulently submitted false valuation certificate certifying the valuation of the non existing property at Kamatchi Nagar, Valasaravakkam, Chennai-87, to the tune of Rs.39.24 lakhs and you A4 and absconding accused Hemamani created bogus revenue records in respect of the property at No.163, Senapathi street, *Kamatchi Nagar, Valasaravakkam, Chennai-87 in survey No.40/1, New Survey No.40/1B and you both A4 and absconding accused Hema Mani arranged/brought the absconding accused Leo Christopher and made him sign as Leo Christopher and you Al by abusing your official position as public servant and by violating the rules and regulations of the bank regarding pre sanction and post sanction, sanctioned packing credit and bill discounted facility to the tune of Rs.55 lakhs based on the forged security documents on 20.12.2001 in favour of M/s Maruthi Exports of A2, even before the valuation certificated of the approved valuer was received on the basis of the very same false collateral security documents and caused a wrongful loss of Rs.22,03,515/- to the IOB, Chennai and corresponding wrongful gain to yourselves, thereby you Al to A4 have committed offense punishable u/s 120-B r/w 420, 468, 471 IPC and u/s 13(2) r/w 13(1)(d) of PC. Act 1988 and within my cognizance.*

Charge No.2:- *Secondly, in furtherance of the aforesaid criminal conspiracy and in the course of the same transaction you A2 dishonestly and fraudulently obtained bogus land documents related property at No.163, Senapathi Street, Kamatchi Nagar, Valasaravakkam, Chennai-87 in survey No.40/1, New Survey No.40/1B knowing fully that no such property* *was in existence at Senapathi Street, Kamatchi Nagar, Valasaravakkam, Chennia-87 in the name of Christopher absconding accused with active connivance of A4 and Leo absconding accused Hema Mani and you A2 submitted and used the same as genuine knowingly or having reasons to believe that they are forged documents before the IOB, Chennai and induced the bank to part with its funds to availed the packing credit limit and bill discounting of Rs.55 lakhs on 21.12.2001 which was sanctioned by Al dishonestly and by abusing the official position as public servant ignoring the rules and regulations of pre-sanction and post sanction, You A2 have availed the credit facilities and failed to repay the loan amount and caused a wrongful loss of Rs.22,03,515/- to the IOB, Mount Road Branch, Chennal and corresponding wrongful gain to yourselves and thereby you 42, and A4 have committed offences punishable u/s 420,468 r/w 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.39.24 lakhs relating to the property at No.163, Senapathi Street, Kamatchi Nagar, Valasaravakkam, Chennai-87 in survey No.40/1, New Survey No.40/1B* *knowing fully well that no such property was in existence at Senapathi Street, Kamatchi Nagar, Valasaravakkam, Chennai-87 and that Leo Christopher absconding accused was not the owner of such property which enabled A2 to avail the packing credit limit and bill discounting facilities of Rs.55 lakhs on 21.12.2001 thereby you A3 have committed an offence punishable u/s 468 IPC and within my cognizance.*

Charge No.4:- *Fourthly in furtherance of the aforesaid criminal conspiracy and in the course of the same transaction you A4 with active connivance of absconding accused Hemamani dishonestly and fraudulently created false and bogus revenue records pertaining to property at No.163, Senapathi Street, Kamatchi Nagar, Valasaravakkam, Chennai-87 in survey No.40/1, New Survey No.40/1B knowing fully well that no such property was in existence at Senapathi Street, Kamatchi Nagar, Valasaravakkam, Chennai-87 and arranged and produced absconding accused Leo Christoper and made him to execute the security documents at IOB. Mount Road Branch, Chennai which enabled A2 to avail credit facilities to the tune of Rs.55 lakhs ultimately causing a wrongful loss of Rs.22,03,515/0 thereby you A4 and absconding accused Hema Mani and Leo Christopher have committed an offence punishable 468 IPC and within my cognizance.*

Charge No.5:- *Fifthly, 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 property documents not worthy of being mortgaged and by ignoring/violating of the rules and regulations of the Bank regarding the pre-sanction and post sanction verification sanctioned packing credit and bill discounting facilities to the tune of Rs.55 lakhs on 21.12.2001 in favour of M/s.Maruthi Export represented by A2 and A2 after availing the credit facility have failed to repay the loan amount which caused a wrongful loss of Rs.22,03,515/- to the IOB, Mount Road Branch, Chennai and corresponding wrongful gain to yourself, thereby you Al have committed and offence punishable u/s 13(2) r/w 13(1)(d) of P.C. Act 1988 and within my cognizance.*

8. To prove the charges, the prosecution examined 15 witnesses (P.W.1 to P.W.15) and marked 50 Exhibits (Ex.P.1 to Ex.P.50). On the side of the defence, 2 exhibits were marked (Ex.D.1 & Ex.D.2). The documents from CBI was summoned and 7 Exhibits (Ex.C.1 to Ex.C.7) were marked through Court.

9. Pending trial Thiru.Balraj, Real Estate broker (A4) died hence the charges against him got abated. The trial Court held the other three accused A-1 to A-3 guilty 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 and 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/- each, in default to undergo S.I for three months.
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 r/w 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 ordered to run concurrently. The default sentences ordered to run consecutively. The period of imprisonment already undergone, if any, ordered to be set off.

10. Being aggrieved by the judgment of the trial Court in C.C.No.17 of 2005, the following Criminal Appeals are filed by the appellants.

A1/S.Rajaram has preferred Crl.A.No.484 of 2013,
A2/Senthilnathan preferred Crl.A.No.561 of 2013 and
A3/L.Bharath has preferred Crl.A.No.508 of 2013.

11. Crl.A.No.484 of 2013

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 since, 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 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***.

12. 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 nor 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***.

13. Crl.A.No.561 of 2013

The Learned Counsel for the appellant/2nd accused in Crl.No.561 of 2013 submitted that, the trial Court erred in appreciating the evidence. He also erred in misapplying the law. The Court below had presumed several facts without any material particulars. The trial Court, first of all ought not to have taken cognizance of the case since the sanction to prosecute A-1 a public servant, a defective sanction not issued after application of mind but owing to the external pressure. Therefore, when public servant under Prevention of Corruption Act cannot be prosecuted, the Special Court for P.C Act lack jurisdiction to try the case. Also, charge of conspiracy read with provisions of PC Act against this appellant not maintainable.

14. The prosecution has not adduced evidence to prove forgery or fabrication of documents. The alleged fabrication and forgery was done only by (A4) Balraj who died pending trial. Ex.P.23 and Ex.D.2, the statement of accounts maintained by the borrowing firm M/s.Maruthi Exports, will show it is a project making running business regularly paying its loan dues. For the loan availed, the property at No.30, Mahadev Street, West Mambalam in the name of K.N.Ragupathy is genuine and the appellant had no intention to cheat the Bank.

15. The trial Court erred in concluding that non-existing property documents were forged and produced to Bank as collateral security to induce the bank to sanction loan. All the alleged forged documents were produced to Bank only by (A4) Balraj and this appellant had no knowledge about those documents.

16. <u>Crl.A.No.508 of 2013:-</u>

The Learned Counsel for the appellant/3rd accused in Crl.A.No.508 of 2013 submitted that, he is a valuer for the bank. As per his duty, 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 to convict him for the offence of conspiracy to cheat or for any other offence. 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.***

17. Per contra, the Learned Special Public Prosecutor appearing for respondent/CBI submitted that, the sanction order given subsequently after proper appreciation of the documents is valid in the 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 2nd accused, loan was granted based on security of a non-existing property.

18. The role of A1 is categorically proved by prosecution to the effect that, he had played vital role in the conspiracy. He had dishonestly sanctioned credit facilities to M/s.Maruthi Exports, Chennai, owned by A2 Senthilnathan, by way of packing credit of Rs.35 lakhs and bill discounting facility to the extent of Rs.20 lakhs. Ex.P.5 is the account opening form which was authenticated by Al/Mr.Rajaram. Ex.P.19 series is the application dated 28.11.2001, submitted by M/s.Maruthi Exports, signed by S.Senthilnathan, requesting sanction of Packing Credit limit of Rs.75 lakhs and export bill purchase limit of Rs.25 lakhs on the basis of collateral security belongs to one Mr.Leo Christopher's property at Valasaravakkam, Chennai, is worth about Rs.50 lakhs. Ex.P.20 is the sanction order dated 20.12.2001 signed by Al and sanctione the Packing Credit limit of Rs.55 lakhs in the account of M/s.Maruthi Exports against collateral security of Plot No.163, Senapathy Street, Kamakshi Nagar, Valasaravakkam. The sanction communication letter is marked as Ex.P.21 series. The valuation report (Ex.P.22) dated 21.12.2001 signed by Mr.N.Bharath (A3). Ex.P.23 series is the certified copy of statement of account of M/s.Maruthi Exports A/c.No.2007 for the period from 01.11.2001 to 23.5.2003. Ex.P.24 series is the guarantor's statement signed by Mr.Leo Christopher, showing his assets and liabilities. Ex.P.28 is the settlement deed dated 08.05.1985 executed by Mrs.Murugammal in favour of Mr.Leo

Christopher in Survey No.40/1 of Valasaravakkam Village, Saidapet Taluk, Chenglepet District, registered as document No.1217/1985 with SRO, Virugambakkam, Chennai. This document has been submitted to the bank by M/s.Maruthi Exports for availing the credit facilities. Ex.P.29 the Notary attested copy of partition deed dated 04.11.1968. Ex.P.30 is the copy of partition deed dated 10.05.1983 for the property in Survey No.40/1 of Valasaravakkam Village. Ex.P.32 is the patta bearing No.186 for the property in Survey No.40/1B in favour of Mr.Leo Christopher. Ex.P.34 is the encumbrance certificate of the said property. Ex.P.35 is the copy of Chitta dated 02.03.1985 issued by VAO, Valasaravakkam Village for the property. Ex.P.36 series is the certified copy of document bearing No.1827 of 1942 issued by SRO, Saidapet, Chennai dated 22.12.2001. Ex.P.37 is the encumbrance certificate dated 30.5.2001 issued by SRO, Virugambakkam, for the property in Survey No.40/1 bearing certificate No.3949/2001. The evidence adduced in the case categorically establishes that, the said property was not in existence at the location described in the document. It was confirmed that, there was no property in Plot No.163, Senapathy Street, Kamakshi Nagar, Valasaravakkam, Chennai as mentioned in the documents submitted to the bank for availing credit facility by M/s.Maruthi Exports. The evidence adduced in the case further establishes that, the documents submitted to the Bank in support of the collateral security are also forged and fabricated. Al was permitted the loanee to enjoy the funds without any genuine business and finally the bank has suffered huge loss.

19. The Learned Public Prosecutor appearing for the respondent submitted that, A2 Senthilnathan, Proprietor of M/s.Maruthi Exports, availed credit facilities and Packing credit facility and bill discounting facility. P.W.7 had deposed that, M/s.Maruthi Exports is owned by A2 Senthinathan as Proprietor. He made request for sanctioning the Packing Credit limit of Rs.75 lakhs and Export Bill Purchase Limit of Rs.25 lakhs. The property of one Mr.Leo Christopher was given as collateral security. A2 Senthilnathan stood personal guarantee for the loan, he availed. The valuation report for the property given as collateral security was signed by N.Bharath. As per his valuation report (Ex.P.22), the property of Mr.Leo Christopher situated at No.163, Senapathy Street, Kamakshi Nagar,Valasaravakkam, Chennai, is valued at Rs.41.96 lakhs. The title deed in favour of Leo Christopher were produced by A2 for availing the loan along with the valuation certificate given by A3 and legal opinion (Ex.P.33) given by R.Kumara Raja, the Panel

Advocate.

20. The said Leo Christopher was examined as P.W.12. He had deposed that, his mother name Mary Agnes and his father name Susainathan. The property at No.163, Senapathy Street, Kamakshi Nagar, Valasaravakkam, Chennai, is in the name of his mother. The real estate broker Thiru.Balraj (A4) (deceased) known to him and neither he, nor his mother, mortgaged the property at Indian Overseas Bank. In fact, Leo Christopher's mother sold away the property to Balraj (A4) in the year 1980. His mother did not execute any settlement deed in his favour. The ownership as well as the settlement deed denied by Mr.Leo Christopher, in whose name the documents related to the property given as collateral security was falsely created. This witness not been examined by the accused person and therefore, his evidence stands proved. That apart, the Revenue Officials and SRO had deposed that, the said property bearing No.163, Senapathy Street, Kamakshi Nagar, Valasaravakkam, Chennai, is non-existing property and Mr.Leo Christoper is not owner of the property. Without verifying the existence of the property, A1 has been sanctioned the loan to A2 and for facilitating to grant loan, A3 has given the valuation certificate for non-existing property to tune of Rs.39.24 lakhs.

21. P.W.8, Vijaya Raghavan, Charted Engineer and Approved Valuer as well as P.W.6, P.R.Seshadri, Panel Valuer, were engaged by the Bank and the prosecution agency for ascertaining the existence of the property and the value of the property if it exist. They both were not able to identify the property since there is variation in the description of the property. Therefore, contended that, the trial Court judgment is bound to be confirmed.

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.

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?

23. A1/Rajaram, the Chief Manager of the Bank, who sanctioned the loan for M/s.Maruthi Exports. He had relied the opinion given by the Panel Advocate and the valuer. The Competent Authority had thought fit that, it is not the case for the prosecution and therefore, after stating the reasons, request for sanction to prosecute been declined. However, after the 2nd request, P.W.1 has accorded sanction to prosecute. Through Ex.C.1 to Ex.C.7, the appellant/Rajaram has proved that, P.W.1 had no material to reconsider the earlier order, except the internal pressure. While in proceedings dated 27.10.2004 contains reason for not granting sanction to revisit the above reasons, the prosecution has not placed any new material. However, P.W.1 has reversed the earlier opinion and accorded sanction by signing the draft sanction order forwarded by C.B.I. There is no fresh material placed by C.B.I for P.W.1 to reconsider. Hence, the order of sanction suffers non-application of mind.

24. As contended by the Learned Counsel for the appellant, there is no material to show that, Credit Facility extended to M/s.Maruthi Export, Chennai owned by A2 was given by A1 with dishonest intention and in pursuance of conspiracy. Except the account opening form of M/s.Maruthi Export, Chennai was authenticated by Rajaram A1.

25. The trial Court had observed that, the earlier order of rejection to accord sanction was collective decision of the Vigilance Wing of IOB. Whereas, Ex.P.1 the subsequent sanction order which is the order passed by P.W.1 on application of mind. The reasoning said by the trial Court does not find place anywhere in the communications between CBI and Vigilance Wing of IOB or from CVC. The trial Court has invented this reason which is not found in the record. Therefore, on score of defective sanction, the case of the prosecution as against A1 gets dented. However, to add criminality of conspiracy and cheating also not sufficiently proved by the prosecution as against Bank Manager A1. To conclude that, he had sanctioned loan, knowing well that, the property given as collateral security by Senthilnathan (A2) does not belong to Mr.Leo Christopher when the legal opinion had stated that, Leo Christopher is the title holder of the property at No.163, Senapathy Street, Kamakshi Nagar, Valasaravakkam, the Manager has gone by the legal opinion. Therefore, the judgment of the Hon'ble Supreme Court relied by the Learned Counsel for the 1st appellant/accused are extracted below, applies to the facts of the case.

(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 abovereferred 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."*

26. The facts of this case clearly prove that, the sanction to prosecute granted by PW-1 is not out of independent application of mind. The earlier rejection order not been satisfactorily explained why it is reviewed without any fresh material for reconsideration. For the said reason, the ***Criminal Appeal No.484 of 2013 is allowed.*** The judgement of conviction passed by the trial Court in C.C.No.17 of 2005 on the file of Learned XI Additional Special Judge, (CBI cases), is hereby set aside.

27. As far as Senthilnathan, Proprietor of M/s.Maruthi Exports, Chennai who is arrayed as A2, he has availed Packing Credit and bill discounting facility to a tune of Rs.55 lakhs on 20.12.2001. For availing this loan, the property at No.163 Senapathi Street, Kamatchi Nagar, Valasaravakkam, Chennai, of one Mr.Leo Christopher, been given as collateral security.

28. P.W.7 K.Venkatagiri had spoken about the account opening in the Bank by A2 and his application for sanctioning packing credit limit of Rs.75 lakhs and Export Bill purchase limit of Rs.25 lakhs. The property of Leo

Christopher at Valasaravakkam been shown as worth about Rs.41.96 lakhs. A1 has granted Packing Credit Limit of Rs.55 lakhs *vide* order dated 20.12.2001. The valuation report Ex.P.22 given by N.Bharath (A3) show that the property which stand in the name of Mr.Leo Christopher at No.163, Senapathi Street, Kamatchi Nagar, Valasaravakkam, Chennai, is worth Rs.41.96 lakhs.

29. P.W.12 Leo Christopher had spoken about the documents that, he does not have any property at Valasaravakkam and the property which was held by his mother was sold to 4th accused Balraj (deceased) in the year 1980 itself. The verification of the field by subsequent valuer Thiru.Vijaya Ragavan has brought to light that, there is no property for Mr.Leo Christopher in the said place.

30. P.W.6 P.R.Seshadri had deposed that about his visit to the site referred in Patta No.185 dated 10.07.1990 and the valuation report of Mr.Bharath, the plot number is mentioned as 163, Senapathi Street, Kamatchi Nagar, with the help of President of Kamakshi Nagar Welfare Association. He has tried to verify the Plot No.163, Senapathi Street, Kamatchi Nagar, Valasaravakkam, but he could not identify it with the help of measurement and boundaries given in document furnished by the borrowers. The patta produced was also does not tally with the property. In the said circumstances, the trial Court has rightly convicted Senthilnathan (A2) for cheating and using fabricating documents as genuine.

31. As far as conspiracy is concerned, the Assistant General Manager of the Bank, who sanctioned the loan as well as the Valuer been arrayed as accused and charges against all the three accused under Section 120-B of I.P.C was framed and also convicted by the trial Court.

32. From the evidence, this Court find there is no sufficient proof for meeting of mind between the three accused. Particularly A1/S.Rajaram has sanctioned loan based on the field visit report, legal opinion and the valuation certificate. A3/Bharath, the Valuer has given the valuation certificate based on the property shown by borrower. The genuineness of the encumbrance certificate or the title document ought to have been tested by the Advocate who has given the opinion. The responsibility of the valuer is to visit the property and assess the value.

33. In this case, the valuation certificate given by A3 Bharath is marked as Ex.P.22 series. P.R.Seshadri (P.W.6) and Vijaya Ragavan (P.W.8) the valuers had contended that, they were not able to identify the property correlating the survey number and boundaries. The report of Vijaya Ragavan (P.W.8) is marked as Ex.P.39. The report of P.R.Seshadri with photograph marked as Ex.P.38. Both the witnesses admit that, they did not take the assistance of officials from Survey Department while inspecting the property. Vijaya Ragavan (P.W.8) admits that, verification of genuineness of patta and Chitta is not duty of the valuer. Therefore, the Criminal Appeal No.508 of 2013 is filed by A3/Bharath is allowed.

34. As far as, Senthilnathan (A2) properitor of M/s.Maruthi Exports, the borrower who had availed the loan by using fabricated document as genuine by creating collateral security in the name of Mr.Leo Christopher is found guilty of offences under Section 420 of I.P.C and 468 r/w 471 of I.P.C. In the result, A2/Senthilnathan is found guilty for offences under Section 420 and 468 r/w 471 of I.P.C are confirmed. The other charges against A2/Senthilnathan under Section 120-B r/w 420, 428, 472 of I.P.C and 13(2) r/w

13(1)(d) of P.C Act, 1988 held not proved beyond doubt.

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 r/w 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.

35. In fine, the ***Criminal Appeal Nos.484 & 508 of 2013 are allowed.*** The judgement of conviction passed by the trial Court in C.C.No.17 of 2005 by XI Additional Special Judge, (CBI cases), are hereby set aside. Fine amount paid if any by the appellants, shall be refunded to him. Bail bond if any executed by the appellants shall stand cancelled.

36. The ***Criminal Appeal No.561 of 2013 is partly allowed.*** The judgment of conviction passed by the trial Court in C.C.No.17 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

Pre-delivery common judgment made in
Crl.A Nos.484, 508 & 561 of 2013

24.07.2023