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.485 & 509 of 2013

[Crl.A.No.485 of 2013 against C.C.No.18 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.18 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.509 of 2013 against C.C.No.18 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.18 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).

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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 Assistant 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.18 of 2015 pertains to the loan sanctioned to M/s.Sastha Exports. As per the F.I.R M/s.Sastha Exports is a partnership concern with A6/L.K.Rangwani and A7/Shri Palani Kumar as partners, who opened current account No.2400 in the Bank. A1/Shri.Rajaram, A2/Shri.Chandrasekar and A12/Bharath colluded with A6/L.K.Rangwani, A7/Shri.Palani Kumar and was sanctioned a loan limit of Rs.54 lakhs for packing credit and bill discounting facility for M/s.Sastha Exports. They availed the facility in excess of the sanctioned limit and the dues was Rs.64.83 lakhs in packing credit limit and Rs.28.42 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 not genuine. The valuation of the property was done by A12/Shri Bharath, the approved valuer of the bank giving inflated value for a non existing property. A1/Shri.Rajaram and A2/ Shri.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.94 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, Thiru.S.Rajaram, the Chief Manager arrayed as 1st accused. Mr.N.Bharath, who is the approved valuer and gave value for the property alleged as not in existence is arrayed as 4th accused. L.K.Rangwani and R.Palani Kumar, who are the partners of M/s.Sastha Exports, Chennai, were arrayed as A2 and A3.

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

Charge No.1:- *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 & A3 the partners of M/s. Sastha Exports and A4 the then approved valuer of Indian Overseas Bank, Chennai and during 2001 to 2002 to cheat the Indian Overseas Bank Mount Road, Chennai in the matter of sanctioning/enhancing and availing credit facilities in the form of Packing credit and bill discounting facilities on the basis of false and forged collateral securities. Pursuant to which you A-2 & A3 dishonestly and fraudulently created bogus land documents relating to lands an extent of 1 acre 21 cents at No.65, Kolathur Village, Perambur Taluk, Chennai, comprised in Survey No.56/3, Old Pymash No.101/1 in Kolathur Village coming under North Chennai Registration District within the jurisdiction, SRO, Sembium, Chennai standing in the name of K. Natarajan and K. Kanthasamy represented by Shri R. Palanikumar power of attorney holder of said property knowing that no such property was in existence at No.65 Kolathur Village, Perambur Taluk, Chennai, comprised in Survey No.56/3, Old Pymash No.101/1 in Kolathur Village coming under North Chennai Registration District and* *used the same as genuine before the Indian Overseas Bank, Chennai and you A-2 induced the bank to part with its fund and you A4 dishonestly and fraudulently submitted false valuation certificate certifying the valuation of the non-existing property at Kolathur to the tune of Rs.94.35 lakhs knowing that there was no such property ever in existence and you A-1 by abusing your official position as Public servant ignoring the rules and regulation regarding the pre-sanction and post sanction inspection have sanctioned a packing credit to the tune of Rs.54 lakhs and bill discounting facility of Rs.45 lakhs on 12.04.2002 in favour of A-2 and A-3 and caused a wrongful loss of Rs.85,97,231/- to the Indian Overseas Bank, Chennai and corresponding wrongful gain to yourselves thereby you A1 to A4 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.*

<u>Charge No.2:-</u> *SECONDLY, in furtherance of the aforesaid criminal conspiracy and in the course of the same transaction you A-2 & A3 dishonestly and fraudulently created bogus land documents relating to land No.65, Kolathur Village, Perambur Taluk, Chennai, comprised in Survey No.56/3, Old Pymash No.101/1 in Kolathur Village coming under North Chennai Registration District within the jurisdiction, SRO,* *Sembium, Chennai standing in the name of K. Natarajan and K. Kanthasamy represented by you A3 through forged power of attorney of such property knowing that no such property was in existence at No.65 Kolathur Village, Perambur Taluk, Chennai, comprised in Survey No.56/3, Old Pymash No.101/1 in Kolathur Village coming under North Chennai Registration District 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 its funds and you A2 andA3 availed the packing credit limit of Rs.54 lakhs and bill discounting limit of Rs.45 lakhs on 12.04.2002 which was sanctioned by Al dishonestly and by abusing the official position as public servant and ignoring the rules and regulations of the pre-sanction and post sanction. You A-2 and A-3 after availing the credit facilities have failed to repay the loan amount which ultimately caused a wrongful loss of Rs.85,97,231/- to the Indian Overseas Bank, Mount Road Branch, Chennai and corresponding wrongful gain to yourselves. There by you A2 to A4 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 to the tune of Rs.94.35 lakhs relating to the land No.65 Kolathur Village, Perambur Taluk, Chennai, comprised in Survey No.56/3, Old ymash No.101/1 in Kolathur Village coming under North Chennai Registration District within the jurisdiction, Sembium, Chennai standing the of K. Natarajan and K. Kanthasamy represented by you A3 forged power of attorney holder of said property knowing fully well that no such property was in existence at No. 65 Kolathur Village, Perambur Taluk, Chennai, and that Palanikumar A3 was not the Power of Attorney of such property, which enable A-2 and A-3 to avail the packing credit limit of Rs.54 lakhs and Bill discounting facilities of Rs.45 lakhs on 12.04.2002 which ultimately caused a wrongful loss of Rs.85,97,231/- to the Indian Overseas Bank, Mount Road Branch, Chennai and corresponding wrongful gain to yourselves. Thereby you A4 have committed offence punishable u/s 468 IPC and is within my cognizance.*

<u>Charge No.4:-</u> *FOURTHLY in furtherance of the aforesaid criminal conspiracy and in the course of the same transaction you A-1 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 rule and regulations of the Bank regarding the pre-*

sanction and post sanction verification sanctioned Packing credit of Rs.54 lakhs and bill Discounting facilities to the tune of Rs.45 lakhs on 12.04.2002 in favour of M/s.Sastha Export represented by A2 and A3. A2 and A3 after availing the credit facilities have failed to repay the loan amount which caused a wrongful loss of Rs.85,97,231/- to the Indian Overseas Bank, Mount Road Branch, Chennai and corresponding wrongful gain to yourself thereby you Al have committed offence punishable u/s 13(2) r/w 13(1)(d) of Prevention of Corruption Act 1988 and is within my cognizance.

8. To prove the charges, the prosecution examined 13 witnesses (P.W.1 to P.W.13) and marked 38 Exhibits (Ex.P.1 to Ex.P.38). On the side of the defence, no documents and exhibits were marked. The documents from CBI was summoned and 7 Exhibits (Ex.C.1 to Ex.C.7) were marked through Court.

9. Pending trial, A2 Shri.L.K.Rangwani died therefore, the charge against him got abated. On the date of judgment, Shri.R.Palani Kumar (A3) the other partner of M/s.Sastha Exports, failed to appear before the Court and NBW was issued against him and the case against him was split up. For the remaining accused, the trial Court found them guilty and imposed the following sentence:-

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.
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 and to pay fine of Rs.1,000/-, in default to undergo S.I for three months.
A4	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.
A4	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.
A4	u/s. 471 of I.P.C	To undergo R.I for One year and to pay fine of Rs.1,000/-, in default to undergo S.I for three months.
A4	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 judgement of the trial Court in C.C.No.18 of 2005, the following Criminal Appeals are filed by the appellants.

A1/S.Rajaram has preferred Crl.A.No.485 of 2013 and
A4/N.Bharath has preferred Crl.A.No.509 of 2013.

11. Crl.A.No.485 of 2013:-

The Learned Counsel for the appellant/1st accused S.Rajaram, Assistant General Manager, 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/A1 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. <u>Crl.A.No.509 of 2013</u>

The Learned Counsel for the 4th accused/appellant in Crl.A.No.509 of 2013 submitted that, he is the approved valuer for the bank. His duty is to give the valuation certificate after inspecting the property which was 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 his 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.***

14. 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 eye of law. In this case, Chief Vigilance Commission 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 Chief Manager of the Bank. To provide monetary advantage to the accused 2 & 3, loan was sanctioned, based on security of a non-existing property.

15. The role of A1 is categorically proved by prosecution that, he had played vital role in the conspiracy. He had dishonestly sanctioned credit facilities to M/s.Sastha Exports in November 2002 when the firm requested for credit facility for packing credit and bill facility for Rs.40 lakhs against the primary security of stocks and collateral security belonging to K.Natarajan and K.Kandhasamy of No.65, Kollathur Village. The credit appraisal was made by the Branch Officer and the same was sanctioned by A1 S.Rajaram on 12.4.2002, which is marked Ex.P.6. The title deed is marked as Ex.P.13. The

Encumbrance Certificate relating to the property is marked as Ex.P.22. The EC for the period 01.01.1994 to 14.01.2000 is marked as Ex.P.23. The Encumbrance Certificate for the period 01.01.2000 to 11.6.2001 is marked as Ex.P.24. R.Palani kumar also submitted possession certificate from VAO is marked as Ex.P.25. Further, he also submitted another certificate dated 11.4.2002 is marked as Ex.P.26. The account statements for the period 01.04.2000 to 23.05.2003 of M/s.Sastha Exports is marked as Ex.P.27. The outstanding due was Rs.54,84,653/-. In the account of M/s.Sastha Exports, there was also a bill amounting to Rs.28,42,540/- along with the over drafts Rs.1,50,000/-. The documents submitted to the bank in support of the collateral securities are forged and fabricated. Al/Rajaram was permitted the loanee to enjoy the funds without any genuine business and finally, the bank has suffered huge loss.

16. The evidence of P.W.5 P.R.Sheshadri had deposed that, he is a Panel Valuer for various Banks including Indian Overseas Bank and his valuation report in the account of M/s.Sastha Exports dated 12.12.2002 is marked Ex.P.4. He was asked to value the property belonging to the owners Mr.K.Natarajan and K.Kandasamy, as a third party collateral security for

M/s.Sastha Exports, represented by Mr.R.Palani Kumar. He inspected the property at Survey No.56/3 and 56/5, Paimash No.101/1 and 103/2, Kolathur Village, Perambur, Purasawalkam Taluk, SRO Sembium, Chennai District, on 09.12.2002 along with Mr.K.Venkatagiri, Chief Manager, IOB, Mount Road Branch. In the valuation report, he has perused the documents, 1). Xerox copy of the sale deed document No.2292/1954 dated 20.12.1954 on the file of SRO, Sembium, 2). Xerox copy of the sale deed No.929/1957 dated 05.05.1957 on the file of SRO, Sembium, 3). Xerox copy of General Power of Attorney No.316/1994, dated 08.03.1994 on the file of SRO, Sembium, 4). Xerox copy of Patta No.1385 and 8A/183/98, 5). Xerox copy of agreement for sale dated 2.8.1993, 6). Xerox copy of valuation report of Mr.N.Bharath dated 22.3.2002 submitted to IOB, Mount Road Branch, Chennai. On my enquiry, this land is owned by Mr.Ramachandran on the rear and one Mr.Govindarajan on the front abutting 100 feet road. This appears that, this vacant land property is not the property relating to the document given hence, it could not be valued. He also mentioned certain observations made during his inspection to the Bank and go in detail by verifying the facts. His observation regarding the inspection of the property have specifically mentioned in his report and he identified his signature on Ex.P.4.

17. The evidence of P.W.7, Vijaya Raghavan had deposed that, he was an approved valuer for all Banks including Indian Overseas Bank and in this case, IOB, Mount Road Branch, Chennai, requested him to value the property involved in this case along with the Chief Manager Mr.Venkatagiri, Mr.A.Shanmuganathan, Chief Manager-II, Mr.Rajendiran Assistant Manager, C.R.Venkateswaran, Chief Inspector, IOB, Mr.Venkatrathinam, Inspector IOB, Mr.N.Bharath (A4), Valuer of IOB, Anbalagan (A2) and Senthil Kumar, the borrowers. Since there was variation in the area and boundaries, he was not able to value the properties. The boundaries and extent on the ground did not tally with the boundaries and extent in the document. The valuation report given by him dated 13.10.2003 along with photographs is marked as Ex.P.31.

18. It is also contended by the appellant/1st accused that, the sanction for prosecution under Section 19 of the Prevention of Corruption Act 1988 by P.W.1 is not proper and is not sustainable in the eye of law. In support of their argument, they contended that, the sanction order Ex.P.1 was issued without any application of mind and have been issued subsequently to his earlier refusal by P.W.1 himself and hence, it is not sustainable in the eye of law. It is submitted that, P.W.1 in his evidence categorically stated that, he had accorded the sanction for prosecution independently and which proves his application of mind. The refusal order has been made by a team and it is not the individual opinion of P.W.1, as evidenced in Ex.C.4. In Ex.C.4, it is categorically mentioned that, the refusal sanction was communicated by P.W.1 to CBI, was a collective decision of the Vigilance Department. The present sanction order Ex.P.1, is an independent order issued by P.W.1 and in the above circumstances, the referred citations of the Apex Court relied upon by the accused has no relevance. It is accepted by the Apex Court that, sanction for prosecution is an individual appraisal of fact by the Competent Authority and it is subjective satisfaction. It is further submitted that, the said fact regarding his independent appreciation of the facts while according sanction under Ex.P.1 has not at all been challenged during cross examination. The fact of refusal by the Vigilance Wing of IOB has no relevance to decide the sanctity of Ex.P.1.

19. The charge against A4 is that, he dishonestly and fraudulently submitted false valuation certificate, the valuation of a non existing property at Kamatchi Nagar, Valasaravakkam, Chennai-87, to the tune of Rs.39.24 lakhs for facilitating A2 to misappropriate the funds of IOB, Mount Road branch, Chennai.

20. The evidence of PW.10 S.Madhanraja had deposed that, during 2001-2002, he was working as Assistant in the office of N.Bharath/A-4, which is situated at No.169, V.V.Giri Street, Valasaravakkam, Chennai. At that time, A-4 was Building Valuation Officer and before the Court, he has identified A3. The letter dated 23.03.2002, issued by A-3 also identified the witnesses.

21. 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.

<u>22. Point for consideration:-</u>

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. 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.

24. 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.

25. 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."*

26. Apart from grave error in the sanction to prosecute accorded without application of mind but on doted lines, from the evidence court finds that, P.W.6 K.Venkatagiri, Assistant General Manager, IOB Branch, had deposed that, the collateral security can be given by the borrower or third parties. He has further deposed that, while sanctioning the loan to M/s.Sastha Exports, Chennai, A1/S.Rajaram had imposed condition that, initially Rs.45 lakhs sanctioned as loan and further, limit can be increased after watching shipment. He has directed to obtain ECGC policy and specific buyer limit and complete the documentation before releasing the Packing Credit. Few more condition has been imposed by A1 for sanctioning the loan. While none of the prosecution witness implicated A1, the act of A1/S.Rajaram, done in the course of discharge of his duty in good faith, based on the proposal forwarded by Assistant Manager annexed with legal opinion given by R.Kumara Raja and the valuation certificate by N.Bharath (A4). In the absence of evidence to prove neither conspiracy nor intention to cheat the bank, the condition imposed on A1 S.Rajaram is liable to be set aside. For the said reason, the ***Criminal Appeal No.485 of 2013 is allowed.*** The judgment of conviction passed by the trial Court in C.C.No.18 of 2005 on the file of Learned XI Additional Special Judge, (CBI Cases), is hereby set aside. Fine amount paid if any by the appellant, shall be refunded to him. Bail bond if any executed by the appellant shall stand cancelled.

27. N.Bharath (A4) is an approved valuer, who had given value of the property offered as collateral security. The borrower of M/s.Sastha Exports, Chennai, had offered a property at Kolathur Village, after inspecting the property along with the Manager had prepared the valuation report. It is contended that, the title documents produced show, the property belongs to K.Natarajan and K.Kandasamy represented by the Power of Attorney Thiru.R.Palani Kumar. As per his estimation, the value of the property is worth Rs.94.35 lakhs. Further, contended that, on visit of Vijaya Raghavan (P.W.7), the valuer appointed by the Bank to visit the property found that, it is not existing. His report cannot be relied upon since, he had not taken assistance of Revenue staff for identification of the land. The other valuer Mr.P.R.Shesadri examined as P.W.5 had deposed that, on his enquiry, he came to know that, Mr.Ramachandran is the owner of the property and not K.Natarajan and K.Kandasamy, because P.W.5 P.R.Shesadri were not able to identify the property or material to show that, the title deed of K.Kandasamy and K.Natarajan are false. The Charted Accountant, who is not expecting to be expert of the title document cannot be held responsible. Neither the variation in the boundaries nor difficultly in identifying the property be a point for presuming that, the appellant had given the false valuation certificate. Therefore, in the absence of evidence that, the appellant/N.Bharath had knowingly inflated the value for the property not in existence. Hence, liable to be set aside.

28. In the result, the ***Criminal Appeal No.509 of 2013 is allowed.*** The judgment of conviction passed by the trial Court in C.C.No.18 of 2005 on the file of Learned XI Additional Special Judge, (CBI Cases), is hereby set aside. Fine amount paid if any by the appellant, shall be refunded to him. Bail bond if any executed by the appellant shall stand cancelled.

24.07.2023

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

DR.G.JAYACHANDRAN,J.

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.

Delivery common judgment made in
Crl.A Nos.485 & 509 of 2013

24.07.2023