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.486, 500 & 510 of 2013

[Crl.A.No.486 of 2013 against C.C.No.19 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.19 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.500 of 2013 against C.C.No.19 of 2005]

Alban Bright,
Proprietor,
M/s.Bright & Co.,
Chennai.
No.1, United Indian Colony,
3rd Main Road, Ayanavaram,
Chennai – 600 023 ... Appellant/Accused No.2

/versus/

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

Prayer: Criminal Appeal has been filed under Section 374(2) of Cr.P.C., against the judgment and conviction passed by the Learned XI Additional Special Judge (CBI Cases Relating to Banks and Financial Institutions), Chennai, on 27.06.2013 in the above C.C.No.19 of 2005 and acquit the appellant.

For Appellant : Mr.A.Saravanan, Senior Counsel,

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

[Crl.A.No.510 of 2013 against C.C.No.19 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 Bureau 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., against the judgment and conviction passed by the Learned XI Additional Special Judge (CBI Cases Relating to Banks and Financial Institutions), Chennai, on 27.06.2013 in the above C.C.No.19 of 2005 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 persons 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 loan, the approved valuer and approved panel advocates had given their opinion for non-existing property or inflated value for the property

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 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.19 of 2015 pertains to the loan sanctioned to M/s.Bright & Co. As per the F.I.R M/s Bright & Co., is a Proprietorship company with A9/Shri.Alban Bright as its Proprietor. In the account opening form for the current account No.1919, the photograph of A3/Shri.G.Anbalagan is available. A1/Shri.Rajaram and A2/Shri.Chandrasekar again colluded with A9/Shri.Alban Bright, A3/Shri G.Anbalagan, A12/Shri Bharath, approved valuer of the bank and A10/Shri.Chandrakanth, approved Panel Advocate of IOB, Chennai and this company was sanctioned Rs.17.84 lakhs credit facilities to this Company. 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 Bharath, the approved valuer of the bank given inflated value for a non-existing property. A10/Shri.Chandrakanth had given legal opinion in this case with dishonest intention. 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.18 lakhs, and consequent wrongful gain to the private individuals.

6. The Assistant General Manager S.Rajaram shown as 1st accused in the final report. Mr.Alban Bright, the Proprietor of M/s.Bright & Co., shown as 2nd accused. Mr.N.Bharath, approved valuer who gave the value of the property not in existence is arrayed as 3rd accused. One Thiru.Balraj, Real Estate broker was arrayed as A4, however, the charges against him got abated, in view of his death, pending trial.

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

> ***<u>Charge No.1:-</u>*** *Firstly, that you A1 while functioning as Chief Manager, Indian Overseas Bank, Mount Road Branch, Chennai entered into a criminal conspiracy with you A2 proprietor of M/s.Bright and Company, Chennai, the approved valuer of Indian Overseas Bank and A4 with absconding accused Hema Mani and Mary Christiana 2001-2002 at Chennai and*

other places to cheat the IOB 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 A2 with the active connivance Al and absconding accused Hemamani and Mary Christiana dishonestly and fraudulently created/obtained bogus land documents relating to lands and extent of 16 cents of land bearing survey No.37/2 at No.101, Valasaravakkam village, Chennai-87 in the name of Mary Christiana (absconding accused) knowing that no such property was in existence at No.101, Valasaravakkam Village, Chennai and you A2 used the same as genuine knowingly or having reasons to believe that they are forged documents before the Indian Overseas Bank, Chennai and you A3 dishonestly and fraudulently submitted false valuation certificate certifying the valuation of the non existing property Valasaravakkam Village, Chennai, to the tune of Rs.37.06 lakhs 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, verification sanctioned cash credit to the tune of Rs.15 lakhs on 29.4.2002 and enhanced the limit to Rs.20 lakhs on 29.6.2002 in favour of M/s.Bright & Co., a proprietary concern of A2 and you A2 have failed to repay the loan amount which caused a wrongful loss of

Rs.18 lakhs to the IOB, Chennai and corresponding wrongful gain to yourselves, thereby you A1, A2, A3, A4 have committed offences punishable u/s 120-B r/w 420, 468, 471 IPC and u/s 13(2) r/w 13(1)(d) of P.C. 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 with active connivance of A4 and absconding accused Smt.Hema Mani and Mary Christiana dishonestly and fraudulently created bogus land documents relating to lands and extent of 16 cents of land bearing Survey No.37/2 at No.101, Valasaravakkam Village, Chennai-87 in the name of Mary Christiana (absconding accused) knowing that no such property was in existence at 37/2, at No.101, Valasaravakkam village, Chennai-87 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 and availed the cash credit facility of Rs.15 lakhs on 27.04.2002 and the same was enhanced to Rs.20 lakhs on 29.6.2002 which was sanctioned by Al dishonestly and by the official position as public servant, You A2 after availing the credit facilities failed to repay the loan amount which ultimately caused a wrongful loss of Rs. 18 lakhs to the IOB, Mount Road Branch, Chennai and corresponding wrongful gain to yourselves and* *thereby you A2, and A4 have committed offences punishable u/s 420, 468 r/w 471 IPC and within my cognizance.*

Charge No.3:- *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.37.06 lakhs relating to the land No.37/2, at No.101, Valasaravakkam Village, Chennai-87 knowing fully well that no such property was in existence at land No.37/2 at No.101, Valasaravakkam Village, Chennai-87 and facilitated A2 to avail the cash credit limit of Rs.15 lakhs on 27.4.2002 and enhance limit of Rs.20 lakhs on 29.6.2002 which ultimately caused a wrongful loss of Rs.18 lakhs to the IOB, Mount Road Branch, Chennai and corresponding wrongful gain to yourselves and 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 Al by abusing your official position as public servant dishonestly and fraudulently and by accepting the bogus/forged property documents not worthy of being mortgaged and by ignoring/violating of the rule and regulations of the*

Bank regarding the pre-sanction and post sanction verification sanctioned cash credit of Rs. 15 lakhs on 29.4.2002 and enhanced limit of Rs.20 lakhs on 29.06.2002 in favour of M/s.Bright and Company, represented by A2 and A2 after availing the said credit facilities have failed to repay the loan amount, which caused a wrongful loss of Rs.18 lakhs to the IOB, Mount Road Branch, Chennai and corresponding wrongful gain to yourself and thereby you Al have committed an 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 13 witnesses (P.W.1 to P.W.13) and marked 24 Exhibits (Ex.P.1 to Ex.P.24). 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. 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	To undergo R.I for three years and to pay fine of Rs.2,000/-, in default to undergo S.I for one year.

Accused	***Offences***	***Conviction and Sentence passed by the Trial Court***
	13(1)(d) of P.C Act, 1988.	
A2&A3	u/s.120-B r/w 420, 468, 471 of I.P.C 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 shall run concurrently, but the default sentences shall run consecutively. The period of imprisonment already undergone, if any, is ordered to be set off.

10. Being aggrieved by the judgment of the trial Court in C.C.No.19 of 2005, the following Criminal Appeals are filed by the appellants.

A1/S.Rajaram has preferred Crl.A.No.486 of 2013,
A2/Alban Bright preferred Crl.A.No.500 of 2013 and
A3/N.Bharath has preferred Crl.A.No.510 of 2013.

11. Crl.A.No.486 of 2013:-

The Learned Counsel for the appellant/1st accused S.Rajaram a public servant submitted that, the prosecution is liable to be set aside since the sanction upon which the Court has taken cognizance is non est in law submitting that, the request of the Investigating Agency namely C.B.I to grant sanction was declined by the Sanctioning Authority. Drawing the attention of this Court to Ex.C.1 to Ex.C.7 which are the communications between C.B.I and the Bank higher Officials regarding sanction to prosecute the Learned Counsel submitted that the sanctioning authority after perusing the records has taken a conscious decision and declined to accord sanction. While so, without any new facts and documents, C.B.I has forwarded a draft sanction order and pressurised the sanctioning authority P.W.1 to give order for prosecution which is marked as Ex.P.1. It is a clear case of sanction issued without application of mind at the dictation of the prosecuting agency and therefore, conviction has to be set aside for want of proper sanction. To buttress his submission, the Learned Counsel rely upon the following 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 sanction based on the legal opinion and the valuation certificate cannot be termed as misconduct or abuse of official power. It is neither wilful negligence. As a Chief Manager of the branch, A1 had discharged his duty and sanctioned the loan after being satisfied with the report given by the field officer and opinion of experts. Therefore, his action will not fall within the definition of any of the offences for which he was tried and convicted. In support of this preposition, the Learned Counsel for the appellant rely upon the following judgment of the Hon'ble Supreme Court in ***Subbammal alias Rajammal and others -vs-. The President, The Tenkasi Co-operative Urban Bank, Ltd*** reported in ***1976 SCC Online Mad 122***.

13. Crl.A.No. 510 of 2013:-

The Learned Counsel for the 3rd accused/appellant in Crl.A.No.510 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. There is no contra valuation for the property for which he has given valuation certificate. 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 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. Crl.A.No. 500 of 2013:-

The Learned Counsel for the 2nd accused/appellant in Crl.A.No.500 of 2013 M/s.Bright & Company submitted that, the trial Court has ignored to consider the evidence of P.W.1, P.W.2, P.W.3 and P.W.14 in entirety and at the same time had believed the testimony of P.W.5, P.W.8 and P.W.9 who are interested witnesses. The property for collateral security was arranged by Balraj (deceased) and from the prosecution witness P.W.10 Mary Christiana, it is elicited that, she sold the property to Balraj (deceased) and gave the original document to him. While Balraj stand as guarantor, there is no reason to disbelieve his credential since the title document and the revenue documents like patta, Chitta and Encumbrance certificate apparently showed Ms.Mary Christiana is the owner of the property which was given as collateral security. The Panel Advocate has also given the opinion to that effect. Therefore, the conviction is liable to be set aside.

15. The Learned Special Public Prosecutor for the respondent/C.B.I submitted that the sanction order is valid and there is no infirmity in it. P.W.1 had deposed that, on application of his mind, he had granted sanction after perusing the documents and in consultation with CVC. There is no bar for the sanctioning authority to have a consultation with CVC. Even, if there is any defect in the sanctioning order, it cannot be a reason to acquit the bank Manager, who had knowingly accepted false property documents and valuation certificate to advance credit facility to M/s.Bright and Company. Without connivance of the Branch Manager, Rajaram, loan to a tune of Rs.15 lakhs might have not been sanctioned. Similarly, A3/N.Bharath, the Valuer had dishonestly and fraudulently submitted his valuation certificate dated 12.04.2002, estimating the value of non-existing plot as Rs.37.06 lakhs. A2/ Alban Bright had fraudulently created documents in respect of 16 cents of land bearing S.No.37/2 at No.103, 104, Valasaravakkam Village, in the name of Ms.Mary Christiana. The said property is a non-existing property and same is proved by examining the VAO of Valasaravakkam and Sub-Registrar, Virugambakkam. That apart, the field verification was done with Valuer Vijayaraghavan and Bank officials, who had categorically stated that, the property is not identifiable. Contrarily, A1 had recorded that, he inspected the field on 19.04.2002 and the property given as collateral security is worthy of be mortgage.

16. The report of the valuer P.W.7 clearly states that, the property identified by A2 on measurement and on comparison with the document given by A2 to the Bank, it is found that the property mentioned in the document is agricultural land, whereas, the property on the site was a housing site and therefore, the value could not be assessed. Therefore, the Special Public Prosecutor submitted that, the trial Court had after thorough examination of documents had rightly convicted the appellant.

17. Heard the Learned Counsel for the Appellant and the Learned Special Public Prosecutor for the respondent/C.B.I. Records perused.

<u>18. 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?

19. 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.

20. 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.

21. 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."*

22. The misappropriation by fraudulent means induced by conspiracy had come to light when P.W.8 C.R.Venkateswaran conducted inspection of IOB, Mount Road Branch. During the course of their inspection irregularities were noticed in respect of five cases for which loan was sanctioned by Rajaram, Chief Manager were not based on true and original documents but based on fake documents and false valuation certificate. The inspection of property by P.W.8 along with valuer and other bank staff brought to light that the property described in the document deposited as collateral security does not exist or could not be identified. The current account of M/s.Bright and Company was authorised by A1 by showing them as trader in home appliance and Entertainment electronics. A1 has sanctioned Rs.15 lakhs as cash credit limit to M/s.Bright and Company. The loan was sanctioned against the primary security of stock and collateral security of property at Nos.103, 104 Viyasar Street, Kamatchi Nagar, Valasaravakkam, Chennai. Though the borrower claimed that this property belongs to Shri.Mary Christiana and annexed the valuation certificate given by A4 Bharath that the property worth Rs.37 lakhs, later, it has been proved that the property does not belong to Shri.Mary Christiana. The said Mari Christiana examined as P.W.10 had categorically deposed that, she is not owner of the said property at the time of creating mortgage. She has sold away the property to the deceased accused Balraj between 1985 to 1987.

23. From the evidence of Shri.Mary Christiana and evidence of P.W.5 P.R.Shesadri reveal that, Plot Nos.103, 104 are in existence at Kamatchi Nagar. Therefore, it may not be correct to say there is no property in existence but property document produced before the bank may not be a genuine document. Therefore, there is every reason to believe the defence taken by A1 and A3, the valuer that based on the legal opinion and on inspection of the field, loan has been sanctioned to A2 Alban Bright. However, the borrower who had mislead the bank by showing the document in the name of his relative but property concern been already alienated, apart from the fake revenue document it indicate that, the borrower Alban Bright, Proprietor of M/s.Bright and Company had induced the bank to advance cash credit loan of Rs.15 lakhs while producing false document. Whether it was pursuant to the conspiracy with other accused person could not be ascertained from the evidence of prosecution witnesses. Thus, the charge for cheating and fabrication of false document as against A2 is clearly made out.

24. The leaned Counsel for the appellant/A2 submitted that, P.W.6

had deposed that, after doubt raised about the collateral security of a property in the name of Ms.Mary Christiana, the borrower had given another property as additional security which stands in the name of Thiru.Pakiri at Thiruvanmiyur and value about Rs.37,29,144/- Therefore, the appellant had no intention to cheat the bank. However, this submissions does not carry any merit because the document filed initially to induce the Bank to avail loan proved to be a false document and at the time of inspection, loan was under default.

25. From the materials placed, it is clearly established that, the sanction to prosecute A-1 accorded by P.W-1 not on his own application of mind. The reconsideration of his earlier rejection order not on the basis of new facts brought to his notice. That apart, the evidence relied by the prosecution does not prove beyond any doubt that the loan was sanctioned by A-1 with knowledge that the documents related to collateral security property are forged. Both the Manager and the valuer (A-1 and A-4) the appellants herein had acted based on the opinion given by the Panel Lawyer regarding the title of the property. Their plea that, they acted bonafidely and had no intention to cheat the bank or had knowledge about the fake documents produced by the other accused (A-2 and the deceased accused Balraj) who are the beneficiary of this crime, need acceptance, since no evidence to prove the contra.

26. As a result, the ***Criminal Appeal Nos.486 & 510 of 2013 are allowed.*** The judgment of conviction passed by the trial Court in C.C.No.19 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.

27. As far as, the Criminal Appeal No.500 of 2013 filed by A2/Alban Bright is partly allowed. While there is no evidence to prove for conspiracy between this accused with A-1 and A-4, the charge of conspiracy against the accused is held to be not proved. Prosecution has proved beyond doubt through material evidence for cheating the bank by producing fake title deeds as genuine with intention to cheat the bank available and therefore, it attracts offences under Section 420 and 468 r/w 471 of I.P.C. The conviction and sentence against A2 for the said offences are as below:-

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

Accused	***Offences***	***Conviction and Sentence passed by the Trial Court***
		Rs.1,000/-, in default to undergo S.I for three months.

28. In fine, The ***Criminal Appeal No.500 of 2013 is partly allowed.*** The judgment of conviction passed by the trial Court in C.C.No.19 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, CBI/ACB/Chennai.
4.The Special Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,J.

bsm

Pre-delivery common judgment made in
Crl.A Nos.486, 500 & 510 of 2013

24.07.2023