IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 23.03.2023	Pronounced on : 28.04.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.Nos.49 & 83 of 2013

Crl.A.No.49 of 2013 against C.C.No.26 of 2008:-

1. R.Kasi.
2. M.Jayabalan. ... Appellants/Accused Nos.1 to 2.

/versus/

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

Prayer in Crl.A.No.49 of 2013: Criminal Appeal is filed under Section 374 of Cr.P.C., against the judgement dated 27.12.2012 passed by the Learned XI Additional Special Judge for CBI cases, Chennai in the above C.C.No.26 of 2008 in R.C.No.4/E/2007/CBI/EOW, Chennai convicting the first accused R.Kasi under Section 120B, r/w 420 IPC and 13(2) r/w 13(1)(d) of P.C Act 1988 and Section 420 I.P.C convicting and sentencing to undergo rigorous imprisonment for 1 year and to pay a fine of Rs.2000/- and second appellant M.Jayabalan for an offence punishable under section 120 B r/w 420 I.P.C and 13 (2) r/w 13(1)(d) of P.C Act 1988 convicting and sentencing to undergo rigorous imprisonment for 1 year and to pay a fine of Rs.2,000/- for the first charge of conspiracy under 120 B and 3 years and to pay a fine of Rs.5000/- under section 13 (2) r/w 13 (1) (d) of PC Act 1988.

For 1st Appellant	: Mr.R.Vijayaraghavan
For 2nd Appellant	: Mr.G.R.Hari, for Mr.R.Baskar.
For Respondent	: Mr.K.Srinivasan, Senior Advocate, Special Public Prosecutor (CBI).

Crl.A.No.83 of 2013 against C.C.No.26 of 2008:-

K.Prakash. ... Appellant/Accused No.3

/versus/

The Union of India,
Represented by CBI, Chennai.
(RC.No.4E/007/CBI/EOW/Chennai. ... Respondent/Complainant

Prayer in Crl.A.No.83 of 2013: Criminal Appeal is filed under Section 374 of Cr.P.C 1973 r/w Section 27 of the P.C Act, 1988, pleased to allow this appeal and set aside the judgment of conviction imposed by XI Additional Special Judge (CBI Cases) relating the Banking & Financial Institutions, Chennai in C.C.No.26 of 2008 dated 27.12.2012 sentencing him to undergo R.I for one year and pay fine of Rs.2,000/- in default to undergo S.I for 6 months for the offence under Section 120 B r/w Section 406, 420, 467, 471 I.P.C and under Section 13(2) & 13(1)(d) of P.C Act, 1988 and also sentenced him to undergo R.I for one year and pay a fine of Rs.2,000/- in default to undergo S.I for 6 months for the offence under Section 420 of I.P.C.

For 3rd Appellant : Mr.R.M.Meenakshisundaram

For Respondent : Mr.K.Srinivasan, Senior Advocate, Special Public Prosecutor (CBI).

COMMON JUDGMENT

These two Criminal Appeals are filed against the judgment passed by XI Additional Special Judge, (CBI cases relating to Banks and Financial Institutions) Chennnai, in C.C.No.26 of 2008 in R.C.No.4E/2007/CBI/EOW/Chennai. Crl.A.No.49 of 2013 preferred by the appellants/Kasi (A1) and Jayabalan (A2). Crl.A.No.83 of 2013 is preferred by Prakash (A3).

2. According to the prosecution, A-1/Kasi is a Proprietor of M/s.Netra Infosys. A-2/Jayabalan is the Branch Manager of Indian Bank, South Usman Road, Indian Branch, Chennai. A-3/Prakash a close associate of A-1. During the year 2005-2006 conspired to cheat the Indian Bank and in pursuant to the said conspiracy, A1/Kasi induced the partners of M/s.Asia Power Electricals to apply for loan of Rs.25 lakhs for working capital and Rs.5 lakhs for term loan. The application for sanction of above credit facilities in the name of M/s.Asia Power Electrical was submitted on 01.03.2005, by the partners of the said firm namely Ranjan Fernando, S.Ponraj and P.Kannan. A1 & A3 induced them to part away documents. 10 days later, they requested to open current account in the Indian Bank, South Usman Road Branch, Chennai and the current account opening form was initially introduced by one D.Gunasekaran but later the name of Gunasekaran A/c.No.1688 was striked off. Kasi/A1, Proprietor of M/s.Netra Infosys, having current account No.1595 is shown. The said Kasi is the 1st accused in this case. The account has been permitted to open after verifying the signature by the Branch Manager/Jayabalan, who is the 2nd accused. Pursuant to the request for advance of trade loan, a sum of Rs.10 lakhs was sanctioned by the Branch Manager/A2. The Current Account No.1694 was opened in the name of M/s.Asia Power Electrical, based on manipulated documents. A2/Jayabalan as a Branch Manager, abused his official position and in connivance with A1 & A3, had permitted to open the current account in his bank and also sanctioned loan to a tune of Rs.10 lakhs to the said M/s.Asia Power Electrical. The loan amount has been transferred to the current account of M/s.Asia Power Electrical opened without the knowledge of the real partners of M/s.Asia Power Electrical and thereafter, loan amount deposited in the current A/c No.1694 of M/s.Asia Power Electricals on 21.03.2005 was withdrawn as follows:-

(i). Rs.4,00,000/- by way of Demand Draft in favour of S.K.Moorthy payable at Villupuram through demand draft challan dated 23.03.2005 (Ex.P.19).

(ii). A sum of Rs.1,00,000/- dated 23.03.2005, for issuance of Demand draft in favour of M.Krishnasamy (Ex.P.20).

(iii). Rs.2,50,000/-, dated 21.03.2005, by way of cheque bearing No.738808 in favour of S.Ponuraj, Partner M/s.Asia Power Electrical (Ex.P.21).

(iv). A yourself cheque for sum of Rs.5,01,048/-, dated 23.03.2005 (Ex.P.22) and

(v). Cheque for Rs.2,61,000/- dated 24.03.2005 in favour of S.Raju (Ex.P.23) was issued. The said loan amount was not repaid. After transfer of A2/Jayabalan from that Branch, one A.G.Sundaram (P.W.2) succeeded him and found that, several loans sanctioned by A2/Jayabalan become 'Non-Performing Assets', without even paying single instalment. Therefore, A.G.Sundaram (P.W.2), has brought to the notice of the higher officials about serious irregularities in the loan sanctioned by A2/Jayabalan, without proper pre-sanction inspection and scrutiny of the documents furnished for availing loan. Thus, the crime came to light.

3. Thereafter, an in-house enquiry was conducted by Indian Bank through K.Radhakrishnan (P.W.5) retired, Senior Manager, Indian bank, Chennai. He found that, several lakhs of rupees has been siphoned. Based on the report, complaint to C.B.I was lodged by K.B.Nagendra Moorthy (P.W.1), General Manager and Circle Head of Indian Bank, Chennai.

4. Thereafter, C.B.I registered the F.I.R on 21.06.2007 in RC.4/E/2007-CBI/EOW/Chennai, for the offence under Section 120-B r/w 420 of I.P.C and 13(2) r/w 13(1)(d) of PC Act. Final report was filed on 22.07.2008 against R.Kasi/A1, Jayabalan/A2 and Prakash/A3. Based on the materials collected during the investigation, XI Additional Special Judge, for CBI framed charge under Section 120-B r/w 420 and 13(2) r/w 13(1)(d) of PC act, 1988 against A1 to A3; As against A1 & A3 charge for offence under Section 420 of I.P.C was framed. A2/Jayabalan being a public servant charged for offence under Section 13(2) r/w 13(1)(d) of P.C Act, was framed.

5. The sum and substance of the complaint which is marked as Ex.P.1

discloses that, 15 borrowal accounts which has become 'Non-Performing Assets' was taken for scrutiny and the report reveals that, fraud has been committed by one Kasi/A-1 and his accomplices in collusion with officials of Indian Bank, South Usman Road Branch and borrowers in availing credit facility from the Branch in the name of 11 borrowers. The documents obtained by guarantors were manipulated to avail higher credit facilities from the branch by the borrowers even without the knowledge of the guarantors. The loan proceeds were diverted to the account opened in the name of private individuals and later diverted to others.

6. To prove these charges, the prosecution examined 15 witnesses (P.W.1 to P.W.15) and marked 56 exhibits (Ex.P.1 to Ex.P.56). On behalf of the appellant/accused one Mr.Jayaraman, I.P.S, Superintendent of Police, EOW, CBI, Chennai, who registered the F.I.R marked as Ex.P.56 was examined as D.W.1.

7. The trial Court, on perusal of the oral and documentary evidence found all the three accused persons are guilty and sentenced them to undergo the following punishment mentioned below:-

Accused	*Offences*	*Conviction and Sentence imposed by the trial Court*
A1 to A3	120-B r/w 420 and 13(2) r/w 13(1) (d) of PC Act, 1988.	To undergo R.I for one year and to pay fine of Rs.2,000/-, each in default to undergo S.I for six months.
A1 and A3	420 of I.P.C	To undergo R.I for one year and to pay fine of Rs.2,000/-, each, in default, to undergo S.I for six months.
A2	13(2) r/w 13(1) (d) of PC Act, 1988.	To undergo R.I for three years and to pay fine of Rs.5,000/-, in default, to undergo S.I for one year.

The sentences of imprisonment ordered to run concurrently and the period of imprisonment already undergone ordered to be set off under Section 428 of Cr.P.C.

8. Aggrieved by the above conviction and sentence passed by the trial Court, the appellants/A1 and A2 have jointly preferred present appeal in C.A.No.49 of 2013. A3/Prakash has preferred present appeal in C.A.No.83 of 2013.

9. The case of the prosecution as spoken by witnesses is that, M/s.Asia Power Electrical is a partnership firm consisting of 12 partners. They authorised three of them to the signatories to a registered firm having account in I.O.B, Thiruvottiyur Branch. When one of the partner Ranjan (P.W.11) came to know about Kasi (A1) through K.Viswanathan (P.W.12) that, he can arrange loan from the bank for their business purposes, he approached Kasi (A1), who in turn introduced him to Jayabalan (A2), Branch Manager, Indian Bank, South Usman Road, Chennai. To avail loan, P.W.11 (Rajan) was asked to open an account in South Usman Branch. Accordingly, application (Ex.P.2) to open the current account in the name of M/s.Asia Power Electrical was submitted with the signature of the three partners, who are authorised to represent the firm. No other documents was furnished by them. However, account was opened with introduction of Kasi/A1. A2/Jayabalan, Branch Manager, contacted P.W.11 (Ranjan) over phone and informed to bring two cheques for commission for sanctioning the loan. Expecting the sanction of loan, P.W.11 (Ranjan) handed over two signed cheques (Ex.P.22 and Ex.P.23) to A2/Jayabalan, the Branch Manager in the presence of A1/Kasi, who was in the room of A2/Jayabalan. Through those two cheques, loan proceeds been withdrawn. Later, when A2/Jayabalan called him to pay the loan instalments, he, then verified and found that Rs.10 lakhs been sanctioned as loan to his partnership firm and money has been withdrawn by A1 & A2. They promised to repay the loan amount but except a sum of Rs.60,000/- which was deposited by A1/Kasi nothing repaid. The loan amount sanctioned for the partnership firm of M/s.Asia Power Electrical was misappropriated and utilised for the benefit of the accused persons for which, A2/Jayabalan, the Branch Manager helped and has abused his official position.

10. A sum of Rs.10 lakhs loan amount was credit into the current account No.1694 of M/s.Asia Power Electrical, on 21.03.2005. A sum of Rs.7,51,048/- was withdrawn through two cheques viz., for Rs.2,50,000/- dated 21.03.2005 and Rs.5,01,048/- dated 23.03.2005. These two cheques marked are Ex.P.21 and Ex.P.22. While the cheque of Rs.2,50,000/- which is marked Ex.P.21 drawn in favour of S.Ponraj partner of M/s.Asia Power Electrical another cheque marked as Ex.P.22 for Rs.5,01,048/- been withdrawn through yourself cheque for purchase of two demand drafts for Rs.4 lakhs and Rs.1,00,000/- respectively and another sum of Rs.1 lakh to one Thiru.M.Krishnasamy through mail transfer was withdrawn. Ex.P.37 is the cheque dated 28.12.2004 drawn from the account maintained by M/s.Asia Power Electrical in Indian Overseas Bank, Indira Nagar, Chennai. This cheque for Rs.1 lakh is issued in favour of Kasi (A1). The partners of M/s.Asia Power Electrical in the course of investigation has said Rs.1 lakh which was given is a commission money given to Kasi/A1 for arranging the loan. When the loan was sanctioned, that was not informed to them about the sanction of loan except withdrawal of Rs.2,50,000/-. The encashment of the cheque given to Kasi (A1) for a sum of Rs.1 lakh is reflected in the statement of accounts maintained by Indian Overseas Bank, Indira Nagar, Chennai, which is marked as Ex.P.54. The cheques Ex.P.21 to Ex.P.23 used to withdrawn the money from the account of M/s.Asia Power Electrical were all written by A3/Prakash as opined by hand writing expert Ravi (P.W.10), Principal Scientific Officer. His report marked as Ex.P.42 indicating and substantiating the evidence of P.W.11 that, A1/Kasi took three cheques from them and withdrawn the money for his benefit.

11. P.W.11 had deposed that, he has not arranged any guarantor for the loan and it was all arranged by A1 & A2. Except Rs.2,50,000/- withdrawn by one of the partner Mr.S.Ponraj, rest of the money been withdrawn by Kasi/A1 and A2/Jayabalan, Bank Manager, utilising the cheques given to them and after repeated request, A1/Kasi deposited Rs.60,000/- in the account.

12. Being aggrieved by the order of the trial Court, the Criminal Appeal No.49 of 2013 are filed by A1 (Kasi) and A2 (Jayabalan) jointly and Criminal Appeal No.83 of 2013 is filed by A3 (Prakash) separately. The Learned Counsel for the appellants submitted that the Court below miserably failed to appreciate the evidence properly.

13. The submission on behalf of the appellants/accused is that, the case of the prosecution is that, the loan amount sanctioned to M/s.Asia Power Electrical been withdrawn by the accused persons. The guarantors for the loan was not arranged by the borrower but by the accused persons. For this allegation, the trial Court has heavily relied upon the evidence of P.W.11, who is one of the partners of M/s.Asia Power Electrical. The trial Court failed to consider that, P.W.11 (Ranjan) is the beneficiary of the loan and had admitted that, he along with the other partners signed the loan application form as well as in the account opening form and furnished them to A1 (Kasi). The loan application (Ex.P.4) is dated 01.03.2005. The statement of account for M/s.Asia Power Electrical is marked as Ex.P.17 this will indicate that, the account came to be opened on 12.03.2005 with deposit of Rs.5,100/- and thereafter, been in operation till 30.09.2005. Apart from three cheques which is alleged to have given to A1/Kasi by P.W.11(Ranjan), there are few more withdrawals by the loanees using cheques. If the evidence of P.W.11 is to be accepted, the prosecution ought to have explain how Mr.Ponuraj of M/s.Asia Power Electrical withdrew Rs.2,50,000/- from that account, if they are not aware of the fact that loan of Rs.10 lakhs been sanctioned to them.

14. The Learned Counsel appearing for the appellants further submitted that, apart from withdrawal through three cheques, which according to prosecution, are incriminating evidence against these appellants, it is alleged Ex.P.19 and Ex.P.20 are applications for issuance of pay orders for sum of Rs.4 lakhs in favour of S.K.Moorthy of Villupuram and to issue pay order for Rs.1 lakh in favour of Krishnasamy, Chennai. These two pay orders are admittedly signed by A3/Prakash and there is a noting on the pay order application that referring current account No.1694. These two pay orders slip dated 23.03.2005 used for purchase of two pay orders from the cheque marked as Ex.P.22 in favour of the Bank. The prosecution has failed to prove how these two pay orders drawn in favour of S.K.Moorthy for Rs.4 lakhs and in favour of Krishnasamy for Rs.1 lakh were utilised by the accused persons. Because the pay order application been filled up by A3/Prakash, it cannot be presumed that, these two pay orders were utilised by A3 or other accused. Further, the Learned Counsel appearing for the appellant/A3 submitted that, the specimen signatures obtained from A3/Prakash, without permission of the Court is inadmissible and therefore, the opinion of the hand writing expert should be eschewed.

15. The Learned Counsel appearing for A1 and A2 who are the appellants in Crl.A.No.49 of 2013, apart from other legal submissions also submitted that, in this case, the prosecution has not proved that the loan was sanctioned without proper scrutiny of the application form. The allegation that M/s.Asia Power Electrical is a fictitious Company is untrue. Only on proper scrutiny of the documents such as assets and liability statements, letter of guarantee by Pannerselvam, pro-note executed by the borrower the projected turn over of the borrower and on inspection of the property loan was sanctioned. The alleged payment of Rs.1 lakh by M/s.Asia Power Electrical to A1/Kasi, from their account maintained at Indian Overseas Bank, in the year 2004 cannot be an inferential fact that, Kasi/A1 has received this money as a commission to arrange the loan. Even if it is so, Kasi/A1 being a private individual, he cannot be held guilty for conspiracy or cheating.

16. Mr.K.Srinivasan, Learned Special Public Prosecutor appearing for the State submitted that, this is a case of conspiracy to cheat the Indian Bank. One of the conspirator is a public servant, who has misconducted himself to cause loss to the Bank and wrongful gain. This is not an isolated case where the loan sanctioned bonafidely by A-2/Jayabalan without conducting pre-sanction inspection or based on fake document. This case is one episode of multiple cases of fraud and cheating. The *modus operandi* adopted by the accused A-1/Kasi in connivance with Jayabalan/A-2 the Branch Manager, Indian Bank, was that the people who were desperately in need of loan entice to hand over their property document and made to sign in the loan application form and other documents. Using those documents, trade loan were granted by A-2/Jayabalan, Branch Manager without proper and careful scrutiny of the documents. A-2/Jayabalan, being the final authority for sanction and disbursement of the trade loan, without proper scrutiny of the documents, knowingly sanctioned the loan and allowed the loanee to withdraw the money for purposes not meant for. When nearly 15 trade finance accounts under the scheme of Annapoorna Arogya become as Non-Performing Asset (NPA), suspicion arose about the manner in which these loans were sanctioned and therefore, an in-house enquiry was ordered to be conducted by K.Radhakrishnan, retired Senior Manager, Vigilance Department. On scrutiny of the records and after spot visit to the address of the loanee (P.W.5), K.Radhakrishnan gave his report Ex.P.35 with the following findings:-

> "*1. The H.O Guidelines regarding the term loans was not followed.*
>
> *2. The rule allowes payment vide DD or pay order but in the present case cash was directly paid to the loanee and in some cases amount credited to the respective accounts.*
>
> *3. The margin factor was not followed.*
>
> *4. As per the term loan condition invoice to be obtained from the supplier of the equipments and stamped receipts should have been obtained and kept with the documents.*

5. Before release of the loan amount, business place should have been verified by the Manager..”

17. In this case, for repayment, Pannerselvam stood guarantee of the loan amount. His consent letter is marked as Ex.P.9. His property taken as collateral security. Third party property was obtained as security without the approval from the higher Authorities. The guarantor, who has given the property as security not informed that the title deed of his property had been utilized as security for the purpose of loan sought by M/s.Asia Power Electrical. P.W.5 (Radhakrishnan), Senior Manager, Indian Bank, Circle Office, Chennai, in his report marked as Ex.P.35, has explained how the fraud and cheating has been committed by these three accused.

18. The guarantor Mr.Panneerselvam was arranged by A-1 (Kasi). During the course of investigation, the said Panneerselvam has stated that, his signatures in the forms and documents were obtained by A-1 on the promise he will arrange loan. A-1 gave him Rs.50,000/- and told him to sign in the documents. He did not know that, his property will be used as collateral security for the loan of M/s.Asia Power Electricals. The documents relating to the guarantor Panneerselvam marked as Ex.P.31 series. The extract of the registration of Equitable mortgage of Paneerselvam property is marked as Ex.P.32. No doubt, the said Panneerselvam not examined as witness before the Court, however the fact remains that, the title deed given as collateral certificate is not original but a photocopy. A-2/Jayabalan, instead of original deed had taken copy of the document for collateral security

19. P.W-11 Rajan, one of the partner of M/s.Asia Power Electricals had deposed that, when they signed the documents in the Bank formats they were blank. For arranging loan in the bank, A-1 (Kasi) demanded Rs.1 lakh and got it by money transfer into his account. He and his partner signed the unfilled assets and liability form as requested by A1. The demand draft slips marked as Ex.P-19 and Ex.P-20 were not written by him.

20. Misusing these blank signed cheque given by the borrower, two demand draft slips prepared and with the help of one cheque (Ex.P-22) these two demand drafts were purchased drawing the said cheque in favour of the bank itself.

Including Rs.2,50,000/- (Ex.P-21) drawn in favour of S.Ponraj, the entire loan amount siphoned and taken away by the accused. Rs.2,50,000/- was given in cash by A-1, days after collecting the documents and signatures.

21. Heard the Learned Counsels for the appellants and the Learned Special Public Prosecutor for the respondent/CBI. Ex.P.1 to Ex.P.56 and the testimony of prosecution witness and defence witnesses perused.

22. The examination of prosecution documents reveals, M/s.Asia Power Electrical is the loanee. The said firm became the customer of the Indian Bank, South Usman Road, Chennai, on 11/03/2005. (Ex.P.2 is the account opening form). The account opened on the introduction of Kasi (A-1). Even prior to that application for Advance to traders made for Rs.25 lakhs for working capital and Rs.5 lakhs for term loan by the partners of M/s.Asia Power Electricals on 01/03/2005 in this application, the applicant has stated that, it was started in the year 2003. In this application, the name of the guarantor Panneerselvam is mentioned with address and phone number. Along with the bio-data of its partners, the profit and loss account also furnished.

The loan amount diverted soon after the amount credited into the account of M/s.Asia Power Electricals. P.W-11 who has already paid Rs.1 lakh to A-1 (Kasi) as commission for arranging loan, had given three signed blank cheques to A-1 (Kasi) and A-1, in turn, along with A-3 (Prakash) had diverted the funds to discharge the liability of A1/Kasi. The statement of account of M/s.Asia Power Electrical marked as Ex.P-54 indicates that, a sum of Rs.1,00,000/- transferred to A1/Kasi on 28/12/2004. According to P.W-11, this was the commission amount given to A-1 for arranging the loan.

23. A-2/Jayabalan, the Branch Manager though not inspected the property and properly scrutinized the loan documents, had sanctioned loan as if, he had inspected the property before sanctioning the loan. M/s.Asia Power Electricals was started functioning only in the year 2003. It had no previous year turn over. Without audit report and confidential report from the erstwhile banker, A2/Jayabalan, the Branch Manager had sanctioned loan. The said loan amount is immediately withdrawn and diverted using the blank signed cheques obtained from the borrower. The evidence invariably indicate all the three accused persons had designed the scheme to cheat the Bank in the manner explained above and no contra evidence available.

24. It is contended by the Learned Counsel for the A1/Kasi that, he is not a public servant nor anyway connected with Indian Bank. He claims, no evidence placed against him to infer he cheated Indian Bank in the loan transaction related to M/s.Asia Power Electricals. This contention does not hold water in view of the receipt of Rs.1,00,000/- from P.W-11 (Ranjan) and same been reflected in the bank account of M/s.Asia Power Electricals. Likewise, the sanction of loan based on Ex.P-26, the unregistered sale deed of Panneerselvam and the failure to conduct pre loan sanction inspection. Permitting A-1 (Kasi) to introduce the customer, filing up the loan application documents with false particulars by A-3/Prakash, accepting the collateral security even without interacting with him and sanctioning loan without getting the audit report proves the guilt of A-1, A-2 and A-3.

25. Therefore, the trial Court has rightly concluded that, charges under Section 120-B of I.P.C for criminal conspiracy and under Section 420 of I.P.C for cheating is made out. The A2/Jayabalan, being the Branch Manager had played a vital role in the crime. He had abused his position to the core in granting the loan for a firm which had account in a different bank, got an account opened in his bank with his associate A-1/Kasi. He did not even get the confidential report from the previous bank of M/s.Asia Power Electrical. Hence, as a public servant, for the proven misconduct hence, liable for punishment under Section 13 (2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

26. It is stated on behalf of the appellants that, it is a pure financial transaction between Banker and its customer in which loan disbursed after scrutiny of the documents by the Loan Officer and after securing the property for repayment of the loan. Hence, it cannot be termed as an act of cheating, just because later there was default in repayment of the loans availed by the firm. If, it is to be termed as conspiracy to cheat, the borrower must be the prime accused.

27. In this case, the borrower M/s.Asia Power Electricals through its partner P.W-11 had admitted that, they signed the account opening form and opened the account. He admits that, the three cheques marked as Ex.P-21, Ex.P-22 and

Ex.P-23 signed and given by the partners. He also admits withdrawal of Rs.2,50,000/- from his account. But, a plausible explanation been given by P.W-11, under what circumstances the documents were given to A-1/Kasi. The prosecuting agency had thought fit that the partners of M/s.Asia Power Electricals had no *mens rea* to cheat the bank while they opened the bank account or while they applied for working capital. Because, the defaulted borrower not prosecuted in this case, the said omission cannot inure right to the other accused who had paved way for the crime cannot claim immunity.

28. Sufficient evidence of wilful omission to observe the guidelines while sanctioning the loan, its withdrawal and recovery fix A-2/Jayabalan, the Branch Manager charged for the offence under Section 13(2) r/w 13(1)(d) of the P.C Act. Unlawful gain or reward/motivation in cash or kind need not be directly to the public servant but also to any person.

29. The Learned Counsel for the appellants in C.A.No.83/2013 (K.Prakash/A-3) specifically contended that, this appellant cannot be suspected to be a conspirator to cheat the Bank. The account opening form for M/s.Asia Power

Electrical marked as Ex.P-2 alleged to be written by this appellant namely Prakash (A-3). The opinion of the handwriting expert is inadmissible in evidence since the admitted signature of the accused not drawn after getting permission from the Court. During the course of investigation, this appellant was examined as witness and his statement under Section 161 Cr.P.C. He is not named accused in the F.I.R. When no witness spoken anything incriminating A-3 (Prakash), the trial Court ought not to have convicted him.

30. It is now a settled law that, evidence collected illegally cannot be rejected on that score as inadmissible. Such evidence requires to test with utmost caution. As far as specimen signature sent for comparison, A-3 does not deny the genuineness of this specimen signature or the competency of the hand writing expert or his opinion. Therefore, there is no reason or legal impediment in relying the expert opinion.

31. A1 had introduced P.W.11 the partner of M/s.Asia Power Electricals to A-2 for loan. After sanction of loan amount of Rs.10 Lakhs in the current account of M/s.Asia Power Electricals. S.Ponraj, one of the partners of M/s.Asia Power

Electrical had encashed cheque bearing No.738808 for Rs.2,50,000/- and on the same day A3 obtained demand drafts in favour of M. Krishnaswamy for Rs.1 Lakh payable at Chennai and in favour of one S.K.Moorthy for Rs.4 Lakhs payable at Villupuram using the loan proceeds for which cheque No.738809 collected from the borrower by A1 used another cheque bearing No.738810 was collected by A1 was encashed in the name of S.Raju and all these cheques, and forms were written by A3 and all these transactions are proved through P.W.3 evidence. Through him the credit report signed by A2 is marked as Ex.P.6. The voucher transfer form loan account to current account for Rs.10 Lakhs is marked as Ex.P.18. The Demand draft challan for Rs.4 Lakhs favouring S.K.Moorthy is Ex.P.19 and Demand draft challan favouring M.Krishnaswamy for Rs.1 Lakh is marked as Ex.P.20 those challan shows the applicant as A3/Prakash.

32. P.W.3 has further deposed that he passed Ex.P.21 cheque bearing No.738808, dated.21.3.2005 favouring Ponraj, Ex.P.22 cheque No.738809, dated 23.3.2005 for Rs.5,01,048/-; Ex.P.23 cheque bearing No.738810, dated 24.3.2005 for

Rs.2,61,000/- favour one Raju and all these cheques were passed by A2, in his capacity as the Branch Manager of the bank. It is evident that A1 and A3 with the active connivance of A2 diverted the loan money for their personal benefits which fact is clearly disclosed from the evidence of P.W.3 and P.W.2 and from the documentary evidence Ex.P.19 to Ex.P.23.

33. The *modus operandi* adopted by the accused A-1/Kasi with A-3 Prakash in connivance with Jayabalan/A-2 the Branch Manager, Indian Bank, is that, they target people who are desperately in need of loan and enticed them to hand over their property document and get their signature in the blank loan application form and other documents. These documents are later filed up by A-3 (Prakash). By using those fabricated documents, loans sanctioned by A-2/Jayabalan without proper scrutiny of the documents. In this case, even the title deed which was taken for equitable mortgage was not original. The owner of the property though signed in the deed of guarantee and the letter of deposit of title deed, had denied handing over the document with intention to create equitable mortgage. A-2/Jayabalan, the Branch Manager, is the final authority for disbursement of loan. He, without proper scrutiny of the documents had knowingly sanctioned the loan and allowed the loan amount being withdrawn.

34. This Court, on assessment of the evidence has no hesitation to concur the view of the trial Court that, without following the guidelines and the circulars and modified circulars, A2 has on his own accord has allowed to sanction the term loan to M/s.Asia Power Electricals, a partnership firm and the said amount was diverted for the sake of A1 and A3 without the knowledge and consent of the partner of M/s.Asia Power Electricals. Therefore, the conviction and sentence imposed by the trial Court in C.C.No.26 of 2008 is confirmed.

35. These three appellants who are accused in C.C.No.26 of 2008 are also found guilty in C.C.No.27 of 2008 for similar offences. Therefore, the sentence imposed on these accused shall run concurrently together with the period of sentence imposed for similar offence and identical period in C.C.No.27 of 2008 wherein, these three appellants are arrayed as A1, A2 and A6.

36. This Court finds no merit in these appeals hence, judgment in C.C.No.26 of 2008 stands confirmed. Accordingly, the ***Criminal Appeal Nos*.49 & 83 of 2013** ***are dismissed.*** The trial Court shall secure the accused persons/A1 to A3 and commit them to prison to undergo remaining period of sentence. The bail bond executed, if any, shall stand cancelled.

28.04.2023

Index :Yes/No.
Neutral Citation :Yes/No.
Speaking order/Non-speaking order
bsm

To,
1. The Learned XI Additional Special Judge for CBI cases, Chennai.
2. The Inspector of Police, CBI, EOW, Chennai.
3. The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN,J.
bsm

Pre-Delivery common judgment made in
Crl.A.Nos.49 & 83 of 2013

28.04.2023