# 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.50 & 79 of 2013

**Crl.A.No.50 of 2013 against C.C.No.24 of 2008**

1. R.Kasi,
2. M.Jayabalan,
3. D.Gunasekaran, ... Appellants/Accused No.1 to 3

**/versus/**

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

**Prayer in Crl.A.No.50 of 2013:** Criminal Appeal has been filed under Section 374 of Cr.P.C., against the judgement dated 27.12.2012 the judgement dated, 27.12.2012 passed by the Learned XI Additional Judge for CBI cases, Chennai in the above C.C.No.24 of 2008 in R.C.No.4/E/2007/CBI/EOW, Chennai, convicting the first accused R.Kasi and third accused D.Gunasekaran under Section 120-B r/w 420 I.P.C 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.2,000/- 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 PC 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.5,000/- under section 13(2) r/w 13(1)(d) of PC Act 1988.

For A-1 & A-3 : Mr.R.Vijayaraghavan

For A-2 : Mr.G.R.Hari,
for Mr.R.Baskar

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

**Crl.A.No.79 of 2013 against C.C.No.24 of 2008**

K.Prakash ... Appellant/Accused No.4

**/versus/**

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

**Prayer in Crl.A.No.79 of 2013:** Criminal Appeal has been filed under Section 374 of Cr.P.C 1973, pleased to allow the appeal and set aside the judgment of conviction imposed by XI Additional Special Judge, (CBI Cases) relating to Banking & Financial Institutions, Chennai in C.C.No.24 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 120B r/w Section 406, 420, 467 and 471 of 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 A-4 : 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 Sessions Court, (CBI cases relating to Banks and Financial Institutions) Chennnai, in C.C.No.24 of 2008 in R.C.No.4E/2007/CBI/EOW/Chennai. Crl.A.No.50 of 2013 preferred by the appellants/Kasi (A1), Jayabalan (A2) and D.Gunasekaran (A3) respectively. Crl.A.No.79 of 2013 is preferred by 4th accused/Prakash.

**2.** For the sake of convenience, the appellants are referred as per their ranking before the trial Court.

According to the prosecution A-1/Kasi Proprietor of M/s.Netra Infosys, A-2/Jayabalan, the Branch Manager of Indian Bank, South Usman Road Branch, Chennai. A3/D.Gunasekaran Proprietor of M/s.Sri Subramanian & Company and A4/Prakash, a person known to A-1/Kasi, with an intention to cheat the Indian Bank entered into a criminal conspiracy during the year 2005–2006. Pursuant to the conspiracy with the help of A2/Jayabalan, Branch Manager, application for credit facilities in the name of M/s.Subramanian and Company mentioning D.Gunasekaran (A3) as its Proprietor submitted manipulated documents. A-2/Jayabalan, by abusing his official position as Manager, released the loan without verifying the genuineness of the documents and without collecting vital details for which the loan sought for. A-2/Jayabalan sanctioned the credit facilities to the tune of Rs.5 lakhs in favour of M/s.Subramanian and Company owned by A-3 without conducting the mandatory pre-sanction inspection of the business. The said loan amount was credited into the account of A-3, on 24.01.2005. For the said purpose, bank account was opened on the same day by producing PAN Card, Driving License, Family Card (Ration Card) etc., showing a fictitious address and false declaration that, A-3/D.Gunasekaran in the name of M/s.Subramanian and Company trading in wholesale onion. After release of the loan amount and been credited in the Bank Account of A-3, a sum of Rs.2 lakhs was withdrawn by A-3/D.Gunasekaran, using self cheque dated 28.01.2005. A-3/Gunasekaran issued cheque for Rs.45,000/- in favour of M/s.Ind Kraft and another cheque for Rs.30,000/- in favour of M/s.Shree Laxmi Infotech. Both these cheques were given to A-1/Kasi as per his instructions. A-1/Kasi, in turn, after receiving these two cheques gave it to one T.Krishnamoorthy, Proprietor of M/s.Shree Lakshmi Infotech and M/s.Ind Kraft. These two cheques were used by A-1/Kasi to discharge his private loan with T.Krishnamoorthy and these two cheques were encashed through City Union Bank, T.Nagar, in the account maintained by T.Krishnamoorthy. These cheques were written by A-4/Prakash, associate of A1/Kasi. Further, on 01.03.2005, a sum of Rs.2,19,825/- was transferred from the account maintained by A-3 to the Current Account No.6001, which is a parking account of the Bank, at the instance of Bank Manager A-2. After availing the loan furnishing fictitious address, documents and misutilising the loan amount, A-3 did not repay the loan amount and the interest accrued.

**3.** The crime came to light when, A.G.Sundaram (P.W.2), who succeeded A-2/Jayabalan as Branch Manager of Indian Bank, South Usman Road, found that, the account of M/s.Subramanian and Company running in outstanding and instalments were not properly paid. Therefore, the account was declared as 'Non-Performing Assets' (NPA). 14 accounts under the Annapoorna Arogya loan also become NPA and it was noticed by the bank higher Officials that, serious irregularities has been committed by the then Branch Manager Jayabalan/A-2 in disbursing the credit facilities without even conducting pre-sanction inspection. Therefore, K.B.Nagendra Moorthy, General Manager and Circle Head of Indian Bank, Circle Office, gave a written complaint, on 20.12.2006 before the Deputy Superintendent of Police, CBI, EOW, Chennai, along with in-house investigation report submitted by Bank Investigating Officer Mr.K.Radhakrishnan. When the matter was taken up for investigation and final report was filed by the Inspector of Police, Loverson Kuruvila. Out of 15 accounts, in eight cases, evidence of fraudulent disbursement of loan amount has been adequately found and therefore, eight final reports were filed. The case involving M/s.Subramanian and Company of D.Gunasekaran is one among them.

**4.** As far as the subject matter of the present appeal is concerned, final report dated 30.06.2008 was taken cognizance by the Court in C.C.No.24 of 2008 against four accused, who are appellants namely R.Kasi (A-1), M.Jayabalan(A-2), D.Gunasekaran (A-3) and Prakash (A-4). In column No.2 of the final report, R.K.Vasu and S.Ramesh shown as an accused persons not sent up for trial.

**5.** The trial Court, on perusal of the documents and final report, framed charges against each of the accused persons as below:-

| ***Rank of the Accused*** | ***Charge framed under Section against the accused*** |
|---|---|
| A1 to A4 | 120-B r/w 420 of I.P.C and 13(2) r/w 13(1) (d) of P.C Act |
| A1, A3 and A4 | 420 of I.P.C |
| A2 | 13(2) r/w 13(1)(d) of PC Act, 1988. |

**6.** To prove the charges, the prosecution has examined 13 witnesses (P.W.1 to P.W.13) and marked 63 exhibits (Ex.P.1 to Ex.P.63). On behalf of the appellants, one K.Jayaraman, I.P.S, Superintendent of Police, EOW, CBI, Chennai, received the complaint on 20.12.2006 from K.B.Nagendra Moorthy, General Manager, Indian Bank, been examined as D.W.1.

**7.** The Trial Court, on appreciating the evidence held all the accused persons are guilty of the charges mentioned above and sentenced them to undergo the punishment mentioned below:-

| *Accused* | *Offences* | *Conviction and Sentence imposed by the Trial Court* |
|---|---|---|
| A1 to A4 | 120-B r/w 420 of I.P.C and 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.2,000/- each, in default to undergo S.I for six months. |
| A1, A3 and A4 | 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 sentence 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, A2 and A3 have preferred present appeal in C.A.No.50 of 2013. A4/Prakash has preferred present appeal in C.A.No.79 of 2013.

**9.** According to the appellants, the trial Court failed to consider that the credit facilities was extended to M/s.Subramanian and Company as a trade loan and not a term loan. The procedure for disbursing the trade loan is different from the procedure for disbursing term loan. In respect of trade loan, it is not necessary that loanee to furnish documents for purchase of machineries or raw materials. There is no necessity to pay any margin money of 25% on the cost of the machinery. In case of term loan, the loan amount will be directly paid to the suppliers of the machinery or raw materials. Whereas, under the trade loan, on submission of the application by the loanee along with relevant records and a deed of guarantee for the loan amount executed by the guarantor, loan is disbursed into the account of loanee for managing his trade. The application for trade loan will be scrutinised by the loan Officer Mr.Soundarajan and only after his verification and recommendation, the loan will be sanctioned. The Loan Officer is responsible for scrutinising the documents and recommending for the loan.

**10.** As a Branch Manager A-2/Jayabalan, not expected to scrutinize the application before sanctioning the loan. The Loan Manager (P.W.4) is the person directly in-charge and responsible for disbursement of the loan and not A-2, the

Branch Manager, who is the Superior Officer. When the complaint Ex.P.1 dated 20.12.2006 was lodged, the needle of suspicion was only against the loan Officer. However, after completion of investigation, his name was omitted in the charge sheet. As per the procedure for term loan, on the recommendation of the loan Officer, loan was disbursed and deposited in the account of the loanee directly and thereafter, Branch Manager has no control over the money, except to ensure the repayment of the loan. It is not correct to say that, M/s.Subramanian and Company is a fictitious Company and the document furnished by the Company for availing trade loan are fabricated documents. There is no evidence to show that, A1 to A4 conspired to cheat the Indian Bank. A-3/D.Gunasekaran, Proprietor of M/s.Subramanian and Company was introduced to open an account in the Indian Bank by Mr.R.Kasi/A1. R.Kasi being an existing customer introduced A-3/D.Gunasekaran, to open a new account in the Indian Bank, South Usman Road, Chennai and there is nothing wrong in introducing a person for opening the account. For availing loan, D.Gunasekaran (A3) has furnished all necessary documents along with surety. On verification of the documents, A-3 was allowed to open the account and operate it. The loan amount of Rs.5 lakhs has been fully secured by equitable mortgage created in favour of the bank and there was no intention to cheat the bank at the time of applying for the loan or while availing the loan.

**11.** The complaint given by K.B.Nagendra Moorthy (P.W.1) was based on the in-house enquiry report submitted by K.Radhakrishnan (P.W.5). The complaint was given by a person, who did not have direct knowledge about the content of the complaint. The suspicion of Radhakrishnan (P.W.5) as found in his report is that for disbursing the loan, commission was paid to Branch Manager. This allegation or suspicion not been substantiated by the prosecution. Therefore, the trial Court ought to have concluded that there is no case made out under Section 120-B of I.P.C for criminal conspiracy or under Section 420 of I.P.C for cheating or under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 for misconduct.

**12.** It was purely a financial transaction and the loan was disbursed after scrutiny of the documents by the Loan Officer and securing the property for repayment of the loan, in case there is any default in repayment of the loan. A3/D.Gunasekaran, availed trade loan furnishing necessary documents to prove his business and has furnished necessary security to ensure recovery.

**13.** A1/Kasi introduced A3/D.Gunasekaran to open the account and for that reason, he cannot be suspected to be a conspirator to cheat the Bank in connivance with the other accused. A2/Jayabalan, the Branch Manager, who is the senior most officer at the Branch level had no direct responsibility regarding scrutiny of loan applications. It is the duty of P.W.4 Soundarajan to scrutiny the applications and verify its genuineness. A4/Prakash had no role in this case and the prosecution has not placed any document to implicate him in the scheme of conspiracy. Even assuming, A-4/Prakash has written two cheques (Ex.P.22 and Ex.P.23) in favour of M/s.Laxmi Infotech and M/s.Ind Kraft respectively, this act cannot be construed as abetting or aiding to commit any offence to bring Prakash/A4 as a co-conspirator in the alleged crime.

**14.** Mr.K.Srinivasan, Learned Special Public Prosecutor appearing for the State submitted that this is not an isolated case where the loan was sanctioned bonafidely by A-2/Jayabalan without conducting pre-sanction inspection or based on fake document to a fictitious firm, incidentally A-1/Kasi introduced A3/D.Gunasekaran, to open the bank account. This case is one episode of multiple case 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 were enticed 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 in the name of fictitious or non-existing firm without proper and careful scrutiny of the documents A-2/Jayabalan, Branch Manager, is the final authority for sanction and disbursement of the trade loan. He, 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, Senior Manager, Vigilance Department. On scrutiny of the records and after spot visit to the addresses of the loanees, K.Radhakrishnan gave a report 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...*"

**15.** In this case, third party property was obtained as security without the approval from the higher Authorities. The guarantors, who has given the property as security were not informed that the title deed of their property had been utilized as security for the purpose of loan sought by A3/D.Gunasekaran and in his report marked as Ex.P.38, he has explained how the fraud and cheating has been committed.

**16.** A-1/Kasi, who had to pay one T.Krishnamoorthy, had utilised the loan amount sanctioned to M/s.Subramanian and Company owned by A-3/D.Gunasekaran. Two cheques Ex.P.22 for Rs.45,000/- and Ex.P.23 for Rs.30,000/- were utilised to draw in the name of M/s.Shree Laxmi Infotech and M/s.Ind Kraft. Both these firms belong to T.Krishnamoorthy and this fact been proved through P.W.11 Murali, Assistant Manager, City Union Bank, International Banking Division, T.Nagar Branch, Chennai, in which, T.Krishnamoorthy maintaining current account in the name of M/s.Ind Kraft and M/s.Shree Laxmi Infotech.

**17.** The statement of accounts for these two firms marked as Ex.P.47 and Ex.P.48 respectively indicates that, the loan of Rs.5 lakhs sanctioned to D.Gunasekaran Proprietor, M/s.Subramanian and Company was deposited in his Account No.14586. A1/Kasi introduced A3/D.Gunasekaran, for opening the account and that fact been proved through P.W.2 A.G.Sundaram, who has identified the SB account opening form dated 24.01.2005 submitted by A-3/D.Gunasekaran, which is marked as Ex.P.2. P.W.9 (Krishnamoorthy), who is the Proprietor of M/s.Ind Kraft and M/s.Shree Lahshmi Enterprises had admitted that, two cheques Ex.P.22 and Ex.P.23 was given to him by A-1/Kasi, who owe him a sum of Rs.7.2 lakhs which received by A-1 in the year 2004 on promise that, he will supply computers to him. He did not supply computer but has returned the money in piecemeal. These two cheques Ex.P.22 and Ex.P.23 were issued towards the part payment of the outstanding. The hand writing expert opinion report marked as Ex.P.43 reveals that the cheques Ex.P.22 and Ex.P.23 been filled up by the 4th accused Prakash. The specimen writing of Prakash/A4 is marked as S-42 to S-70. The specimen tallies with the question documents Q.118 to Q.125. A4/Prakash has filled up the details in the loan application and its annexure found in Ex.P.5.

**18.** Further, the Learned Special Public Prosecutor (CBI) for the respondent/state submitted that A-3 having availed the trade loan, the said loan money never been utilised for any trade purpose but been utilised to discharge the existing private loan of A1/Kasi and for other purposes. Therefore, Branch Manager A-2/Jayabalan, cannot claim ignorance that, he has bonafidely sanctioned the loan to a fictitious Company which was introduced by A1/Kasi, for opening the account and get trade loan facility. Similarly, A1/Kasi cannot plead innocence since the money availed for trade loan by A3/Gunasekaran been utilised by A1/Kasi, to discharge his personal loan payable to T.Krishnamoorthy P.W.9. A-4/Prakash, had been a close associate to A-1/Kasi, filled up the forms and other documents with false details knowing well that the details furnished are false. Therefore, conspiracy among the accused A1 to A4 are well established through documentary evidence and oral witnesses, who had dealt with those documents.

**19.** P.W.5. K.Radhakrishnan, had categorically submitted in his report that, third party security cannot be obtained without permission of the higher Officials, wherein, in this case the property of one Padmavathi has been received as security and the said Padmavathi was not even aware that her property been utilised for sanctioning loan in favour of the M/s.Subramanian and Company.

**20.** Mr.K.Srinivasan, Learned Special Public Prosecutor (CBI) for the respondent/State submitted that, if it is case in isolation. There may be some iota of doubt which could be extended in favour of these accused persons. But, similar MoP has been adopted in 14 other loans and the loan amount sanctioned for one firm has been utilised for other purpose like a) to satisfy the surety, who have given their property unknowingly that the property been charged as a collateral security and for the loan availed by unknown third parties.

**21.** Heard the Learned Counsel for the appellants and the Learned Special Public Prosecutor (CBI) for the State/respondent. Records perused.

**22.** Precisely the prosecution case is that, more than 12 fictitious firms were created pursuant to the conspiracy hatched by Kasi/A1, private individual retired RBI employee and Jayabalan/A2, Branch Manger, Indian Bank, South Usman Road, Chennai. The parties who were in need of loan, their property documents were utilised for creating collateral security for the loans sanctioned in the name of the fictitious firms. Their signatures were obtained and the loan was sanctioned to those fictitious firm by Branch Manager A-2. After sanctioning the loan and releasing the amount into the loanees account, money has been withdrawn and disbursed to the person of their choice and never been utilised for the trade, for which the loan was granted. The loanees naturally failed to pay the instalments and the assets become 'Non-Performing Assets'. In this scheme of conspiracy, some of the loaness have sought for loan knowingly that they are not in trade for which they seek loan and the loan amount is not meant for any promotion of trade and they had never intention to repay the loan. These category of borrowers by joining with A1 and A2 became parties to the conspiracy and their documents were used for sanctioning loans to the fictitious firms. Some of the loanees were innocent loan seekers, who were mislead by Kasi/A1 in connivance with Branch Manager A-2/Jayabalan fabricated documents were used to disburse the loan.

**23.** Conspiracy:-

The Learned Counsels appearing for the appellants in general submitted that the transactions were genuine and they never had intention to cheat and there was no element of conspiracy namely an illegal agreement to do an illegal act or any act by illegal means.

**24.** Further, the Learned Counsel appearing for the A2/Jayabalan at length had argued to impress upon this Court that, all these transactions were only done bonafidely in normal course of discharge the duty and there was no agreement whatsoever between A-2/Jayabalan, Kasi/A-1 or any other loanee.

**25.** The Learned Counsel appearing for A-2/Jayabalan, the Branch Manager, who has sanctioned the term loan which later become as Non-Performing Assets submitted that, on the basis of circumstantial evidence on presumption, the appellants have been held guilty though he is not directly responsible for scrutiny of the loan application. He has sanctioned the loan based on the recommendation of the Loan Officer P.W.4 (Soundarajan). Further submitted that, when each and every incriminating circumstances not establishes guilt of the appellants and the chain of events are broken, the appellants cannot be convicted. In support of his argument, the Learned Counsel for the A2/Jayabalan, rely upon the judgment of the Hon'ble Supreme Court in ***Tanviben Pankajkumar Divetia -vs- State of Gujarat*** reported in ***(1997) 7 SCC 156,*** wherein, it has held that;

> "***45.*** *The principle for basing a conviction on the basis of circumstantial evidences has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by*

*reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the Court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. It has been indicated by this Court that there is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions. (Jaharlal Das v. State of Orissa [(1991) 3 SCC 27 : 1991 SCC (Cri) 527])"*

> ***46.*** *We may indicate here that more the suspicious circumstances, more care and caution is required to be taken otherwise the suspicious circumstances may unwittingly enter the adjudicating thought process of the Court even though the suspicious circumstances had not been clearly established by clinching and reliable evidences. It appears to us that in this case, the decision of the Court in convicting the appellant has been the result of the suspicious circumstances entering the adjudicating thought process of the Court."*

**26.** The Learned Counsels submitted that for criminal conspiracy, the essential requirement is an agreement between two or more persons to do an illegal act or an act by illegal means. An unlawful agreement is a *sine qua non* for constituting offence under Section 120-B of I.P.C. There must be an express or implicit agreement between the accused persons, who was charged for conspiracy and further submitted that, the prosecution in this case has not let in any evidence for sanctioning the said loan there was a prior agreement either implicitly or explicitly between the parties to constitute an offence under Section 120-B of I.P.C. In support of this argument, the judgment of the Hon'ble Supreme Court in

***K.R.Purushothaman and State of Kerala*** reported in ***(2005) 12 SCC 631***, is relied wherein, it has held that;

> "***13.*** *To constitute a conspiracy, meeting of minds of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of the conspiracy. Neither is it necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implication. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. The existence of conspiracy and its objects are usually deduced from the circumstances of the case and the conduct of the accused involved in the conspiracy. While appreciating the evidence of the conspiracy, it is incumbent on the court to keep in mind the well-known rule governing circumstantial evidence viz. each and every incriminating circumstance must be clearly established by reliable evidence and the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn, and no other hypothesis against the guilt is possible. Criminal*

*conspiracy is an independent offence in the Penal Code. The unlawful agreement is sine qua non for constituting offence under the Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the plan would not perse constitute conspiracy. The offence of conspiracy shall continue till the termination of agreement.*

***14.** Suspicion cannot take the place of legal proof and prosecution would be required to prove each and every circumstance in the chain of circumstances so as to complete the chain. It is true that in most of the cases, it is not possible to prove the agreement between the conspirators by direct evidence but the same can be inferred from the circumstances giving rise to conclusive or irresistible inference of an agreement between two or more persons to commit an offence. It is held in Noor Mohd. Mohd. Yusuf Momin v. State of Maharashtra [(1970) 1 SCC 696 : 1970 SCC (Cri) 274 : AIR 1971 SC 885], that: (SCC pp. 699-700, para 7).*

> *"In most cases proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material."*

**27.** Further, the Learned Counsels also rely upon the judgment of the Hon'ble Supreme Court in ***Central Bureau of Investigation, Hyberabad -vs- K.Narayana Rao*** reported in ***(2012) 9 SCC 512***, wherein, it has held that:

> "***24.*** *The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other*

*reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence."*

**28.** And the judgment of the Hon'ble Supreme Court in ***Parveen @ Sonu -vs- State of Haryana*** reported in ***2021 SCC Online SC 1184***, wherein, it has held that;

*"12. It is fairly well settled, to prove the charge of conspiracy, within the ambit of Section 120-B, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. At the same time, it is to be noted that it is difficult to establish conspiracy by direct evidence at all, but at the same time, in absence of any evidence to show meeting of minds between the conspirators for the intended object of committing an illegal act, it is not safe to hold a person guilty for offences under Section 120-B of IPC. A few bits here and a few bits there on which prosecution relies, cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy. Even the alleged confessional statements of the co-accused, in absence of other acceptable*

*corroborative evidence, is not safe to convict the accused. In the case of Indra Dalal v. State Of Haryana1, this Court has considered the conviction based only on confessional statement and recovery of vehicle used in the crime. In the said case, while setting aside the conviction, this Court has held in paragraphs 16 & 17 as under:-*

> *"16. The philosophy behind the aforesaid provision is acceptance of a harsh reality that confessions are extorted by the police officers by practising oppression and torture or even inducement and, therefore, they are unworthy of any credence. The provision absolutely excludes from evidence against the accused a confession made by him to a police officer. This provision applies even to those confessions which are made to a police officer who may not otherwise be acting as such. If he is a police officer and confession was made in his presence, in whatever capacity, the same becomes inadmissible in evidence. This is the substantive rule of law enshrined under this provision and this strict rule has been reiterated countlessly by this Court as well as the High Courts.*
>
> *17. The word "confession" has nowhere been defined. However, the courts have resorted to the dictionary meaning and explained that incriminating statements by the accused to the police suggesting the inference of the commission of the crime would amount to confession and, therefore, inadmissible under this provision. It is also defined to mean a direct acknowledgment of guilt and not the admission of any incriminating fact, however grave or conclusive. Section 26 of the*

*Evidence Act makes all those confessions inadmissible when they are made by any person, whilst he is in the custody of a police officer, unless such a confession is made in the immediate presence of a Magistrate. Therefore, when a person is in police custody, the confession made by him even to a third person, that is, other than a police officer, shall also become inadmissible."*

**29.** The judgment of the Hon'ble Supreme Court in ***Ram Sharan Chaturvedi -vs- The State of Madhya Pradesh*** reported in ***2022 SCC Online SC 1080***, wherein, it has held that;

*"**24.** The principal ingredient of the offence of criminal conspiracy under Section 120B of the IPC is an agreement to commit an offence. Such an agreement must be proved through direct or circumstantial evidence. Court has to necessarily ascertain whether there was an agreement between the Appellant and A-1 and A-2. In the decision of State of Kerala v. P.Sugathan, this Court noted that an agreement forms the core of the offence of conspiracy, and it must surface in evidence through some physical manifestation:*

*"**12.** As in all other criminal offences, the prosecution has to discharge its onus of proving*

> *the case against the accused beyond reasonable doubt. …A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy…*
>
> ***13.*** *…The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient…"*

***25.*** *The charge of conspiracy alleged by the prosecution against the Appellant must evidence explicit acts or conduct on his part, manifesting conscious and apparent concurrence of a common design with A-1 and A-2. In State (NCT of Delhi) v. Navjot Sandhu, this Court held:*

> *"**101**. One more principle which deserves notice is that the cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than*

> *adopting an isolated approach to each of the circumstances. Of course, each one of the circumstances should be proved beyond reasonable doubt. Lastly, in regard to the appreciation of evidence relating to the conspiracy, the Court must take care to see that the acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution."*

**30.** The Learned Counsel for the appellant/A2 also submitted that there is no proof that pursuant to the conspiracy, A-2/Jayabalan, the Branch Manager has obtained any valuable things or pecuniary advantage by illegal or by corrupt means. Hence charge under Section 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988 will not get attracted. Therefore, even assuming that, loans were sanctioned without proper scrutiny of documents *per se* will not be proof of obtaining illegal gratification or pecuniary advantage. None of the witness examined by the prosecution had deposed that, A-2/Jayabalan Branch Manager, by sanctioning the loan in favour of D.Gunasekaran/A-3, Proprietor of M/s.Subramanian and Company had obtained any pecuniary advantage illegally. Further, the act of A-2/Jayabalan, sanctioning the loan in discharge of his official duty, presumed to be done in good faith. In support of this argument, he relies upon the judgment of Gauhati High Court in ***M.L.Sharma and another -vs- Central Bureau of Investigation CBI*** reported in ***(2019) 6 Gauhati Law Reports,*** wherein, it has held that;

*"64. The learned counsel for the appellants strenuously argued that to convict an accused for an offence under Section 13 (1) (d) and 13 (2), the prosecution must establish that by corrupt and legal means the accused has obtained for himself or for any other person any valuable things or pecuniary advantage but in the present case there is no evidence on record the appellants/the public servants obtained any amount by corrupt or illegal means and conviction of the public servants/the two appellants is not sustainable in absence of such requisite evidence. The decision of Subash Parbat Sonvane v. State of Gujarat, (2002) 5 SCC 86, is relied on the aspect.*

*65. In the aforesaid decision, para 6, it has been held that for convicting the person under Section 13 (1) (d) that there must be evidence on record that the accused obtained for himself or others any valuable things or pecuniary advantage either by corrupt or illegal means or by adducing his position as* *a public servant without any public interest. In the present case, there is a lack of evidence on the above aspect.*

*66. On the next, the appellants have relied upon the decision rendered by the Hon'ble Apex Court in 2014 (3) JCC 1552, B. Jayaraj v. State of A.P., wherein it has been held that the presumption under Section 20 of the P.C. Act can be drawn only in respect of offence under Section 7 and not the offences under Section 13 (1) (d) (i) (ii) of the Act. In any event it is only on the proof of acceptance of illegal gratification presumption can be drawn under Section 20 of the Act that such gratification was received or doing or for bearing any official act. Applying the proposition laid by the aforesaid decision, the statutory presumption also cannot be drawn against the public servant/the appellants herein."*

**31.** The Learned counsel appearing for the A-2/Jayabalan finally submitted that, in all the cases A-2/Jayabalan, the Branch Manager is arrayed as an accused and the maximum sentence to undergo 3 years R.I for the offence under Section 13(2) r/w 13(1) (d) of P.C Act. Since the matter is of same nature and been heard, tried simultaneously, the accused who were found guilty must be given the benefit of Section 427(1) of Cr.P.C and he must be ordered to undergo the sentence simultaneously in all the cases. In support of his submission, he relies upon the judgment of the Hon'ble Supreme Court in ***P.N.Mohanan Nair -vs- State of Kerala*** reported in ***(2017) 14 SCC 719***, wherein, it has held that;

> "***7.*** *We have considered the respective submissions, and are of the opinion that essentially the allegations constituted a single transaction between the same parties for a block period split up by the prosecution, presumably for its convenience, into three different cases. The evidence also was common and so is the conviction. Section 427(1) CrPC stipulates that where a person undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, it shall commence at the expiration of the imprisonment previously sentenced, unless the court directs that the subsequent sentence shall run concurrently with such previous sentence. The jurisdiction being discretionary must be exercised on fair and just principles in the facts of a case.*
>
> ***8.*** *We do not consider it necessary to further elucidate or enter into an exposition of the law, in view of the precedents noticed above. Suffice it to observe that in the facts of the case,*

*the exercise of discretion under Section 427(1) of the Code of Criminal Procedure, mandates that the substantive sentences imposed upon the appellant in the three separate prosecutions, are directed to run concurrently, except the default sentence, if the fine by way of compensation as imposed has not been paid by him. The appellant would naturally be entitled to all consequential reliefs for release from custody as available in law based on the present discussion."*

**32.** For the same point, the Learned Counsel for the appellant/A2 also relies upon the judgment of the Hon'ble Supreme Court in ***M.R.Kudva -vs- State of Andhra Pradesh*** reported in ***(2007) 2 SCC 772,*** wherein, it has held that;

"***12.*** *However, in this case the provision of Section 427 of the Code was not invoked in the original cases or in the appeals. A separate application was filed before the High Court after the special leave petitions were dismissed. Such an application, in our opinion, was not maintainable. The High Court could not have exercised its inherent jurisdiction in a case of this nature as it had not exercised such jurisdiction while passing the judgments in appeal. Section 482 of the Code was, therefore, not an appropriate remedy having regard to the fact that neither the* *trial Judge, nor the High Court while passing the judgments of conviction and sentence indicated that the sentences passed against the appellant in both the cases shall run concurrently or Section 427 would be attracted. The said provision, therefore, could not be applied in a separate and independent proceeding by the High Court. The appeal being devoid of any merit is dismissed."*

**33.** The prosecution has to prove that the accused A2/Jayabalan along with A1, A3 and A4 had conspired to sanction the loan and released the credit facility to a fictitious firm created in the name of M/s.Subramanian and Company. To establish the said fact, the account opening form in the name of D.Gunasekaran showing him as onion trader is marked as Ex.P.2. One R.K.Vasu had introduced A2 to the bank and signed in the column meant for introducer. This account opening form is dated 24.01.2005. The said Gunasekaran has given his residents address as No.1/1, 543, 4th Street, Jothi Nagar, Padiyanallur, within a month, A-3/Gunasekaran has informed the Senior Manager, Indian Bank about the change of address and converting his Saving Bank Account into Current Account but his new address has not been provided in his request letter marked as Ex.P.3. The Current Account opening form also mentions only the address found in Ex.P.2. In his application for advance to traders which is marked as Ex.P.5 dated 15.01.2005, he claims that, M/s.Subramanian and Company was established in the year 2001 and he need credit facility for sum of Rs.5 lakhs. It is mentioned in this application that the actual turn over of the firm is Rs.20,48,200/- and projected turn over is Rs.30 lakhs, with a net profit of Rs.3,00,000/-. His income tax returns for the assessment year 2003-2004 submitted at Income Tax Office, Ward-I, Tambaram, on 21.10.2003 indicates that, his total income for that year was Rs.1,02,410/- and he has paid total income tax of Rs.11,355/-. He has not furnished any returns for the other previous years to show that, he is in the trade for 5 years prior to the date of loan application i.e., 15.01.2005. But, this application has been accepted and the loan has been sanctioned after the documents and proposal been appraised by the Branch Manager Jayabalan/A2. In Ex.P.6, the appraisal memorandum signed by A-2 recommends trade loan facility to A-3, a sum of Rs.5 lakhs, at the rate of 12.5% interest, repayable in 48 monthly instalments starting from February–2005, at the rate of Rs.13,273/- per month. For the said loan, A3 has furnished semi filled assets and liability form marked as Ex.P.7, wherein, no essential details about the assets and liability provided, except mentioning the residential address and market value as Rs.40,00,000/- and stock worth Rs.5 lakhs and other immovable property worth Rs.3 lakhs. Apparently, the assets and liability form without necessary particulars been accepted by the A-2 and sanction order Ex.P.8 issued by A2/Jayabalan, the Branch Manager.

**34.** The said Rs.5 lakhs released in favour of A-3 Gunasekaran not been used for any trading purpose but it is proved through documents that the loan amount has been created in the Saving Bank Account No.14586, stood in the name of A-3/Gunasekaran and subsequently, a sum of Rs.2,19,825/- transferred to the Current Account No.6001, which is meant for parking the suspense money of the Branch. This could not have been done without the connivance and knowledge of Branch Manager since the said account itself is maintained by the Bank to lay the suspense money and known as Parking Account. A sum of Rs.5 lakhs credited into the account of A-3/Gunasekaran been withdrawn through the credit slip Ex.P.18, a sum of Rs.2,19,825/- and debited and transferred to Current Account No.6001. The debit slip is marked as Ex.P.19. On 28.01.2005, A-3/Gunasekaran has drawn a sum of Rs.2 lakhs through a self cheque which marked as Ex.P.21. He has issued a cheque for Rs.45,000/- dated 03.02.2005 in favour of M/s.Ind Kraft and the said cheque is marked as Ex.P.22. On 07.02.2005, he has issued another cheque for Rs.30,000/- in favour of M/s.Sri Laxmi Infotech and said cheque is marked as Ex.P.23. Thus the prosecution has proved that after sanction of loan and money substantially been diverted for other purposes.

**35.** A2/Jayabalan has issued a letter dated 21.11.2005 to M/s.Subramanian and Company requesting him to furnish certain particulars like stock registration/tax registration, Insurance Company of the shop, auditors returns, 10 months later to disbursement of loan and the loan amount been withdrawn. A2 in normal course must have sought for these documents prior to sanctioning the loan. It is also been established by the prosecution that the collateral security and equitable mortgage alleged to have been executed by one Padmavathi, a deed which is marked as Ex.P.31 was created by misrepresentation to Padmavathi. The cheques which were issued in favour of M/s.Ind Kraft and M/s.Shree Laxmi Infotech has been encashed by one T.Krishnamoorthy. He, in his evidence, had stated that, to discharge the debt, Kasi/A-1 gave those two cheques to him.

**36.** The suspected documents were sent for hand writing expert opinion and it was found that, the writings found in some of the documents are that of A-4/Prakash. After availing the loan and siphoning it out by transfer or through debit slips and credit slips, withdrawal through self cheque or cheques in the name of third parties, the loan instalments as agreed were not paid and loan account has been declared as Non-Performing Assets on 31.03.2006.

**37.** On cumulative assessment of the material evidence, I hold the prosecution has clearly established that A-3/Gunasekaran, who is the Proprietor of M/s.Subramanian and Company has not furnished satisfactory documents to show that, he was in trade of onion since 2001 or he had substantial turn over in that business to be eligible for trade loan of Rs.5 lakhs. The documents furnished by A-3 were incomplete but however, loan was sanctioned, money was withdrawn and only thereafter, A-2 Branch Manager called for certain documents which should have been obtained prior to sanctioning of the loan while making appraisal. A portion of the loan amount been used to discharge the loan of Kasi (A1), who had indebted to one T.Krishnamoorthy (P.W.9). Therefore, conspiracy regarding cheating along with the public servant by A1, A2 and A3 are proved through the testimony of P.W.2, P.W.9 and Ex.P.2, Ex.P.4, Ex.P.5, Ex.P.18, Ex.P.19, Ex.P.21, Ex.P.22 and Ex.P.23.

**38. Therefore, this Court hold that the conviction and sentence passed by the XI Additional Special Judge, (CBI), Chennai, against A1, A2 and A3 for the offence under Section 120-B r/w 420 of I.P.C and 13(2) r/w 13(1)(d) of P.C Act, 1988 is confirmed. However, as far as this case is concern, the material placed before the Court does not bring A-4 into the net of conspiracy hence acquit A4/Prakash, for lack of evidence.**

**39.**Cheating:-

Pursuant to the said conspiracy by private parties A1/Kasi and A3/Gunasekaran along with A2/Jayabalan, the public servant sanctioned loan to a tune of Rs.5 lakhs to A3/Gunasekaran. He, in turn, permitted to transfer a sum of Rs.2,19,825/- to the parking account of the bank in Current Account No.6001. A2/Jayabalan, being the Branch Manager had authority to handle the said account. He alone had exclusive knowledge how this money transferred to this parking account has been disbursed and for whom. A-2 who is bound to explain had remain silent. He has not explained why this money was transferred from the account of A-3/Gunasekaran. In this scheme of conspiracy, this is not the only incident where the Branch Manager A2/Jayabalan had sanctioned loan without proper document and scrutiny, but there are few more cases in this regard. In the course of conspiracy, the loan amount sanctioned to one person been diverted to the other loanee and guarantors, who had given the property as a collateral security. In the said web of conspiracy, A2 has played a pivotal role along with A-1/Kasi and invariably the loans which had come under the scanner had not been repaid and has been declared as Non-performing Assets. Therefore, the agreement between Kasi/A-1 and A-2/ Jayabalan along with A-3/D.Gunasekaran to do an illegal act or an act by illegal means are well proved through the chain of documents. The circumstances and the manner in which the loan been disbursed and later withdrawn to be utilised for other than trade purpose gives proof for the conclusion that the agreement between the conspirators made possible to siphon the money of the Bank under the guise of loan with intention not to repay. Therefore, A-1/Kasi, who has utilised the loan amount to discharge his liability with T.Krishnamoorthy (P.W.4). A-2/Jayabalan, who had been privy to sanctioning of loan and subsequent withdrawal by A-3/ Gunasekaran, the person who has availed the loan using fabricated document with intention not to repay is proved and A1 to A3 are liable for the offence punishable under Section 420 of I.P.C.

**40.** Hence, the conviction and sentence for the offence under Section 420 of I.P.C imposed by the trial Court as against A1, A2 and A3 confirmed. As far as A-4/Prakash is concerned, he has filled up the cheques Ex.P22 and Ex.P23, except filling up these two documents nothing more is available to incriminate A-4 in this case, hence, benefit of doubt is extended to A-4/Prakash and he is acquitted from all charges.

**41.** Insofar as A-2/Jayabalan being a public servant, his evidence proves that A2/Jayabalan, Branch Manager, had knowingly sanctioned the loan to A-3/Gunasekaran, without proper document and thereby facilitated A1 & A3, who have pecuniary advantage by illegal means by abusing his position as a public servant. He had misconducted himself to get a pecuniary advantage for others by abusing his official position. Therefore, liable to be punished for the offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and the conviction and sentence imposed by the trial Court against this accused is confirmed.

**42.** In the result, the conviction and sentence imposed by the trial Court in C.C.No.24 of 2008 on A1 to A3 are confirmed. The conviction of A4/Prakash is set aside. The period of sentence as confirmed by this Court shall be as under:

| ***Accused*** | ***Offences*** | ***Sentence imposed by this Court*** |
|---|---|---|
| A1 to A3 | 120-B r/w 420 of I.P.C and 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.2,000/- each, in default to undergo S.I for six months. |
| A1 to 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 period of imprisonment already undergone shall be set off under Section 428 of Cr.P.C.

**43.** The period of sentence imposed on these appellants who are accused 1 to 3 in C.C.No.24 of 2008, shall run concurrently together with the period of sentence imposed on them for the similar offence and identical sentence in C.C.No.27 of 2008 of 2008, wherein they are arrayed as A1, A2 and A5 respectively.

**44.** Accordingly, the ***Criminal Appeal No.50 of 2013 is 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.

**45.** Accordingly, this ***Criminal Appeal No.79 of 2013 is Allowed.*** As far as A4/Prakash is concerned, this Court acquit A4/Prakash from all charges. The judgment of conviction and sentence passed by the trial Court in C.C.No.24 of 2008 against Prakash/A-4 alone is set aside. Fine amount paid if any, by the accused/A4 Prakash, shall be refunded to him.

28.04.2023

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

To,

1. The Learned XI Additional Judge, (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.50 & 79 of 2013

28.04.2023