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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.51 & 82 of 2013

Crl.A.No.51 of 2013 against C.C.No.28 of 2008

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

/versus/

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

Prayer in Crl.A.No.51 of 2013: Criminal Appeal has been 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.28 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 IPC and 13 (2) r/w 13 (1)(d) of P.C Act 1988 and Section 420 IPC 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 IPC and 13(2)

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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 of I.P.C 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 A1 & A3 : Mr.R.Vijayaraghavan,

For A2 : Mr.G.R.Hari,
for Mr.R.Baskar

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

Crl.A.No.82 of 2013 against C.C.No.28 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.82 of 2013: Criminal Appeal has been filed under Section 374 of Cr.P.C 1973, pleased to allow this 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.28 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 420 of I.P.C and under

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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 4th Appellant : Mr.RM.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 Court, (CBI cases relating to Banks and Financial Institutions) Chennai, in C.C.No.28 of 2008, in R.C.No.4E/2007/CBI/EOW/Chennai. Crl.A.No.51 of 2013 preferred by Kasi (A1), Jayabalan(A2) and D.Gunasekaran(A3). Crl.A.No.82 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,

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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 A-1 with the help of A2/Jayabalan, Branch Manager, on 01/06/2008 gave an application for opening Current Account in the name of M/s.Sam Fabricators mentioning A.L.Sam as Sole Proprietor. That application accepted by A2 and Account No.1714 was opened. Application for loan accompanied with manipulated documents made and based on the application, without verifying the genuineness of the documents. A-2/Jayabalan, sanctioned trade finance of Rs.10 lakhs to M/s.Sam Fabricators. The immovable property of one V.Kumar offered as collateral security for the loan without his consent and obtained deceitly by A-1, knowingly accepted by A-2, to create equitable mortgage for sanction of loan to cheat the bank abusing his position as a public servant. The loan amount of Rs.10 lakhs was credited into the account of M/s.Sam Fabricators on 03/06/2005. On the same day, from the Current Account No.1714 of M/s.Sam Fabricators Rs.5,80,000/- transferred to the Current Account No.1689 of M/s.Ramesh Infotech owned by one Ramesh (an accused in other connected cases). On 10/06/2005, Rs.1,16,00,00/- transferred to the

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account of Gunasekaran (A-3) in his current account No:1688. Rs.2,00,000/- drawn through self cheque and a cheque for Rs.1,00,000/- issued in favour of Kumar (P.W.11), who gave his property as collateral security for the subject loan.

3. Based on manipulated documents, A-2 sanctioned loan as if, he conducted inspection on 06/06/2005. After disbursement of the loan in the Current Account of M/s.Sam's Fabricated, opened on the introduction of A-1, the loan amount substantially withdrawn through 4 cheques and the loan amount not repaid.

4. 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.Sam Fabricators and few such accounts running in outstanding and instalments were not properly paid. Therefore, the account was declared as 'Non-Performing Assets' (NPA). 14 such accounts also become NPA and it was noticed by the bank higher Officials that, serious irregularities had been committed by the then Branch Manager Jayabalan/A-2 in disbursing the credit facilities based on manipulated documents and persons in whose name collateral security created complaining that their documents

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were collected by deceit and signatures obtained on false promise and false representation. In this connection, K.B.Nagendra Moorthy, General Manager and Circle Head of Indian Bank, Circle Office, gave a written complaint, on 20.12.2006 to the Deputy Superintendent of Police, CBI, EOW, Chennai, along with the in-house investigation report submitted by Bank Investigating Officer Mr.K.Radhakrishnan. When the matter was taken up for investigation and 8 separate final reports 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. The loan amount withdrawn either directly or after transfer of the money from one loanee account to other loanee without his knowledge and withdrawn by the accused person using the signed blank cheque already collected from them. The complicity of the role played by the accused persons in each case to the extent possible been segregated and explained in the final reports.

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

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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 these charges, the prosecution has examined 13 witnesses, relied upon 51 exhibits (Ex.P.1 to Ex.P.51). On the side of the defence, Shanmugam and Jayaraman examined as D.W-1 and D.W-2. Two letters of Indian Bank Ex.D-1 and Ex.D-2 marked to prove that, after Non-Performing Assets, Indian Bank has taken recovery action under the SARFAESI Act and Kumar, who stood as guarantor for the loan and given his property as collateral security had discharged the loan due after his property was brought to auction sale. As a consequence, the Indian Bank in Ex.D-2 dated 11/06/2012 informed the SP, SPE, CBI, EOW,Chennai, the respondent herein that, the loan due cleared and loan account closed, therefore there is no objection from the Bank to return the original title deed of Kumar (P.W.11) to him.

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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 PC Act	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.51 of 2013. A4/Prakash has preferred present appeal in C.A.No.82 of 2013.

9. The evidence placed by the prosecution proves the fact that the Current Account No:1714 was opened in the name of M/s.Sam Fabricators on the

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introduction of A-1/Kasi, who has signed in Ex.P-2 as introducer. The loan was sanctioned by A-2/Jayabalan contrary to the circulars of the Bank (Ex.P-44 to Ex.P-50). Out of Rs.10 lakhs loan amount of Rs.9,96,000/- withdrawn through 4 cheques (Ex.P-24 to Ex.P-27). The loan amount remained unpaid till the launching of prosecution and later, discharged by V.Kumar (P.W-11).

10. Mr.V.Kumar, who is the key witness in this case has deposed that, he know A-1/Kasi when he approached A1/kasi for a loan of Rs.1,00,000/- to met his family expenses, A-1/Kasi promised to arrange loan from Indian Bank. In the year 2005, few persons inspected his property and told him to come to the bank with the property document. A-1/Kasi took him to the Bank. He met the Branch Manager A-2/Jayabalan, A-4/Prakash and one another person by name Sam was present. He gave his document. A-4/Prakash asked him to sign in the printed forms. He insisted to file the loan amount, but A2/Jayabalan assured he will file it as Rs.1 lakh. They showed a cheque for Rs.1 lakh. He received Rs.1 lakh from them. When he came out, A-1/Kasi and A-4/ Prakash collected Rs.5,000/- from him as commission. Later, from the defence document, Ex.D-1 he came to know his property as a collateral

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security for the loan of M/s.Sam Fabricators. Hence, he cleared the loan. To save his property from being auctioned under the SARFAESI proceedings, Ex.D.2 is the letter given by Indian Bank to CBI, to return back the original title deed to him.

11. The Learned Counsel appearing for the appellant extensively argued in defence of this appellants. As far as A1/Kasi is concerned, the Learned Counsel for the appellant submitted that there is no evidence that A1/Kasi has made any pecuniary advantage in this transaction and no evidence to prove there was meeting of mind in disbursing the loan for M/s.Sam Fabricators as a result of conspiracy or withdrawal of the loan amount with an intention to cheat.

12. Regarding A2/Jayabalan, the Branch Manager is concerned, the Learned Counsel for this appellant argued that, he had done his duty in accordance with the procedure. Only after inspecting the property and being satisfied with the valuation certificate as well as legal opinion, he had sanctioned the loan.

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13. As far as A3/D.Gunasekaran is concerned, the Learned Counsel for this appellant submitted that, the cheque for Rs.1,16,000/- in his favour paid from the account of M/s.Sam Fabricators cannot be a reason to presume he is a co-conspirator and he shared with A1 and A2 the intention to cheat.

14. As far as A4/Prakash is concerned, it is contended by the Learned Counsel for this appellant that, the opinion of the hand writing expert, who has claim that the loan application form, account opening form and documents annexed along with loan application are in the writings of A4/Prakash, is not an incriminating evidence to convict him for the charge of conspiracy or cheating.

15. Per contra, the Learned Special Public Prosecutor for the respondent/State has rightly pointed out that, scheme of conspiracy and the role of each accused in siphoning the loan money and thereby cheating the bank as well as the guarantor Kumar (P.W.11), who gave his property as collateral security, is well found.

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16. A1/Kasi had invariable introduced the account of these cheaters and got pecuniary advantage. In this case, the cheque in favour of M/s.Ramesh Infotech for a sum of Rs.5,80,000/- been encashed and the said Ramesh is none other than the brother-in-law of A1/Kasi. He has introduced the account in the name of M/s.Sam Fabricators. There is no evidence to show that the firm by name M/s.Sam Fabricators exist.

17. P.W.11 had identified A1/Kasi as a person who arranged the loan for him and gave Rs.1,00,000/-. As commission for arranging the loan, A-1 received Rs.5000/-. Therefore, A1/Kasi cannot plead innocence.

18. The Learned Special Public Prosecutor for the respondent submitted that regarding A3/D.Gunasekaran, the beneficiary of cheque for Rs.1,16,000/- from M/s Sam Fabricators account has not come forward with any explanation what for he received this money. Having shared the proceeds of crime, he cannot plead innocence.

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19. As far as A4/Prakash is concerned, the Learned Special Public Prosecutor for the respondent states that, apart from the hand writing expert evidence, P.W.11 has identified, A4/Prakash is a person, who filled the application in his presence and received commission along with A1. Therefore, submitted that, the conspiracy which hatched in secrecy been well found and proved by the prosecution. The cheating of the bank also proved through withdrawals from the loan money.

20. This Court, having considered the evidence extensively in this case as well as the other batch of cases, have no doubt that, the prosecution had proved the charge of conspiracy between these four accused persons to the core. The conspiracy hatched in secrecy and only circumstances exposes the crime of conspiracy. In this case, the bank account of M/s.Sam Fabricators introduced by A1/Kasi. The loan sanctioned by A2/Jayabalan, the Branch Manager, without proper verification and adhering to the guidelines, A3/D.Gunasekaran, who is one of the beneficiary of the loan amount by encashing Rs.1,16,000/-, by transfer to his current account. A4/Prakash is a person, who has prepared all the manipulated documents

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and P.W.11 Kumar, is the eye witness for it. Further, the hand writing expert opinion P.W.10 (Ravi) had also opined that, the entires in Ex.P.2 and Ex.P.3 (series) were written by A4/Prakash. The evidence adduced by the prosecution indicates that, A4/Prakash had played prominent role in accompanying A1/Kasi to entice the loan seekers and obtained their signature in blank formats and thereafter, filing it according to their convenience. Therefore, this Court hold that the conviction and sentence passed by the XI Additional Special Judge, (CBI), Chennai, against A1 to A4 has to be confirmed.

21. The period of sentence imposed on these four appellants by the trial Court in C.C.No.28 of 2008 shall run concurrently along with the period of sentence imposed on them in C.C.No.27 of 2008 for similar sentence of identical offence wherein they are arrayed as A1, A2, A5 and A6.

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22. Accordingly, the ***Criminal Appeal Nos.51 & 82 of 2013 are dismissed.*** The trial Court shall secure the accused persons/A1 to A4 and commit them to prison to undergo remaining period of sentence. The period of imprisonment already undergone ordered to be set off under Section 428 of Cr.P.C.. Bail bond stands 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, (CBI Cases), Chennai.
2. The Inspector of Police, CBI, EOW, Chennai.
3. The Public Prosecutor, High Court, Madras.

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Dr.G.JAYACHANDRAN,J.
bsm

Pre-Delivery common judgment made in
Crl.A.Nos.51 & 82 of 2013

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