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.52, 64, 81 & 102 of 2013

Crl.A.No.52 of 2013 against C.C.No.27 of 2008

1. R.Kasi,
2. M.Jayabalan,
3. D.Gunasekaran, ... Appellants/Accused No.1, 2 & 5

/versus/

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

Prayer in Crl.A.No.52 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.27 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, 467, 406, 467 r/w 471 of 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 and A5 for an offence punishable under Section 120-B r/w 420 IPC and 13(2) r/w 13(1)(d) of PC Act 1988, 406, 467 r/w 471 of I.P.C 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 (A2 only) and to pay a fine of Rs.5,000/- under section 13(2) r/w 13(1)(d) of PC Act 1988.

For A1 : Mr.R.Vijayaraghavan

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

For A5 : Mr.R.M.Meenakshisundaram,

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

<u>Crl.A.No.64 of 2013 against C.C.No.27 of 2008</u>

Lenin Sebas. ... Appellant/Accused No.4

/versus/

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

<u>Prayer in Crl.A.No.64 of 2013:</u> 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.27 of 2008, dated 27.12.2012 against the appellant/4th accused 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 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 A4 : Mr.C.K.M.Appaji,

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

Crl.A.No.81 of 2013 against C.C.No.27 of 2008

K.Prakash. ... Appellant/Accused No.6

/versus/

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

Prayer in Crl.A.No.81 of 2013: Criminal Appeal has been filed under Section 374 of Cr.P.C 1973 r/w Section 27 of P.C Act, 1988, 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.27 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, 471 of I.P.C and under Section 13(2) & 13(1)(d) of P.C Act, 1988 and also sentences 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 A6 : Mr.R.M.Meenakshisundaram,

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

Crl.A.No.102 of 2013 against C.C.No.27 of 2008

Ramesh. ... Appellant/Accused No.3

/versus/

State Rep. by
The Inspector of Police,
SPE, CBI, EOW,
Chennai.
(R.C.No.4E/2007/CBI/EOW/Chennai). ... Respondent/Complainant

Prayer in Crl.A.No.102 of 2013: Criminal Appeal has been filed under Section 374 of Cr.P.C 1973, pleased to call for the records in C.C.No.27 of 2008 on the file of XI Additional Special Judge, (CBI Cases relating to Banks and Financial Institutions), Chennai, dated 27.12.2012, hear the appellant and allow the appeal sentencing 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 and 467 r/w 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 A3 : Mr.R.Vijayaraghavan.

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

COMMON JUDGMENT

These four Criminal Appeals are filed against the judgment passed by XI Additional Special Judge, (CBI cases relating to Banks and Financial Institutions) Chennai, in C.C.No.27 of 2008 in R.C.No.4E/2007/CBI/EOW/ Chennai.

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

The case of the prosecution is that, A-1/Kasi as Proprietor of M/s.Netra Infosys, A-2/Jayabalan as the Branch Manager of Indian Bank, South Usman Road Branch, Chennai. A-3/M.S.Ramesh as the Proprietor of M/s.Ramesh Infotech, A-4/Lenin Sebas as the Proprietor of M/s.Jerin Package, A-5/D.Gunasekaran as the Proprietor of M/s.Sri Subramanian & Company and A-6/Prakash an associate of A1/Kasi during the year 2005-2006 while A-2 was serving as the Branch Manager of

Indian Bank, South Usman Road, Chennai branch entered into a conspiracy to promote firms to avail loan from the Indian Bank, South Usman Road Branch by producing fabricated documents and to cheat the bank by not repaying the loan. Pursuant to the said conspiracy, Bank Accounts were opened in the name of M/s.Ramesh Infotech, as proprietor in the name of S.Ramesh; M/s.Jerin Polybags in the name of Lenin Sebas; and M/s.J.R.S. Traders a partnership firm floated by A-1 Kasi and A-6 K.Prakash; applications for loan with fabricated documents are presented at Indian Bank, South Usman Road where A-2 was serving as Branch Manager. The loan applications submitted along with forged, fabricated and manipulated documents was sanctioned by A-2 without any pre-sanction inspection and proper scrutiny of documents.

3. On the application of A-3/S.Ramesh, for cash credit facility of Rs.10,00,000/-, a trade finance loan of Rs.9,00,000/- sanctioned by A-2 on 05/03/2005. The said amount was transferred to the account of M/s.Ramesh Infotech. Likewise, credit facility of Rs.10 Lakhs was extended to M/s.Jerin Polybags, based on the application submitted by Lenin Sebas (A-4). The loan money of Rs.10 lakhs got transferred to the account of M/s.Jerin Polybags on 24/05/2005. Soon after the deposit of the amount in the accounts of these two firms floated by A-3 and A-4, the money was withdrawn and misappropriated in connivance of other accused. The borrowers failed to repay the loan and the bank declared them as Non performing assets on 31/03/2006. Similarly, A-1 and A-6, fraudulently by misrepresentation and false promise to arrange loan, made the partners of M/s.J.R.S Traders to sign bank account opening form and loan application form. Thereafter, Current Account No:1705 opened with the introduction of S.Ponraj of M/s.Asia Power Electricals, holder of current account No:1694. He is another loanee, who borrowed Rs.10 lakhs from Indian Bank with the help of A-1/Kasi and defaulted. In connivance of A-2, the bank account of M/s.J.R.S Traders was operated by A-1 and A-6. They filled the application and other documents, they got blank cheque from the partners of M/s.J.R.S Traders and the loan of Rs.10 lakhs sanctioned by A-2 deposited into the account of M/s.J.R.S Traders on 05/05/2005. Soon after, through a cheque in the name of S.Ramesh (A-3) the entire 10 lakhs was withdrawn, as per the scheme of conspiracy. From the account of A-3/Ramesh, money was transferred to account No:6001, which is the Parking Account of the bank. Later, the money is used to clear the cheques purchased by the bank from A-1 and A-3. To erase the trail of the siphoned money, with the help of A-2, other accused had laid the loan money into the Parking Account of the Bank and subsequently split it to clear the cheques purchased by the Bank.

4. The documents submitted for getting loan were not genuine. They were either false or fabricated. The documents of the security were obtained by deceit and used to create equitable mortgage. Knowingly, A-2/Jayabalan sanctioned loan to M/s.J.R.S Traders. After crediting the loan amount in the account of M/s.J.R.S Traders, A-6/Prakash without the consent and knowledge of its partners withdrew the money and misappropriated. A-2/Jayabalan, being privy to the conspiracy permitted A-3/Ramesh to withdraw the money. Later, for not repaying the loan due the account of M/s.J.R.S Traders was declared as Non Performing Assets on 31/03/2006.

5. For the loan of M/s Ramesh Infotech, collateral security in the name of one Sambasivam was given. The signature of Sambasivam, the guarantor was forged by A-1/Kasi. The forged documents were used as genuine to appear as if, the loan was sanctioned after obtaining due security. The loan advanced to these three firms totally to a tune of Rs.29 lakhs been misappropriated by A-1 to A-6, thereby causing wrongful loss to the Bank and corresponding wrongful gain to the accused. Thus, the accused A-1 to A-6 cheated the bank by availing loan to a tune of Rs.29 lakhs by producing forged documents as genuine.

6. After A-2/Jayabalan transferred from South Usman Road, Indian Bank, one Mr.A.G.Sundaram succeeded A-2/Jayabalan as Branch Manager of Indian Bank, South Usman Road, found several trade facility loans sanctioned by A-2 remain unpaid and the instalments has not paid properly. The accounts under the Annapoorna Arogya loan which become Non Performing Assets noticed by the bank higher Officials, on scrutiny disclosed serious irregularities committed by the then Branch Manager Jayabalan/A-2. 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.

7. The complaint was taken up for investigation. Out of 15 accounts, in eight cases, evidence for fraudulent disbursement of loan amount sufficiently found and therefore, eight final reports came to be filed by the Inspector of Police, Loverson Kuruvila.

8. As far as the subject matter of the present appeal is concerned, final report dated 22/07/2008 was taken cognizance by the Court in C.C.No.27 of 2008 against 6 accused, who are the appellants namely R.Kasi(A-1), M.Jayabalan(A-2), S.Ramesh (A-3), M.S.Lenin Sebas (A-4), D.Gunasekaran (A-5) and Prakash (A-6). In column No.2 of the final report, R.K.Vasu, M.Sounder Rajan and D.Ranganathan were shown as accused persons not sent up for trial.

9. 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 A6	120-B r/w 406, 420, 467 and 467 r/w 471 of I.P.C and Section 13(2) r/w 13(1)(d) of P.C Act, 1988.
A1 and A3 to A6	420 of I.P.C
A1	467 I.P.C, 467 r/w 471 of I.P.C
A2	13(2) r/w 13(1)(d) of P.C Act, 1988, 406 I.P.C 467 r/w 471 of I.P.C

10. To prove the charges, the prosecution has examined 15 witnesses (P.W.1 to P.W.15) and marked 98 exhibits (Ex.P.1 to Ex.P.98). 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 Nagendra Moorthy, General Manager, Indian Bank, and registered the F.I.R dated 21/06/2007 Ex.P-98 been examined as D.W.1 and the fourth accused Mr.Lenin Sebas examined as D.W-2. Four documents marked to support the defence case and same marked as Ex.D-1 to Ex.D-4.

11. The Trial Court, on appreciating the evidence held the accused guilty of the charges mentioned above and sentenced them to undergo with the following punishment as below:-

Accused	***Offences***	***Conviction and Sentence imposed by the Trial Court***
A1 to A6	120-B r/w 406, 420, 467 and 467 r/w 471 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 and A3 to A6	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.
A1	467 of I.P.C	To undergo R.I for one year and to pay fine of Rs.2,000/-, in default to undergo S.I for six months.
A1	467 r/w 471 of I.P.C	To undergo R.I for one year and to pay fine of Rs.2,000/-, in default to undergo S.I for six months.
A2	13(2) r/w 13(1)(d) of P.C Act, 1988	To undergo R.I for three years and to pay fine of Rs.5,000/-, in default to undergo S.I for one year.
A2	406 of I.P.C	To undergo R.I for one year and to pay fine of Rs.2,000/-, in default to undergo S.I for six months.
A2	467 r/w 471 of I.P.C	To undergo R.I for one year and to pay fine of Rs.2,000/-, in default to undergo S.I for six months.

The substantial sentence of imprisonment ordered to run concurrently and the period of imprisonment already undergone ordered to be set off.

12. Aggrieved by the above conviction and sentence passed by the trial

Court, the A1, A2 and A5 namely, R.Kasi, M.Jayabalan and D.Gunasekaran have preferred Appeal in C.A.No.52 of 2013. A-3/Ramesh has preferred Appeal in C.A.No.102/2013. A-4/Lenin Sebas has preferred Appeal in C.A.No.64 of 2013 and A-6/Prakash has filed Appeal in C.A.No.81 of 2013.

13. According to the appellants, the trial Court failed to consider that, the credit facilities was extended to M/s.Ramesh Infotech, M/s.Jerin Polybags and M/s.J.R.S Traders 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 need not 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 the 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. As a Branch Manager A-2/Jayabalan, not expected to scrutinize the application before sanctioning the loan. The Loan Manager Sounderajan (PW-4) is the person directly in charge and responsible for the disbursement of the loan and not A-2 the Branch Manager. When the complaint Ex.P.1 dated 20.12.2006 was lodged, the needle of suspicion was only against the loan Officer. In the F.I.R by D.W-1 registered on 21/06/2007, the said Sounderajan was shown as an accused. However, after completion of investigation, his name was shown under column (2) along with one R.K.Vasu and D.Ranganathan as accused who are not sent for trial.

14. As per the procedure for trade loan, on the recommendation of the loan Officer, loans are 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 the three firms which are subject matter of this case are fictitious firm and the document furnished by the Company for availing trade loan are fabricated documents. There is no evidence to show that, A1 to A6 joined together, conspired to cheat the Indian Bank.

15. M/s.Ramesh Infotech, M/s.Jerin Polybags and M/s.J.R.S Traders are all firms running actively. The loans disbursed were used for purchase of machineries by the loanees and same was found in the prosecution evidence itself. The accounts for these firms were introduced by the existing customers of the Bank and it is in tune with the prevailing banking practice. The current account No:1689 in the name of M/s.Ramesh Infotech was opened on 09/03/2005 and was introduced by D.Gunasekaran, the holder of the Current Account No:1688. Apart from Demand Promissory notes executed by Ramesh for Rs.9,00,000/-, R.K.Vasu and Sambasivam stood as guarantor for the loan and executed Agreement of guarantee for the loan of Rs.9,00,000/- which is sanctioned to M/s.Ramesh Infotech.

16. Likewise, for M/s.J.R.S Traders, the Current Account No:1705 was opened on 28/04/2005 by its partner Mr.Mohamed Rizwan and Mr.Jahufar Sadique. Agreement of guarantee for M/s.J.R.S Traders was executed by one Pushpa, along with valuation certificate and legal opinion and a letter of acknowledgement regarding the deposit of her title deed. The property given as collateral was inspected on 28/04/2005. Joint pro-note from the partners was obtained before recommending for sanction of Rs.10,00,000/- as trade loan.

17. Similarly, in the case of M/s.Jerin Polybags, Proprietor Mr.Lenin Sabas, on 16/05/2005, the current account No.1710 was opened on the introduction of one S.Ponraj holder of the account No.1694. On receipt of loan application for trade assistance, the previous sales turnover, income tax returns and the title of the property given as collateral security were scrutinized and after inspecting the property on 23/05/2005 loan of Rs.10 lakhs sanctioned. One Mrs.Subashini stood as guarantor and she executed the agreement of guarantee and deposited the title deed on 23/05/2005. Pro-note was executed by M.S.Lenin Sabas, the Proprietor of M/s.Jerin Polybags. Thus, the loans were fully secured by the 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.

18. Based on in-house enquiry report submitted by

Mr.K.Radhakrishnan, Senior Manager, Indian Bank (P.W.5), a complaint dated 20/12/2006 was given by K.B.Nagendra Moorthy, General Manager (P.W.1) to D.W.1 Jayaraman, Superintendent of Police. The in-house report of Mr.K.Radhakrishnan is not a true and complete report. The complaint was given by a person, who did not have direct knowledge about the content of the complaint. In respect of suspicion of Mr.Radhakrishnan (P.W.5) that, for disbursement of loan, commission paid to Branch Manager was 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 467 or 471 of IPC or under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act for misconduct of a public servant.

19. It was purely a financial transaction and the loan was disbursed after scrutiny of the documents by the Loan Officer and after securing the property for repayment of the loan. Therefore, only because of default in repayment of the loans availed by these three firms, the accused persons cannot be suspected to be a conspirator to cheat the Bank. 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.

20. The Learned Counsel appearing for A-4/Lenin Sebas in Crl.A.No.64 of 2014 submitted that, Lenin Sebas is an entrepreneur involved in manufacturing heavy density polythene bag in the name and style of M/s.Jerin Polybags. He was running his business in a rented premise at L-12, SIDCO Industrial Estate, Kodungaiyur, Chennai, for its working capital sought financial assistance through A1 Kasi, a retired RBI official and handed over the profile, invoices, quotations, Bank Statements and Income Tax returns along with documents of Mrs.Subashini to create collateral security. A-1 Kasi ensured the process of loan in the Indian Bank, Usman Road Branch with the assistance of A-2, who was the Branch Manager at that time. But the loan was not disbursed to the appellant even after the sanction. Thus, insisted banker to disburse the loan orelse action will be taken on fear of legal action. The banker sent a Demand draft of Rs.3,00,000/- to M/s.Intech Plastic Industries. Thereafter, A4 paid another sum of Rs.2,50,000/- to the manufacturer and recevied machineries value Rs.5,50,000/-. Subsequently, he learnt that A1 & A2 without his knowledge had siphoned the loan sanctioned to him. A-1 and A-2 had siphoned the loan amount without his knowledge. During investigation, when the investigating agency wanted him to give the statement, he narrated the above facts to the police as well as to the Judicial Magistrate, who recorded his statement u/s 164(5) Cr.P.C. However, he had been falsely arrayed as 4th accused in C.C.No.27/2008 (which is the subject matter of this appeal) and 5th accused in C.C.No.30/2008 (Against the conviction in C.C.No.30/2008, this appellant has preferred C.A.No.149/2013).

21. According to the Learned Counsel, Mr.Lenin Sebas (A4) is not a party to alleged conspiracy. There was no meeting of mind between him and other accused. A4/Lenin Sebas, in fact was a victim at the hands of A-1 and A-2, who deceived him by promising loan and obtained documents from him and misused it. Alleging that, the partners of M/s.J.R.S Traders, who are similarly placed has not prosecuted but, A-4 is prosecuted in spite of his disclosure how his documents were taken away by A-1 and A-6 to open account in the name of his firm M/s.Jerin Polybags and availed loan.

22. The Learned Counsel appearing for A-5/Gunasekaran, submitted that, except introducing M/s.Ramesh Infotech in the account opening form marked as Ex.P-2, he has not done anything in connection with the loan application or the disbursement or its withdrawal. He is falsely implicated in this case (C.C.No.27 of 2008) and two other cases in C.C.No.24 of 2008 and C.C.No.28 of 2008.

23. On the similar lines, the Learned Counsel for A-6/Prakash states that, A6/Prakash had no role in this case and the prosecution has not placed any document to implicate him in the scheme of conspiracy. No witness for the prosecution has deposed incriminating A-6. The alleged hand writing expert opinion based on the forcible extraction of the handwriting of the accused without the permission of the Court, vitiate the expert opinion. Therefore, A-6 cannot be held guilty of committing or abetting or aiding any of the offences under section 406, 420, 467, 471 I.P.C or Section 13(2) r/w 13(1)(d) of P.C Act.

24. Mr.K.Srinivasan, Learned Special Public Prosecutor appearing for the State submitted that this is not a stray case where the loan was sanctioned bonafidely by A-2/Jayabalan or incidentally A-5/D.Gunasekaran introducing A-3 M/s.Ramesh Infotech to open the bank account. 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 were enticed to hand over their property document and sign in the loan application form and other documents. Using those documents, loans were granted in the name of fictitious or non-functional firms. The required documents were not properly scrutinised. A-2/Jayabalan, Branch Manager, is the final authority for disbursement of the trade loan. He, without proper scrutiny of the documents, knowingly sanctioned the loan and allowed the loanees 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, in-house enquiry was ordered to be conducted by K.Radhakrishnan, Senior Manager, Vigilance Department. On scrutiny of the records and spot visit to the addresses of the loanees, he gave a report with the following findings:-

"*1. The H.O Guidelines regarding the term loans was not followed.*

2. The rule allows 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..."

25. In this case, third party property obtained as security without approval from the higher Authorities. P.W-11 Muhamed Rizwan one of the partner of M/s.J.R.S Traders had deposed that, Ex.P-14 the account opening form in the name of M/s.J.R.S Traders not filled by him. The Application for advance of loan was not filled when he and his partner signed. Among the enclosures Ex.P-15 from page 4 to 17 were not furnished by him. While signing Ex.P-16 and Ex.P-17, it was not filled. He does not know who was Pushpa, the guarantor for his loan. The said Pushpa whose property taken as collateral security for the loan advanced to

M/s.J.R.S Traders, was examined as P.W-13. She had deposed that the property was purchased by her in the year 2000. The original title deed is in Vijaya Bank for the mortgage loan of Rs.6 Lakhs. A1/Kasi promised to arrange personal loan of Rs.1 Lakh from Indian Bank where his friend is working. So, she handed over the photocopy of title deeds to Kasi (A-1). After a month, A-1/Kasi asked her to come to Indian Bank to sign some papers. When she went to the Bank, she saw Kasi/A1 and another person. The other person who was with A-1/Kasi got her signature in few forms. She identified A-6 (K.Prakash), who was present in the Court as the person who was with A-1 and got her signatures in the forms. She had further stated that A1 and A6 promised that she will get the loan within 15 to 30 days, but she did not get any money.

26. Thus, A-1 and A-6, who had received the documents from Pushpa on a false promise that, they will get personal loan for her, had collected title document, ration card copy, EB card and used it as a collateral security for the loan of M/s.J.R.S Traders. The documents fabricated by these accused accepted as genuine by A-2 the Branch Manager and had sanctioned loan of Rs.10 Lakhs to

M/s.J.R.S Traders. In Ex.P-16, the second accused has made a false entry that, he has inspected the property of Pushpa on 28/04/2005 a residential building worth Rs.17 lakhs. The hand writing experts opinion had indicated that, the account opening form in the name of M/s.J.R.S Traders (Ex P-14) and the remittance of cash to open the account was written by A-6. The loan application Ex.P-15 contain fake audit reports and working capital particulars. The applicant M/s.J.R.S Traders are customers of ICICI Bank till they applied for loan from Indian Bank, but no confidential opinion from ICICI bank was obtained by A-2 before sanctioning the loan. Further, the sum of Rs.10 Lakhs credited in full in the Current Account No:1705 of M/s.JRS Traders by A-2 the Branch Manager on 06/05/2005. The blank cheque signed by the Partners of M/s.JRS Traders filled by A-6 and the entire Rs.10 lakhs was withdrawn. The criminality of the accused persons clearly proved by the prosecution through the documentary and oral evidence that, how the fake loan applications were utilised to cheat the bank and the loans were not properly secured. A-2 even without pre sanction inspection advanced loan to the new customers immediately after opening the account in his branch. First, in the name of M/s.Ramesh Infotech the current account No:1689 opened on 09/03/2005 (Ex P-2) on the introduction of A-5 D.Gunasekaran. Ramesh the Proprietory of M/s.Ramesh Infotech is brother in law of Kasi (A-1). For the loan, R.K.Vasu S/o.Kasi (A-1) is the guarantor (Ex.P-8 series) and second guarantor is one Sambasivam. The said Sambasivam denying the execution of letter of guarantee, wrote a letter Ex.P-77 to the Bank.

27. A-6 using the blank cheque given by its partners withdrew the entire Rs.10 lakhs loan sanctioned to M/s.J.R.S Traders and deposited Rs.9 lakhs in cash into the current account of M/s.Ramesh Infotech on 06/05/2005. Further, A-3 withdrawn a sum of Rs.9,95,000/- from the loan proceeds of M/s.Jerin Polybags and deposited Rs.8 lakhs in the current account of M/s.Ramesh Infotech on 25/05/2005. A-2 the Bank Manager has transferred these two amounts from the account of A-3 into Parking Account of the Bank (A/c No:6001) and later, used to offset the two cheques purchased by the Bank favouring M/s.Ramesh Infotech and A-5/Gunasekaran.

28. The Learned Special Public Prosecutor appearing for CBI, submitted that, the web spin by the accused persons to misappropriate the money after sanctioning loans explained by P.W-5 in his report marked as Ex.P-76 dated 07/03/2006. Pushpa (P.W-13), Sambasivam and Tirumalai (P.W-12) whose property documents misused by the accused persons to create equitable mortgage for the loans sanctioned to M/s.JRS Traders, M/s.Ramesh Infotech and M/s.Jerin Polybags respectively had given statements that A-1 and other accused enticed them to part away their property documents and other documents on the promise they will arrange loan but failed to arrange the loan and also later came to know that their documents were used as security for third parties loan whom they don't know and never consented to stand as surety and offer their property.

29. A-6/Prakash, had been close associate to A-1/Kasi. He has not only indulged in filling up the forms and other documents with false details knowing well that the details furnished are false, he also been benefited monetarily. The entire loan amount of Rs.10 Lakhs sanctioned to M/s.J.R.S Traders, withdrawn by A6/Prakash *vide* cheque Ex.P.87 drawn in his favour by M/s.J.R.S Traders. According to P.W-11 Muhamed Rizwan partner of M/s.J.R.S Traders, A-1 and his son R.K.Vasu known to him in the context of supplying computer peripherals. They owe his firm a sum of Rs.45 lakhs. When P.W.11 asked payment, A-1 told that, at present he does not have money. However, suggested that, he will arrange bank loan of Rs.15 lakhs for their firm and he will discharge the debt by repaying the Bank loan instalments. Believing A-1, they gave documents and signed blank cheque. The said cheque Ex.P-87 for Rs.10 Lakhs encashed by Ramesh (A-3) and deposited Rs.9,00,000/- in his Current Account No:1689 (Ex.P.3). Also, Ramesh (A-3) had encashed Rs.9,95,000/- from the loan proceeds of M/s.Jerin Polybags through Ex.P.51 cheque dated 25/05/2005. On the same day, he has deposited cash Rs.8 lakhs in his Current Account No:1689 (Ex.P-3). Subsequently, on behalf of M/s.Jerin Polybags, Demand draft for Rs.3 lakhs arranged by the accused persons to pay his supplier of machinery at Gujarat. Therefore, conspiracy among the accused A1 to A6 well established through documentary evidence and witnesses, who had dealt with those documents.

30. 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 to satisfy the surety, who have given the property unknowingly that their property been charged as a collateral security for the loan availed by unknown third parties.

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

32. Precisely the prosecution case is that, more than 12 firms were created pursuant to the conspiracy hatched by Kasi/A1, private individual a retired RBI employee and Jayabalan/A2, Branch Manger, Indian Bank, South Usman Road, Chennai. The parties who were in need of loan, enticed by A-1 to part away with their title documents. Made them to sign in the blank account opening form, loan application and other Forms required for sanctioning loan, including letter of consent to create equitable mortgage. These documents were utilised for creating collateral security. The documents were not scrutinized by A-2 the branch manager and he failed to conduct pre sanction inspection but recorded as if he inspected the property. After sanctioning the loan and releasing the amount into the loanees account, money has been withdrawn and diverted into the accounts of the accused person and not utilised for the respective trade, for which the loan was granted. Particularly, the loan of Rs.10,00,000/- sanctioned to M/s.Jerin Polybags, was withdrawn in entirety by A-3 Ramesh. However, a Demand draft in favour of M/s.Intec Plastic Machinery, Gujarat for Rs.3 lakhs was purchased from the account of A-3 and sent to supplier of machinery to M/s.Jerin Plasitic owned by A-4. The receipt of the machinery is admitted by A-4. However, till launching of prosecution, A-4 has not repaid the loan to the Bank, which has advanced the loan to purchase that machine. Therefore, A-4 plea that, his document was misused by A-1 and A-3 in connivance of A-2 though true, at the same time, he is not similar to the innocent partners of M/s.J.R.S Traders, who had not reaped any monetary benefit out of the transaction.

33. In this case and in other cases, invariable the loanees failed to pay the instalments and the accounts were declared as 'Non-Performing Assets'. The guarantors, who gave their property as collateral security, had deposed that the documents were obtained from them by A-1, promising to arrange loan but they did not get any loan from the bank. In this scheme of conspiracy, some of the loanees like A-3 and A-4 had sought for loan knowingly that they are not in trade for which they seek loan. The loan amount is not meant for any promotion of trade and they had no intention to repay the loan. Some of the loanees like the partners of M/s.JRS Traders were innocent loan seekers, they were mislead by Kasi/A1 and in connivance with Branch Manager A-2/Jayabalan had fabricated the documents and used it as genuine to avail loans.

34. The Learned Counsels appearing for the 2nd accused/Jayabalan Branch Manager made the following submissions:-

a). The transactions were genuine and done in the course of duty. The appellant never had intention to cheat and there was no element of conspiracy namely an illegal agreement to do an illegal act or legal act by illegal means or cheating, forgery or fabrication of accounts. The Learned Counsel appearing for the A2/Jayabalan at length argued to impress upon this Court that, all these transactions were only done bonafidely in normal course of discharge of the duty and there was no agreement whatsoever between A-2/Jayabalan, Kasi/A-1 or any other loanees.

b). A-2/Jayabalan, the Branch Manager 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). When each and every incriminating circumstances not establishes guilt of the appellants and the chain of events are broken, the appellants cannot be convicted.

35. 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."*

36. The Learned Counsel for the appellant/A2 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.

37. In support of this argument, he rely upon the judgment of the Hon'ble Supreme Court in ***K.R.Purushothaman and State of Kerala*** reported in ***(2005) 12 SCC 631***, 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."*

38. Further, the Learned Counsel for the appellant/A-2 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."

39. Furthermore, the Learned Counsel for the appellant/A2 also relies upon 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.”

40. And also, the Learned Counsel for the appellant/A2 relies upon 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.*"

41. Further, the Learned Counsel for the appellant/A2 also submitted that in the absence of proof or charge pursuant to the conspiracy, prosecution has to show that the Branch Manager has obtained any valuable things or pecuniary advantage by illegal or by corrupt means, an offence under Section 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988 will never get attracted. Therefore, even assuming that, sanctioning the loan without proper scrutiny of document *per se* will not be an inference of proof of obtaining illegal gratification or pecuniary advantage. None of the witness examined by the prosecution had deposed that, A2/Jayabalan Branch Manager, by sanctioning these three loans 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.

42. In support of his 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."

43. The Learned Counsel appearing for 4th accused/Lenin Sebas submitted that, the bank has initiated recovery proceedings before the Debt Recovery Tribunal and they have specifically stated that, Mrs.Subashini stood as guarantor and created equitable mortgage in respect of a property for the loan granted to this accused. Having admitted that, a valid mortgage deed has been created, the case of the prosecution on the premise that the valuable security is a forged document cannot be sustained.

44. The above contention does not carry any merit because the Civil proceedings for recovery of money based on the document furnished for availing loan is entirely different from the criminal prosecution for furnishing false document namely valuable security. In this regard, the testimony of P.W.12 Tirumalai, husband of Subashini is relevant and he has deposed that, documents were given to the accused believing his false promise and signatures were obtained in blank formats, which has been later filled up by A1 & A6.

45. The prosecution to prove that the accused A2/Jayabalan along with A1, A3 to A6 had conspired to sanction the loan and released the credit facility to a firm created in the name of M/s.Ramesh Infotech, M/s.Jerin Polybags and M/s.J.R.S Traders rely upon the in-house report marked as Ex.P-76, account opening forms of these three firms marked as Ex.P-2, Ex.P-14 and Ex.P-34. To establish the loan sanctioned to these three firms not in accordance to the Bank guidelines, Ex.P-91 to Ex.P-97 which are the Circulars issued by the credit division of the Indian Bank time to time are marked and how the procedures and guidelines were violated in this case is explained by P.W-5 Mr.Radhakrishnan. A-5/D.Gunasekaran showing him as onion trader opened account in the name of M/s.Subramanian and Company, R.K.Vasu son of A-1 had introduced A-5 to the bank and signed in the column meant for introducer. This account opening form is dated 24.01.2005. The said Gunasekaran had introduced Ramesh and assisted him to open current account in the name of M/s.Ramesh Infotech on 09/03/2005 (Ex.P-2). M/s.Nethra Infosys is owned by Kasi (A-1). His Indian Bank, South Usman Road Branch Account statement is marked as Ex.P-61 series. The entries in the account statements reveals that on several occasions money from the Parking Account of the bank (C.A.No.6001) been credited into his account. Ex.P-65 to Ex.P-68 the statement of the Parking Account No:6001 and Ex.P-69 to Ex.P-74 which are transfer challan used by the Indian Bank proves the amount laid in the Parking account been transferred to the account of A-1 and A-3 regularly. Thus, tracing the flow of the loan proceeds of these three firm it could be seen ultimately benefited the prime accused A-1 and A-3, A-4 and A-6. A2-the branch manager had schemed the plot along with A1 a former employee of RBI and others to cheat the bank, is proved beyond doubt through the evidences mentioned above.

46. To accomplish the scheme, A-1 with the help of A-6 had created false documents such as audit report, agreement of guarantee and consent letter for equitable mortgage. The testimony of P.W-11 Muhamed Rizwan, Partner M/s.JRS Traders, P.W-12 Thirumalai, who is the husband of Subashini, who is the guarantor for the loan availed by A-4, P.W-13 Tmt.Pushpa, who is the guarantor for the loan sanctioned in the name of M/s.JRS Traders and the statement of A-4 before the Judicial Magistrate during investigation marked as Ex.D-1 on reading together how A-1 by deceit obtained signatures in the blank forms and filled it up with false particulars without the knowledge and consent of the signatories. Without any scrutiny these forged documents with false particulars accepted by A-2 to sanction loan. The proceeds of the loan as explained earlier been misappropriated by these accused persons.

47. A1/Kasi introduced A5/D.Gunasekaran, for opening the account in the name of M/s Subramanian & Co., which is a non existing company floated for the purpose of cheating. The loan sanctioned to A5 fraudulently by A2 also become NPA and is the subject matter of C.C.No.24 of 2008. A5/D.Gunasekaran introduced A-3/Ramesh to open the account in the name of M/s.Ramesh Infotech. Out of Rs.10 lakhs of the loan advanced to M/s.Jerin Polybags, Rs.9,95,000/- withdrawn through cheque drawn in favour of A-3 Ramesh. The said cheque is marked as Ex.P-51. Later, on behalf of A-4, Demand draft for Rs.3 lakhs arranged by A-1, A-2 and A-3 from the account of KMS Package which is one of the account created by these accused to cheat the bank and subject matter in C.C.No.30 of 2008 and forwarded to the machine supplier at Gujarat. A-4 received the machinery. He did not choose to repay the loan dues. Further, he is also beneficiary of Rs.1,16,000/- drawn from the account of M/s Sam Fabricators subject matter of C.C.No.28 of 2008.

48. The exhibits like A-1 statement of Account, the accounts of A-3 and A 4, cheques Ex.P-51 in favour of A-3 drawn from the account of A-4, Ex.P-87, the cheque for Rs.10,00,000/- in favour of A-6 from the account of M/s.J.R.S Traders along with the Ex.P-59 the bill purchase register, the credit and debit vouchers Ex.P.69 to Ex.P.74 are sufficient to hold by using the fabricated guarantee documents containing false details, loan for Rs.9 lakhs for M/s.Ramesh Infotech and for Rs.10 lakhs each for M/s.Jerin Polybags and M/s.JRS Traders sanctioned by A-2 and the proceeds of the loan had been misappropriated among A-1, A-3 to A-6.

49. On cumulative assessment of the material evidence, this Court hold that the conviction and sentence passed by the XI Additional Special Judge, (CBI), Chennai, against A1 to A-6 is to be confirmed.

50. Accordingly, the ***Criminal Appeal Nos.52, 64, 81 and 102 of 2013 are dismissed.*** The trial Court shall secure the accused persons/A1 to A6 and commit them to prison to undergo remaining period of sentence. The period of sentence shall run concurrently and the sentence already undergo shall be set off under Section 428 of Cr.P.C. The bail bond executed, if any, shall stand cancelled.

28.04.2023

Index :Yes/No.
Neutral Citation :Yes/No.
bsm

To,

1. The Learned XI Additional Special Judge, (CBI Cases), Chennai.
2. The Inspector of Police, SPE, CBI, EOW, Chennai.
3. The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN,J.
bsm

Pre-Delivery common judgment made in
Crl.A.Nos.52, 64, 81 & 102 of 2013

28.04.2023