IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :27.06.023
&
26.06.2023

Pronounced on :17.07.2023

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.Nos.55,71 and 90 of 2013

Crl.A.No.55 of 2013:

1.D.Kalai Selvam
2.N.Devaraj
3.V.J.Vijayakumar
4.S.Vijayakumar
5.D.Senthil
6.S.Elumalai
7.S.Ravi .. Appellants/
A2,A3,A6,A8,A10,A11 and A12

/versus/

Union of India,
Represented by CBI, Chennai.
(RC.No.46(A)/2000/CBI/ACB/Chennai) ..Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 of the Cr.P.C., 1973 r/w Section 27 of the P.C.Act, 1988 praying to allow the appeal and set aside the conviction imposed against the appellants/accused Nos.A2,A3,A6,A8,A10, A11, A12 in C.C.No.41 of 2003 on the file of XI Additional Special Judge (CBI

Cases relating to Banks and Financial Institutions), Chennai dated 17.01.2013.

For Appellants :Mr.V.Balasubramanian
Amicus Curiae
For Respondent :Mr.K.Srinivasasan
Senior Counsel and
Special Public Prosecutor (CBI)

Crl.A.No.71 of 2013

K.Y.Subramanian .. Appellant/Accused-1

/versus/

Deputy Superintendent of Police,
SPE/CBI/ACB
Chennai
R.C.No.46(A)/2000/
CBI/ACB/Chennai .. Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 of the Cr.P.C., praying to call for the records made in C.C.No.41 of 2003 on the file of the XI Additional Special Judge for CBI Cases, Chennai by order dated 17.01.2013 hear the appellant and allow this criminal appeal.

For Appellant :Mr.V.Balasubramanian
Amicus Curiae

For Respondent :Mr.K.Srinivasasan
Senior Counsel and
Special Public Prosecutor (CBI)

Crl.A.No.90 of 2013

R.Udayakumar .. Appellant/Accused-9

/versus/

Deputy Superintendent of Police,
CBI, ACB, Chennai. .. Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 of the Cr.P.C., praying to set aside the judgment and sentence dated 17.01.2013 passed in C.C.No.41 of 2003 on the file of the learned XI Additional Special Judge (CBI Cases relating to Banks and Financial Institutions) Chennai and acquit the appellant.

For Appellant :Mr.R.Amizhdhu

For Respondent :Mr.K.Srinivasasan
Senior Counsel and
Special Public Prosecutor (CBI)

COMMON JUDGMENT

Batch of criminal appeals preferred by the persons, who were found guilty by the trial Court in C.C.No.41 of 2003 for the offences under Sections 120-B r/w 420, 467, 467 r/w 471, 468, 468 r/w 471, 419, 109 IPC and 13(2) r/w 13(1)(d) of PC Act, 1988.

2. <u>The facts leading to appeals:-</u>

Based on the reliable information received in the office of the SP, CBI, ACB, Chennai. The case was registered in RC.MA1.2000 A 0046, dated 30.10.2000. The information so received revealed,

A.1 Shri.K.Y.Subrarnanian working as Branch Manager in Punjab National Bank, Adayar Branch, Chennai during the period from 1997 to 1999. A2 Shri.D.Selvam; A.3, Shri N.Nandan; A.4,Shri.K.Shanmugam, A5, Shri J. Vijayan; A.6, Shri.C.Singaram; A.7,Shri.C.Singaram; A.8, Shri.Vijayakumar Guarantor and A-9, Shri.R.Udayakumar, Approved Valuer, are Private Persons. During the year 1999, A.1 to A.9 entered into a criminal conspiracy at Chennai and other places to cheat the Punjab National Bank and in pursuance of the said criminal conspiracy, Al, Shri.K.Y.Subramanian fraudulently and dishonestly by abusing his official position as Branch Manager of Punjan National Bank, Adyar Branch, Chennai and by colluding with other accused persons sanctioned Truck loans to A2 Shri.D.Selvam; A3.Shri.N.Nandan; A4, Shri.K.Shanmugam; A5, Shri.J.Vijayan; A.6, Shri.C.Singaram; A.7, Shri.C. Singaram for the purpose of purchasing second hand trucks without verifying the genuineness of the Sale Agreements as well as the existence of the Trucks mentioned in the said Sale Agreements.

3. A2, Shri D.Selvam; A3, Shri N.Nandan; A.4, Shri K.Shanmugam; A.5, Shri J.Vijayan; A.6, Shri C.Singaram; A.7, Shri C.Singaram submitted applications on 05.10.99 for sanction of loan for purchasing second hand trucks at a cost of Rs.5 lakhs each from individual owners to the Punjab National Bank, Adyar Branch, Chennai. As per L.A. Circular 77/99 dated 17.08.99 these loans come under Associates and do not fall under Branch Manager's power and was against the banking regulations. A.1, Shri.Suramanian sanctioned the lons on 06.10.99 itself against the Banking Regulations and without asking/scrutinising the original documents of Trucks, guarantee etc. offered for the loans by A.2 to A.9.

4. The title deeds of Agriculture land offered by Shri Vijayakumar (A-3) as Security for the loan amount of Rs.30 lakhs were purchased by the Guarantor during September, November and December 1998. As per the title deeds the market value of the three properties offered as security were viz. Rs.1,38,600/-; Rs.95,400/- and Rs.84,000/- respectively as on the date of purchase. The total actual value of the properties offered as Guarantee works out to Rs.3,18,000/-. The Approved Valuer (A-9) inflated the value of the above properties as

Rs.16,94,000/-, Rs.11,66,000/- and Rs.13,20,000/- resepectively totalling to Rs.41,80,000/-. The same were valued afresh and the values were worked out as Rs.1.66 lakhs; Rs.1.44 lakhs and Rs.1.24 lakhs respectively and the total value worked out to Rs.4.34 lakhs for the above three properties.

5. The loanees submitted photocopies of forged R.C.Books as if they pruchased the Vehicles as follows:-

Name of loanee	**Vehilce No.**
(1)Shri C.Singaram	TN 22 W 8958
(2)Shri J.Vijayan	TN 20 Z 9959
(3)Shri.N.Nandan	TN 22 Z 8825
(4)Shri.K.Shanmugam	TN 22 Y 2785
(5)Shri.D.Selvam	TN 22 Y 2795
(6)V.V.Kumar	TN 22 C 1485

6. Out of 6 registration Numbers mentioned above, Sl.Nos.1 to 3 were found out to be two wheelers of A.Pandian, P.I.Wilson and V.Arasan respectively and not owned by Sivalingam and Sathish as said in the Sale Agreements. By the

above acts, the accused persons cheated the Punjab Nationale Bank and caused wrongful gain to themselves to the tune of Rs.30 lakhs and corresponding wrongful loss to the Punjab National Bank. .

7. Initially, 9 persons were suspected in the case. K.Y.Subramanian, Branch Manager, Punjab National Bank, Adayar Branch, Chennai is a public servant. The rest of them are the private perons who availed loan and the approved valuer, who gave inflated valuation certificate for the properties given by A8 [Vijayakumar] the common guarantor, as collateral security.

8. On completion of investigation, final report was filed against 12 persons. Totally 58 charges were framed. Pending trial, K.Shanmugam(A4) died. 5^{th} accused Udhayan, and 7^{th} accused C.Singaram absconded on the date of judgment. Hence, their names were spilt up from the main case in C.C.No.41 of 2003.

9. The trial Court on appreciating the evience, held that the accused guilty and imposed the following sentence:-

Rank of the accused	Conviction	Sentence
A1 to A3, A6, A8 to A12	Sections 120-B r/w 420, 467, 467 r/w 471, 468, 468 r/w 471, 419, 109 IPC and Section 13(2) r/w 13(1)(d) of P.C.Act, 1988.	To undergo RI for three years each of the accused and A2,A3,A6,A8, A10 to A12 to pay a fine of Rs.1,00,000/- each and A1 and A9 to pay a fine of Rs.10,000/- each in default to undergo SI for one year
A2 and A11	Section 420 IPC	To undergo RI for 7years each of the accused and A2 to pay a fine of Rs.1,00,000/- and A11 to pay a fine of Rs.10,000/- in default to undergo SI for one year
A6	Section 420 IPC	To undergo RI for 7 years and to pay a fine of Rs.1,00,000/- in default to undergo SI for one year
A3	Section 420 IPC	To undergo RI for 7 years and to pay a fine of Rs.1,00,000/- in default to undergo SI for one year
A10	Section 420 IPC	To undergo RI for 7 years and to pay a fine of Rs.10,000/- in default to undergo SI for one year
A2	Section 468 IPC (3 counts)	To undergo RI for 3 years for each count and to pay a fine of Rs.1,00,000/- for each count in default to undergo SI for one year
A2	Section 468 r/w 471 IPC	To undergo RI for 3 years and to pay a fine of Rs.1,00,000/- in default to undergo SI for one year
A6	Section 468 IPC (3 counts)	To undergo RI for 3 years for each count and to pay a fine of Rs.1,00,000/- for each count in default to undergo SI for one year

Rank of the accused	Conviction	Sentence
A6	Section 468 r/w 471 IPC	To undergo RI for 3 years and to pay a fine of Rs.1,00,000/- in default to undergo SI for one year
A3	Section 468 IPC (3 counts)	To undergo RI for 3 years for each count and to pay fine of Rs.1,00,000/- for each count in default to undergo SI for one year
A3	Section 468 r/w 471 IPC	To undergo RI for 3 years and to pay fine of Rs.1,00,000/- for each count in default to undergo SI for one year
A2	Section 468 IPC (4 counts)	To undergo RI for 3 years for each count and to pay fine of Rs.1,00,000/- for each count in default to undergo SI for one year.
A2	Section 468 r/w 471 IPC	To undergo RI for 3 years and to pay fine of Rs.1,00,000/- for each count in default to undergo SI for one year
A6	Section 468 IPC (4 counts)	To undergo RI for 3 years for each count and to pay fine of Rs.1,00,000/- for each count in default to undergo SI for one year
A6	Section 468 r/w 471 IPC	To undergo RI for 3 years and to pay fine of Rs.1,00,000/- for each count in default to undergo SI for one year
A3	Section 468 IPC (4 counts)	To undergo RI for 3 years for each count and to pay fine of Rs.1,00,000/- for each count in default to undergo SI for one year

Rank of the accused	Conviction	Sentence
A3	Section 468 r/w 471 IPC	To undergo RI for 3 years and to pay fine of Rs.1,00,000/- for each count in default to undergo SI for one year
A2 and A11	Section 467 IPC	To undergo RI for 3 years each and A2 to pay fine of Rs.1,00,000/- and A11 to pay fine of Rs.10,000/- in default to undergo SI for one year
A2 and A11	Section 468 r/w 471 IPC	To undergo RI for 3 years each and A2 to pay fine of Rs.1,00,000/- and A11 to pay fine of Rs.10,000/- in default to undergo SI for one year
A6	Section 467 IPC	To undergo RI for 3 years and to pay a fine of Rs.1,00,000/- in default to undergo SI for one year.
A6	Section 467 r/w 471 IPC	To undergo RI for 3 years and to pay a fine of Rs.1,00,000/- in default to undergo SI for one year
A3	Section 467 IPC	To undergo RI for 3 years and to pay a fine of Rs.1,00,000/- in default to undergo SI for one year.
A3	Section 467 r/w 471 IPC	To undergo RI for 3 years and to pay a fine of Rs.1,00,000/- in default to undergo SI for one year.
A10	Section 467 IPC	To undergo RI for 3 years and to pay a fine of Rs.10,000/- in default to undergo SI for one year
A10	Section 467 r/w 471 IPC	To undergo RI for 3 years and to pay a fine of Rs.10,000/- in default to undergo SI for one year

Rank of the accused	Conviction	Sentence
A11	Section 419 IPC	To undergo RI for 3 years and to pay a fine of Rs.10,000/- in default to undergo SI for one year
A2	Section 419 IPC	To undergo RI for 3 years and to pay a fine of Rs.1,00,000/- in default to undergo SI for one year
A6	Section 419 IPC	To undergo RI for 3 years and to pay a fine of Rs.1,00,000/- in default to undergo SI for one year
A3	Section 419 IPC	To undergo RI for 3 years and to pay a fine of Rs.1,00,000/- in default to undergo SI for one year
A11	Section 467 IPC (2 counts)	To undergo RI for 3 years for each count and to pay a fine of Rs.10,000/- for each count in default to undergo SI for one year
A11	Section 467 r/w 471 IPC	To undergo RI for 3 years and to pay a fine of Rs.10,000/- in default to undergo SI for one year
A8	Sections 109 & 120B, 420, 467, 468, 468 r/w 471 IPC	To undergo RI for 7 years under Section 420 of IPC and to pay a fine of Rs.1,00,000/- and RI for 3 years under Sections 109 & 120B, 467, 468, 468 r/w 471 of IPC and to pay a fine of Rs.50,000/- in default to undergo SI for one year
A8 and A9	Section 468 IPC (5 counts for A8 and 3 counts for A9)	To undergo RI for 3 years each for each count and A8 to pay a fine of Rs.10,000/- for each count and A9 to pay a fine of Rs.10,000/- for each count, in default to undergo SI

Rank of the accused	Conviction	Sentence
		for one year
A8 and A9	Section 468 r/w 471 IPC	To undergo RI for 3 years each and A8 to pay a fine of Rs.1,00,000/- and A9 to pay a fine of Rs.10,000/- in default to undergo SI for one year
A12	Section 468 IPC	To undergo RI for 3 years and to pay a fine of Rs.10,000/- in default to undergo SI for one year
A12	Section 468 r/w 471 IPC	To undergo RI for 3 years and to pay a fine of Rs.10,000/- in default to undergo SI for one year
A1	Section 13(2) r/w 13(1)(d) of PC Act, 1988 (6 counts)	To undergo RI for 3 years for each count and to pay a fine of Rs.25,000/- for each count and in default to undergo SI for one year
Total fine amount Rs.52,30,000/-. The above sentences was ordered to run concurrently, but the default sentences was ordered to run consecutively. The period of imprisonment already undergone, if any, was ordered to be set off.		

10. Aggrieved by the judgment of the trial Court dated 17.01.2013, the first appellant K.Y.Subramanian has preferred C.A.No.71 of 2013. The 9th appellant Udhaya Kumar has filed C.A.No.90 of 2013. Appellants 2,3,6,8,10,11 and 12 have preferred C.A.No.55 of 2013.

11. The case of the prosecution as unravelled through its witnesses runs as below:-

K.Y.Subramanian(A1) a Branch Manager of Punjab National Bank, Adayar Branch, during the period from 13.05.1998 to 06.10.1999, had sanctioned six truck loans for Rs.5,00,000/- each. The borrowers are A2[D.Kalai Selvam], A7[Shri Singaram], A6[V.J.Vijayakumar @ V.V.Kumar], A3[D.Devaraj as N.Nandan] A4[K.Shanmugam] and A5[K.Udayan as J.Vijayan]. For the said six truck loans, S.Vijayakumar is the common guarantor. Without verifying the genuineness of the sale agreement as well as the existence of the trucks mentioned in the sale agreement, loan was sanctioned by A1 to the above said borrowers. In pursuant to the conspiracy between the accused persons to facilitate the borrowers to avail term loan on false documents, A9[Udayakumar] approved valuer of the Punjab National Bank had given the inflated valuation certificate. For the purpose of getting loan, the borrowers have submitted forged RC books of vehicles, as if the truck stands in the name of A.Sathish, D.Senthil, S.Sundaram and M.Shivalingam and they are willing to sell their trucks to these borrowers.

12. However, the registration numbers of the vehicle infact belongs to two wheelers or vehicles already hypothecated. Out of six loans, the registration number of the three vehicles is of two wheelers and not trucks. The other three registration numbers, which alleged to stand in the name of A2 [D.Kalaiselvam], A11[S.Elumalai] and A12[S.Ravi] are vehicles already hypothecated with the private financiers but not disclosed in the sale agreement submitted to the Punjab National Bank, Adayar Branch. The truck loan to Singaram (A7) for purchase of second hand truck bearing Registration No.TN 22W-8958 from Sivalingam in fact is a two wheeler 1997 model Bajaj M-80 owned by A.Pandian. Sivalingam the seller is not a person in existence but A.Shanmugam (A4) who has pretended as Sivalingam and executed the false sale agreement and produced fake RC Book. Likewise, the loan in the name of J.Vijayan for purchase of second hand truck bearing No.TN 20-X 9959 from M.Sivalingam, in fact is a two wheeler Suzuki Max 100R owned by P.I.Wilson. Shanmugam (A4) has pretended as Sivalingam and executed sale agreement in the name of J.Vijayan. The said Vijayan is a fictitious name A5[Udhayan] pretended as Vijayan and had availed loan. TN-22-Z-8825 is a two wheeler Yamaha RX 100, 1994 model owned by V.Arasan. RC book with this registration number forged showing one Sathish as its owner and

the vehicle is TATA HMV Lorry Truck. The sale agreement for the non-existing vehicle by Sathish to N.Nandan a fictitious person taken as genuine by A1 to advance loan to Nandhan. N.Devaraj has impersonated as Nandhan and availed the loan producing fake RC Book, forged agreement and false documents like Tax receipt and vehicle permits. The three loans for vehicle Nos.TN-22/Y 2785; TN-22/X 2795 and TN-22C 1485 though they are TATA HMV lorries, but already hypothecated to private financiers and charge created suppressing the first charge loan sought and sanctioned. D.Senthil [A10], he had executed a sale agreement in favour of A4[K.Shanmugam] as if he own the truck bearing Reg.No.TN 22Y 2785 and willing to sell it to K.Shanmugam[A4].

13. Based on these forged documents, loans were disbursed by A1 in the name of D.Selvam, Singaram, V.V.Kumar, N.Nandhan, K.Shanmugam and J.Vijayan, based on the fabricated document, loan amount issued to the fake owners believing that they have sold the truck referred in the loan application. For all the loans, S.Vijayakumar (A8) stood as common guarantor. A12[S.Ravi] signed as witness for the truck alleged to be sold by A2[A.Sathish] to N.Nandan. A4[K.Shanmugam] pretending as M.Sivalingam and A11[Elumalai] pretending as

S.Sundaram induced Punjab National Bank to deliver cheque for Rs.5,00,000/- each as if they have sold the trucks bearing Nos.TN-22-X-2795 TATA SE 1612/42 HMV Lorry Truck; TN 22-W-8958 TATA SE 1612/42 HMV Lorry Truck respectively. Adopting the similarly mode of operandi A6[V.J.Vijayakumar] pretending as V.V.Kumar and A4[K.Shanmugam] as A.Sathish induced the Punjab National Bank dishonestly to deliver Rs.5 lakhs for the alleged fake sale of truck bearing Reg.No.TN 22-C-1485 TATA SE 1612/42 HMV Lorry Truck. Likewise, A3[N.Devaraj] pretending as N.Nandan and A4[K.Shanmugam] pretending as A.Sathish a sum of Rs.5 lakhs been cheated. A7[C.Singaram] based on the forged documents claiming that he has sold vehicle bearing Reg.No.TN 22 W 8958 to M.Sivalingam by forging RC book, tax receipts and vehicle permit.

14. For better understanding the above facts are tabulated under:

Sl. No.	**Vehicle name and Reg.No. and Original Owner as per MVI Report**	**As per the loan document Seller**	**Buyer**	**Amount Rs.**
1.	TN-22/W-8958 -1997 Model Bajaj M-80 A.Pandian	Sivalingam. S/o Manoharan	Singaram (A7)forged RC book of **two wheeler as TATA SE 1612/42 HMV Lorry Truck**	Rs.5,00,000/-
2.	TN-20/Z-9959-Suzuki Max-100R	M.Sivalingam, S/o Manoharan	J.Vijayan	Rs.5,00,000/-

Sl. No.	Vehicle name and Reg.No. and Original Owner as per MVI Report	As per the loan document Seller	Buyer	Amount Rs.
	P.I.Wilson			
3.	TN-22-Z-8825-1994 Model Yamaha RX 100 V.Arasan, S/o C.Venu	A.Sathish, S/o Arumugam	N.Devaraj (A3), S/o T.C.Natesan, impersonated as **N.Nandan,** T.C.Natesan and forged RC book of **two wheeler vehicle as TATA SE 1612/42 HMV lorry truck**	Rs.5,00,000/-
4.	TN-22/Y 2785 TATA SE 1612/42 HMV Lorry Truck-Model 1995 make-D.Kalai Selvam(A2)	D.Senthil(A10), S/o N.Devaraj	K.Shanmugam (A4) impersonated as A.Sathish and **M.Sivalingam**	Rs.5,00,000/-
5.	TN-22/X-2795-1995 Model Tata SE 1612/42/HMV S.Elumalai (A11) Hypothecated	Sundaram	D.KalaiSelvam (A2), S/o N.Devaraj impersonated as **D.Selvam, S/o C.Dilli Babu, TATA HMV Lorry Truck**	Rs.5,00,000/-
6.	TN-22C 1485-HMV Lorry Truck-Model 1998 Make TATA SE 1612/42	A.Sathish, S/o G.Arumugam	V.J.Vijayakumar(A6) impersonated as **V.V.Kumar**	Rs.5,00,000/-

15. The learned counsel Mr.V.Balasubramanian, appearing for the first accused, K.Y.Subramanian (Crl.A.No.71 of 2013) submitted that the trial Court has misled by the evidence of PW-2 and has erroneously held that this appellant has not scrupulously followed the bank guidelines/circular. Contrarily, PW-2 had

deposed that he had inspected the vehicle for which loans were sanctioned and to his knowledge, the appellant K.Y.Subramanian, Branch Manager has not transgressed any guideline or instructions of the bank. This admission elucidated during the cross examination of PW-2 not taken note by the trial Court. Further, all the six loans were disbursed by this appellant based on the report submitted by the loan officer who was examined as PW-24. While the Loan Officer had deposed that he had seen the Registration Certificate of the trucks and was satisfied about its genuineness, the sanction of loans based on her report cannot be found faulted. While it is admitted that V.J.Vijayakumar who stood as guarantor for all the six loans is the valuable customer of the bank, the discretion of the Branch Manager sanctioning the loan well within his limit is not an offence.

16. The learned counsel appearing for the appellant K.Y.Subramanian(A1) further submitted that discharging the duty without any secrecy in the normal course cannot be construed as conspiracy because there was default in repayment of the loan. While he has sanctioned the loan, based on the Inspection Report given by PW-24[Tmt.Rina Chowdary], the loan officer, he cannot be maliciously prosecuted. Referring Ex.P18, Ex.P42, Ex.P68, Ex.P116,

Ex.P130, Ex.P170 are the Inspection Reports admittedly presented by PW-24. Based on her Inspection Report loans were sanctioned. The process note was placed before the first accused that the note of PW-24 considered by PW-1 objectively and the first accused sanctioned the loan. The examination of Ex.P117, the note of PW-24 and the sanction order of the accused further would show that on 06.10.1999 RC books and road tax paid receipts collected by PW-24. Therefore, as the Branch Manager to discharge of official duty without any deviation of the bank circular and guidelines cannot be termed as offence.

17. The learned counsel appearing for appellants/accused 2,3,6,8,10,11, and 12, who all joint together and preferred Criminal Appeal No. 55 of 2013 did not appear and this Court appointed Mr. V.Balasubramanian, who had prepared his case for A1, to represent them as Amicus Curiae. Accordingly, the learned Amicus Curiae appeared on their behalf and submitted that the trial Court failed to take note of the documents marked as Ex.D1 to Ex.D18, which are the orders passed by DRT in the recovery proceedings initiated against them.

18. The learned counsel submitted that the bank initiated recovery proceedings and got the decree. While so, a parallel criminal prosecution for the very same transaction is not maintainable. One time Settlement (OTS) offered by the Bank accepted by the borrowers and out of Rs.1crore fixed as final settlement, Rs.73 lakhs deposited. This fact has not been taken into consideration. The learned counsel particularly submitted that there is no incriminating evidence against A6[V.J.Vijayakumar]. The only charge against him that he pretending himself as V.V.Kumar and induced the Punjab National Bank to deliver Rs.5 lakhs under the term loan No.509 for purchase of second hand truck having Reg.No.TN 22C-1485. There is no document produced by the prosecution to show that V.J.Vijaya Kumar claiming himself as V.V.Kumar, availed loan for purchasing truck bearing Reg.No.TN 22C-1485 and cheated the bank. There is no evidence to show that he was party to the conspiracy.

19. Referring Ex.P69, the learned Amicus Curiae appearing for the appellants in Crl.A.No.55 of 2013 submitted that neither this letter nor Ex.P70 are material evidence to prove that V.V.Kumar, the loanee is V.J.Vijayakumar. Ex.P68 is the Inspection Report prepared by PW-24 on 03.12.1999 wherein she

has certified that she has inspected the vehicle bearing Reg.No.TN-22-C-1485 on 03.12.1999. In the Inspection Report, V.V.Kumar has signed. The Investigating Officer has obtained specimen signature of V.V.Kumar, S/o V.Venugopal and the specimen signature is marked as Ex.P261. The handwriting expert in his report Ex.P264 has opined that the signature found in Ex.P68 tallies with the specimen signature found in Ex.P261. Therefore, V.V.Kumar has availed the loan, but not Vijayakumar, who is the 6th accused, S/o V.L.Jagadeesan, Tiruvottiyur, Chennai.

20. The learned counsel appearing for the appellant in Crl.A.No.90 of 2013 submitted that the charge against this accused that he gave inflated valuation certificate for the immovable properties owned by A8 [S.Vijayakumar], S/o N.Sivagnanam, with an intention to cheat Punjab National Bank and to induce the bank to disburse six truck loans Rs.5,00,000/- each is totally unfound. The property been inspected by the accused (A9) the approved valuer and assessed its value as Rs.41,80,000/-. Contrarily, after registration of the complaint, the CBI has sought for second opinion from another valuer, who has estimated the property valued at Rs.3,97,400/-. However, the valuation report relied by the prosecution not been produced before the Court to test the opinion of the other valuer. While

there is no evidence to show, the value of the property given as collateral security has inflated. A professional valuer who records his opinion based on the data collected about the property cannot be suspected to be the accused. In the absence of incriminating materials, the conviction slapped on the valuer (A9)is bad and liable to be set aside.

21. The learned counsel appearing for the appellant (A9) emphasis that the Investigating Officer, who claims that the property given as collateral security is less than Rs.4 lakhs and not Rs.41 lakhs, as estimated by this appellant ought to have examined, the valuer who has opined that the property worth is only Rs.4 lakhs. However, the Investigating Officer who is examined as PW-27, admits that he has not examined the valuer N.K.Raman and he is not aware what was the methodology adopted by the said valuer to fix the market value of the property. Neither PW-27, who filed the Final Report verified the valuation of the property, nor examined N.K.Raman the person, who arrived at conclusion that the valuation given by this appellant is over estimated and inflated. When there is no evidence to show, the meeting of mind or intention to cause loss to the bank, the conviction of A9 is bad in law.

22. Per contra, the learned Special Public Prosecutor (CBI) submitted that it is a clear case of conspiracy wherein A1, inspite of note made by PW-24, Loan Officer that the property given as collateral is by one and the same person. Therefore, it has to be termed as associate loan and they do not fall under the Branch Manager power as per the loan and advance circular No.77/1999 dated 17.08.1999. Despite this specific objection, the first accused being the Branch Manager had made a note that the common guarantor is not criteria to determine associate concerned and he has gone ahead to sanction the loan based on the fabricated document to fictitious persons. The private accused A2 to A8, A10 to A12, who are all either relative or known to A8, had participated in the loan transaction by producing false documents. The vendors who have executed the agreement to sell the vehicles were not the owners of the vehicles or owners of the vehicles already been hypothecated to the private financiers. The RC book, permit and road tax receipts were found to be fabricated and the same was proved. A1, Branch Manager had not collected the original RC Book and other documents pertaining to the vehicle before disbursing the loan or soon thereafter. He collected the documents belated and sent it for necessary endorsement by the RTO

but when the vehicles were sent to the respective RTO office, the crime had come to light from the letter of RTO exposing the fact that these RC books are fake or already been charged.

23. As far as the truck bearing No.TN-22C-1485, the loan was sanctioned in the name of V.V.Kumar. The vehicle alleged to have been sold by A.Sathish. Whereas, Meenambakkam RTO has informed that the vehicle stands in the name of one I.Chidambara Raj, S/o Iyyamperumal and the same was hypothecated to the Motor and General Finance Limited, 17-B, Azaf Ali Road, New Delhi and thereafter, to one Revathi Ravindran of Keelkattalai, the vehicle was later transferred to one S.Ravi, S/o Sivagnanam on 12.09.1999 and hypothecated to Nemichand Mohanlal Jain Finance. Thus, a calculated cheating committed by the accused persons in connivance with A1 the Bank Manager cannot be mitigated by repaying the loan in part that too after taking cohesive steps.

24. Point for consideration:-

Whether the trial Court had properly appreciated the evidence for convict the appellants?

25. The prosecution beyond any doubt had proved that the six truck loans advanced by A1 based on the Inspection Report of PW-24 are not after proper verification of the vehicle and its documents. As narrated above, for all the six loans the guarantor is one and the same. The property given as collateral security is also one and the same. The document executed by A8 agree to stand as guarantor for all the six loans which are identical in nature is proof of meeting of mind among these accused persons. While PW-24 had raised an objection that it must be treated as an associate loan since, the guarantor and the property given as collateral security is one and the same, A1 has overlooked the objection. Yet another incriminating evidence against A1 is that he had not taken steps to collect the original documents of the vehicle at the time of disbursing the loan. He had taken his own time to collect the documents and when he sent the documents to the concerned RTO Office for recording the hypothecation, the fact that three of the vehicles are not lorry but two wheelers and other three vehicles been hypothecated with private financiers, had come to light. The 'B' Register of the vehicle marked as Ex.P203 to Ex.P208 goes to show that the vehicles for which loan sanctioned were not title worthy. The fabrication of RC book, road tax paid

receipts and loan agreement and using these documents as genuine to induce the bank to advance loan squarely attracts the offences under Sections 419, 420, 467, 468, 467 r/w 471 and 468 r/w 471 for committing these offences. A8 [S.Vijayakumar] had played the key role in the crime by providing his property as collateral security with inflated value. Therefore, the conviction and sentence by the trial Court as against A2, A3, A8, A10,A11 and A12 for making false document and using it as genuine with fraudulent intention to cheat the Punjab National Bank is upheld.

26. As far as A9 [R.Udayakumar, Valuer in Crl.A.No.90 of 2013] is concerned, as rightly pointed out by the learned counsel appearing for the appellant, the valuation certificate given by him for the property of A8, not been proved by proper document and evidence, that the valuation is over estimated. The valuation certificate of an approved valuer is an opinion of expert which can be contradicted by opinion of another expert. In this case, though the prosecution claims that A9 has inflated the value of the property, to establish the fact that the valuation was inflated, there is no contra evidence. For the said reason, the valuer[A9] is entitled for acquittal.

27. A1[K.Y.Subramanian, Branch Manager] claims that he acted upon the Inspection Report given by PW-24. There is material to believe the said defence because in Ex.P9 the process note, PW-24 had prepared and signed it. This has been prepared on 15.01.2000, but even prior to that the letter of hypothecation and other documents has been prepared. In her inspection report, she has stated that RC Book, road permit and tax receipts seen but in the Court, while she has deposing qualified it saying she saw the xerox copy of these documents but the word 'xerox copy' is consciously absent in her note. By omitting the word 'xerox' , there is reason to believe that A1 had been misled by the note of PW-24. However, it will not give a clean chit to the officer, who had not sent the RC books of these vehicles to the respective RTO office for necessary endorsement. Therefore, taking note of the fact that despite objection that sanctioning loan based on the common guarantor [Ex.P236] beyond the limits prescribed for Branch Manager, wanton omission to collect the original RC books from the borrowers soon after disbursement of the loan shows that he had failed to discharge his duty. The point is whether the said failure is result of conspiracy. If it is tested in the light of the evidence, though the suspicion is very strong, it is not

adequate to convict him particularly when the bank witnesses have invariably deposed that A1 has not deviated the circular or regulations issued by the head office. His reasoning to overlook the objection made by PW-24 regarding his power to sanction loan of Rs.30 lakhs based on the common guarantor is apparently acceptable. Any reasonable exercise of discretion cannot take the place of exercising discretion dishonestly. Therefore, the benefit of doubt is extended to A1. His act of dereliction of duty certainly attracts disciplinary proceedings by the Department but not criminal prosecution.

28. As a result,

Crl.A.No.55 of 2013 is dismissed against appellants 1,2,4,5,6 and 7/accused A2, A3, A8, A10, A11 and A12. The judgment of conviction passed by the XI Additional Special Judge (CBI Cases relating to Banks and Financial Institutions) Chennai in C.C.No.41 of 2003 dated 17.01.2013 is hereby confirmed. Bail bond, if any executed by the appellants 1,2,4,5,6 and 7 shall stand cancelled. The respondent police is directed to arrest appellants 1,2,4,5,6 and 7 and remand them to the judicial custody for the remaining period of sentence, after giving set off the period already undergone.

This Criminal Appeal No.55 of 2013 is allowed in favour of the 3rd appellant/6th accused. The judgment of conviction passed by the XI Additional Special Judge (CBI Cases relating to Banks and Financial Institutions), Chennai in C.C.No.41 of 2003, dated 17.01.2013 is set aside. Bail bond if any executed by At/3rd appellant shall stand cancelled. Fine amount if any paid by him shall be refunded to him. The appellant is set at liberty forthwith unless his presence is not required in connection with any other criminal case.

This Criminal Appeal No.71 of 2013 filed by K.Y.Subramanian (A1) is allowed. The judgment of conviction passed by the XI Additional Special Judge (CBI Cases relating to Banks and Financial Institutions) Chennai in C.C.No.41 of 2003 dated 17.01.2013 is set aside. Bail bond if any executed by the appellant shall stand cancelled. Fine amount if any paid by the accused shall be refunded to him. The appellant is set at liberty forthwith unless his presence is not required in connection with any other criminal case.

This Criminal Appeal No.90 of 2013 filed by R.Udayakumar, Valuer (A9) is allowed. The judgment of conviction passed by the XI Additional Special

Judge (CBI Cases relating to Banks and Financial Institutions) Chennai in C.C.No.41 of 2003 dated 17.01.2013 is set aside. Bail bond if any executed by appellant(A9) shall stand cancelled. Fine amount if any paid by the accused shall be refunded to him. The appellant is set at liberty forthwith unless his presence is not required in connection with any other criminal case.

17.07.2023

Index:yes
speaking order/non speaking order
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To:

1.The XI Additional Special Judge (CBI cases relating to Banks and Financial Institutions) Chennai.
2.The Deputy Superintendent of Police, SPE/CBI/ACB,Chennaiai
3.The Special Public Prosecutor CBI Cases, High Court, Madras.

DR.G.JAYACHANDRAN,J.

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Delivery Common judgment made in
Crl.A.Nos.55, 71 and 90 of 2013

17.07.2023