IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.03.2023

Pronounced on : 30.03.2023

CORAM

THE HONOURABLE DR. JUSTICE **G.JAYACHANDRAN**

Crl.A.Nos.656, 678, 684, 685 of 2013 and 1 of 2014

Crl.A.No.656 of 2013

K.Neelakandan @ Neelu ... Appellant/ 4th accused

Vs

State represented by
The Inspector of Police,
ACB: CBI,
Chennai ... Respondent

Prayer:- Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the sentence and conviction order dated 30.08.2013 passed in CC.No.225 of 1997 by the learned XI Additional Special Judge for CBI Cases, Chennai.

For Appellant : Mr.T.R.Ramesh

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

Crl.A.No.678 of 2013

B.Natarajan ... Appellant/ 8th accused

Vs

State represented by
The Inspector of Police,
ACB: CBI,
Chennai ... Respondent

Prayer:- Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the sentence and conviction imposed upon the appellant by judgment dated 30.08.2013 of the learned XI Additional Special Judge (CBI Cases relating to Banks and Financial Institutions), Chennai in CC.No.225 of 1997 on his file and acquit him of all the offences with which he stood charged.

For Appellant : Mr.V.R.Kamalanathan
for Mr.T.I.Ramanathan

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

Crl.A.No.684 of 2013

1.V.Subramanien
2.A.V.Krushnun ... Appellants/ accused 1 & 2

Vs

State represented by
The Inspector of Police,

Delhi Special Police Establishment,
Central Bureau of Investigation,
Special Crime Branch(SCB),
Rajaji Bhavan,
Third Floor, Besant Nagar,
Chennai 600 090 ... Respondent

Prayer:- Criminal Appeal filed under Sections 374, 380 and 401of Criminal Procedure Code, to call for the entire records pertaining to CC.No.225 of 1997 on the file of the learned XI Additional Special Judge for CBI Cases relating to banks and financial institutions, Chennai-600001 and allow this appeal preferred by the appellants and set aside the order dated 30.08.2013 passed by the learned XI Additional Special Judge for CBI cases relating to banks and financial institutions, Chennai 600 001 in CC.No.225 of 1997 and direct refund of the find amount of Rs.8,000/- paid by the appellants and discharge the sureties executed for suspension of sentence.

For Appellants : Mr.V.S.Venkatesh

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

Crl.A.No.685 of 2013

V.P.Raghavendra Rao ... Appellant/ accused

Vs

State represented by
The Inspector of Police,

Delhi Special Police Establishment,
Central Bureau of Investigation,
Special Crime Branch(SCB),
Rajaji Bhavan,
Third Floor, Besant Nagar,
Chennai 600 090 ... Respondent

Prayer:- Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the entire records pertaining to CC.No.35 of 2013 on the file of the learned XI Additional Special Judge for CBI Cases relating to banks and financial institutions, Chennai-600001 and allow this appeal preferred by the appellant and set aside the order dated 03.09.2013 passed by the learned XI Additional Special Judge for CBI cases relating to banks and financial institutions, Chennai 600 001 in CC.No.35 of 2013 and direct refund of the find amount of Rs.4,000/- paid by the appellant and discharge the sureties executed for suspension of sentence.

For Appellant : Mr.V.S.Venkatesh

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

Crl.A.No.1 of 2014

D.K.Mukerjee ... Appellant/ 5th accused

Vs

State represented by
The Inspector of Police,
ACB: CBI,
Chennai

(R.C.No.1(s)/1994&2(s)/1994/
CBI/ACB/Chennai) ... Respondent

Prayer:- Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the records in CC.No.33 of 2013 (which was split from CC.No.225 of 1997) on the file of the learned XI Additional City Civil & Sessions Judge for CBI Cases, Chennai and to set aside the sentence and conviction imposed on the appellant dated 28.11.2013.

For Appellant : Mrs.S.Sasikala

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

COMMON JUDGMENT

These criminal appeals filed under Section 374 of Cr.P.C. are directed against the judgment passed by the XI Assistant City Civil and Sessions Judge for CBI Cases, Chennai in CC.No.225 of 1997 which is a case split up as against D.K.Mukerjee who is one of the absconding accused and later secured and tried along with the main case and CC.No.33 of 2013 which is also a split up case against V.P.Ragavendra Rao, who was secured after abscondence.

2. Based on a written complaint dated 04.01.1994 given by

Mr.P.Gopalakrishnan, the Chief Vigilance Officer of Indian Bank, a criminal complaint was registered by Deputy Superintendent of Police in RC.Nos.1(S) and 2(S), CBI/SCB/Chennai for offences under Sections 120(b) r/w 420, 468, 471 of IPC against M/s.Austral Plastics Private Limited, A.V.Krushnun and V.Subramaniam and taken up for investigation.

3. According to the complaint given by Gopalakrishnan, fraudulent transaction in the account of M/s.Plastimar Products by V.Subramaniam, A.V.Krushnan and others been found and brought to the notice of the Superintendent of Police (CBI) for investigation. In the complaint, it is stated that M/s.Plastimar Product Private Limited, a company incorporated on 27.05.1982 under the Companies Act changed the name of the entity as 'M/s.Austral Plastics Private Limited' on 27.08.1983. As per the memorandum of association of M/s.Austral Plastics Private Limited, one Sri.A.V.Krushnun and Sri.V.Subramaniam and Sri.K.Ramasubramaniam are subscribers to the concern. On and after 27.08.1983, "M/s.Plastimar Products Private Limited" ceased to exist. While so, on 18.05.1991, V.Subramaniam opened current account

No.252 with Indian Bank, East Abhiramapuram Branch in the name of "M/s.Plastimar Products" declaring it as a proprietory concern and he as its proprietor. Two days after opening the account, V.Subramaniam applied for bill purchase facility to a tune of Rs.61,00,000/- (180 days D/A) claiming that he is a trader in chemicals and other allied products required for plastic industries and have supplied material to M/s.Austral Plastics Private Limited suppressing the fact he was one time the Commercial Director of M/s.Austral Plastics Private Limited, he and A.V.Krushnun are brothers. Knowing the fact, Regional Manager, Madras(S) sanctioned bill purchase – BP/DA (DABPI-one time) limit of Rs.60.14 lakhs on 27.05.1991, hundies for Rs.60.14 lakhs all drawn on M/s.Austral Plastics Private Limited were discounted. Even after 180 days, the bills were not honoured and a sum of Rs.53.87 lakhs fallen due. Two cheques, one for Rs.30,61,250/-, another for Rs.29,53,000/- both drawn on Dena Bank issued by M/s.Austral Plastics Limited on 28.11.1991 and 08.12.1991 respectively were returned for want of fund. While so, at the request of M/s.Plastimar Products (Proprietor V.Subramaniam), additional sum of Rs.24 lakhs was released under DA/BP II on 10.10.1991.

4. Following bills were drawn and discounted but not honoured:

a) Sai Chem Dyes Pvt. Limited, 283, SIDCO North, Ambattur Industrial Estate, Madras 600 098 – Rs.8.14 lakhs.

b) Deccan Chemical Agencies, 20AA Block, Anna Nagar, Madras 600 040 – Rs.13.26 lakhs.

c) M/s.Industrial Polymers, 17 Ramakrishna Street, T.Nagar, Madras 600 017 – Rs.8.65 lakhs

5. When enquiry conducted about these three bills, the complainant has come to know that M/s.Deccan Chemical Agencies and M/s.Industrial Polymers are non existing companies. Existence of Plastimar Products after change of name as M/s.Austral Plastics is doubtful and the alleged supply of goods worth more than Rs.60 lakhs to M/s.Austral Plastics Private Limited and Rs.30,00,000/- to other three firms mentioned above in the 1991, eight years after it has become defunct indicates commission of offence punishable under Sections 120(b) of IPC and 420 of IPC, 409 of IPC, 467 of IPC and 471 of IPC by

A.V.Krushnun, V.Subramaniam and others.

6. Yet another complaint on the same day was given with almost similar set of facts in connection with inland LC/DA discounted by M/s.Austral Plastics Private Limited, but not honoured by M/s.Austral Plastics Private Limited. Among the four firms mentioned in the complaint, two were doubted to be fictitious and two had semblance of remote existence. Those four firms names and money cheated are below:

> ***1)*** *a)* ***M/s.Industrial Polymers****, 3/58 Veteran Lines, Cantonement Pallavaram, Madras-43 for Rs.4.95 lakhs*
>
> *b)* ***M/s.Industrial Polymers****, 3/58 Veteran Lines, Cantonement Pallavaram, Madras-43 for Rs.6.75 lakhs*
>
> ***2)*** *a)* ***M/s.Sai Chem Dyes (P) Ltd****, No.283, SIDCO North, Ambattur, Industrial Estate, Madras – 96 for Rs.4.87 lakhs*
>
> *b)* ***M/s.Sai Chem Dyes (P) Ltd****, Plot No.283, SIDCO North, Ambattur Industrial Estate, Madras – 96 for Rs.9.52 lakhs*
>
> *c)* ***M/s.Sai Chem Dyes (P) Ltd****, Plot No.283, SIDCO North, Ambattur Industrial Estate, Madras – 96 for Rs.8.53 lakhs*

3) *a)* ***Deccan Chemical Agencies****, 31, Subramanian Street, Abhiramapuram, Madras-18 – Rs.2.09 lakhs*

b) ***Deccan Chemical Agencies****, 31, Subramanian Street, Abhiramapuram, Madras-18 – Rs.5.04 lakhs*

4) M/s.Union Plastics*, 12, Palace Road, Madras -4 – Rs.8.16 lakhs*

7. On the strength of the two complaints, investigation carried by P.W.53 – Mr.Muruganantham who took up the investigation from P.Rajkumar, Deputy Superintendent of Police has opined that the offences alleged in both the FIR's and complaints are on single conspiracy, hence single final report was filed for both RC's against the accused. The public servants involved in the cases since retired at the time of filing the final report, no sanction to prosecute obtained by the officers who laid final report. Based on the material relied by the prosecution, the special court constituted for the trial of CBI cases, framed charges against nine persons and the charges against them framed as below:

1.V.Subramanian

2.A.V.Krushnun
3.V.P.Ragavendra Rao
4.K.Neelakandan @ Neelu
5.D.K.Mukerjee
6.T.Ramani
7.D.Varadharajan
8.B.Natarajan
9.B.Subramaniam

Charge No.1:

Firstly, that all of you on or about during the period between May 1991 to October 1991 at Madras agreed to or caused to be done an illegal act by illegal means to wit to cheat the Indian Bank, Madras in respect of documents against acceptance-Bills Purchase (DABP), credit facilities, inland letter of credit facilities by furnishing forged/fabricated documents to the Indian Bank, Further all of you used the said documents as a genuine document to cheat the Indian Bank and thus all of you have committed an offence punishable U/s 120-B r/w 420, 420, 468, 471 r/w 468 IPC and within the congnizance of this court.

Charge No.2:

Secondly, that in pursuance of the said criminal conspiracy and in furtherance thereof during the period between May 1991 to October 1991 you A1 V.Subramanian, Prop.of Plastimar Products: You A2 A.V.Krushnun, Managing Director of Austral Plastic (P) Limited, you A3

V.P.Ragavendra Rao: you A4 K.Neelakandan @ Neelu, Managing Director of Sai Chem Dyes (P) Limited: You A5 D.K.Mukerjee, Prop. of Deccan Chemicals Agencies: You A6 T.Ramani, Former Works Manager, Austral Plastics (P) Limited, You A7 D.Varadharajan, Assistant in Austral Plastic (P) Limited: you A8 Natarajan, Assistant General Manager and you A9 B.Subramanian, Deputy General Manager, Indian Bank cheated the Indian Bank by dishonestly induced the Indian Bank, East Abiramapuram, Chennai to deliver the amount of Rs.60,14,250/- as DABP credit facilities to you A1 V.Subramanian on 27.05.1991, further DABP credit facilities to the tune of Rs.30,00,000/- on 10.10.91 and further inland letter of credit facilities to you A2 A.V.Krushnan to the tune of Rs.50,00,000/- on 09.07.1991 respectively. Further you A1 V.Subramanian, Prop. of Plastimar Products: You A2 A.V.Krushnun, Managing Director of Austral Plastic (P) Limited and you A3 V.P.Ragavendra Rao furnished forged / fabricated document for availing above said DABP credit facilities to the said amount. Further you A4 Neelangandan @ Neelu, Managing Director of Sai Chem Dyes (P) Limited, and you A5 D.K.Mukerjee, Prop. Of Deccan Chemical Agencies operated the bank accounts for Sai Chem Dyes (P) Limited which is a fictitious firm by name Industrial Polymer and you A5 D.K.Mukerjee, Prop. of Deccan Chemical Agencies, *operated the bank accounts for Sai Chem Dyes (P) Limited which is a fictitious firm by name Industrial Polymer and you A5 D.K.Mukerjee, Prop. of Deccan Chemical Agencies, which is also a fictitious firm and you A6 T.Ramani, Former Works Manager, Austral Plastics (P) Limited: You A7 D.Varadharajan Assistant in Austral Plastic (P) Limited signed fabricated accounts written invoices, delivery challan which were furnished to the Indian Bank and you A8 Natarajan, Assistant General Manager and you A9 B.Subramanian, Deputy General Manager, Indian Bank sanctioned the above said credit facilities on the strength of forged documents and that you thereby committed an offence punishable under Section 420 IPC and within the cognizance of the court.*

Charge No.3

Thirdly that in pursuance of the said criminal conspiracy and in furtherance thereof you A1 to A7 during the year May 1991 to October 1991 forged certain documents i.e. accounts returns, invoices, delivery challans etc., to wit to cheat the Indian Bank intending that it shall be used for the purpose of cheating and that you A1 V.Subramanian, Prop. of Plastimar Products: You A2 A.V.Krushnan, Managing Director of Austral Plastic (P) Limited and you A3

V.P.Ragavendra Rao and you A4 Neelagandan @ Neelu, Managing Director of said Chem Dyes (P) Limited and you A5 D.K.Mukerjee, Prop. of Deccan Chemical Agencies, which is a fictitious firm and you A6 T.Ramani Former Works Manager, Austral Plastics (P) Limited and you A7 D.Varadharajan, Assistant in Austral Plastic (P) Limited, thereby committed an offence punishable under Section 468 of IPC and within my cognizance.

Charge No.4

Fourthly that in pursuance of the said criminal conspiracy and in furtherance thereof during the period between May 1991 to October 1991 you A1 V.Subramanian Prop. of Plastimar Products: You A2 A.V.Krushnan, Managing Director of Austral Plastic (P) Limited and you A3 V.P.Ragavendra Rao and you A4 Neelagandan @ Neelu, Managing Director of said Chem Dyes (P) Limited and you A5 D.K.Mukerjee, Prop. Of Deccan Chemical Agencies, and you A6 T.Ramani, Former Works Manager, Austral Plastics (P) Limited and you A7 D.Varadharajan, Assistant in Austral Plastic (P) Limited and you A8 Natarajan, Assistant General Manager and you A9 B.Subramanian, Deputy General Manager, fraudulently/dishonesty used as a genuine certain documents such as accounts return, invoices, delivery challan, *etc., which you knew or had reason to believe at that time you used it to be a forged document and thereby all of you committed an offence punishable under Sections 465 & 471 of IPC and within my cognizance.*

Charge No.5

Fifthly that in pursuance of the said criminal conspiracy and in furtherance thereof during the period May 1991 to October 1991 you A8 Natarajan, being a public servant working as Assistant General Manager, Indian Bank, Chennai and you A9 B.Subramanian, being a public servant working as Deputy General Manager, Indian Bank, Chennai by corrupt or illegal means or by otherwise abusing your position as public servant to sanction the credit facilities on the strength of forged / fabricated documents for DABP and inland letter credit facilities to the extent of Rs.60,14,250/- on 27.05.1991, Rs.30,00,000/- on 10.10.1991 and Rs.50,00,000/- on 09.07.1991 for pecuniary advantage to yourself or to others and thereby you committed the offence specified in section 13(1) (d) of P.C. Act, 1988 punishable u/s 13(2) of that act and within the cognizance of this Court.

8. Pending trial, the third accused V.P.Ragavendra Rao failed to appear before the court during trial. NBW was issued against him and case against him was split up and numbered as CC.No.35 of 2013. Later

the said accused V.P.Ragavendra Rao surrendered and therefore, NBW was recalled. Likewise, fifth accused D.K.Mukerjee absconded and NBW was issued against him. Case against him was split up on 06.08.2013 and numbered as CC.No.33 of 2013. On behalf of the prosecution, to prove the charge against accused persons, 58 witnesses were examined, 251 exhibits marked through these witnesses. On the side of the defence, two exhibits Ex.D1 and Ex.D2 were marked. The trial court in CC.No.225 of 1997, held V.Subramaniam-A1, A.V.Krushnun-A2, Neelakandan @ Neelu-A4, B.Natarajan-A8 and B.Subramaniam-A9 guilty. A6-Ramani and A7-Varadharajan were found not guilty. Insofar as the split up cases, where third accused Ragavendra Rao and the fifth accused D.K.Mukerjee stood trial, the trial court held them guilty. The sentence imposed on the accused who were found guilty in CC.No.225 of 1997 is as under:

S No	Accused	Offence	Punishment
1	A1,A2,A4, A8, A9	120(b) r/w 420, 468, 471 r/w 468 IPC	One year rigorous imprisonment and fine of Rs.1,000/-, in default to undergo six months simple imprisonment

S No	Accused	Offence	Punishment
2	A1,A2,A4,A8 & A9	420 IPC	One year rigorous imprisonment and fine of Rs.1,000/-, in default to undergo six months simple imprisonment
3	A1, A2 & A4	468 IPC	One year rigorous imprisonment and fine of Rs.1,000/-, in default to undergo six months simple imprisonment
4	A1, A2, A4, A8 & A9	465 & 471 IPC	One year rigorous imprisonment and fine of Rs.1,000/-, in default to undergo six months simple imprisonment
5	A8 & A9	13(1)(d) r/w 13(2) of PC Act, 1988	One year rigorous imprisonment and fine of Rs.1,000/-, in default to undergo six months simple imprisonment
Sentence of imprisonment ordered to run concurrently. Period of imprisonment already undergone ordered to be set off.			

9. Aggrieved by the order of conviction and sentence, Crl.A.No.656 of 2013 is preferred by Neelakandan @ Neelu, fourth accused who has been found guilty and sentenced as mentioned in the

tabular column above. Crl.A.No.678 of 2013 is filed by B.Natarajan, 8th accused against the sentence and conviction mentioned above. Crl.A.No.684 of 2013 filed by V.Subramaniam and A.V.Krushnun A1 and A2 respectively as against the conviction and sentence mentioned in the above tabular column.

10. Crl.A.No.685 of 2013 preferred by V.P.Ragavendra Rao, split up accused and tried separately in CC.No.35 of 2013. He was originally shown as A3 in the parent case CC.No.225 of 1997. The other split up accused D.K.Mukerjee tried in split up case CC.No.33 of 2013. He was originally shown as A-5 in the parent case. He has preferred Crl.A.No.1 of 2014. Both these appellants have preferred appeals as against the conviction and sentence as stated in serial No.1 to 4 of the table stated above.

11. **Case of the prosecution and the reasons given by the trial court for holding them guilty:** The trial court, in CC.No.225 of 1997 after extracting the evidence of the prosecution witnesses and the documents spoken by them, held that the evidence adduced by these

witnesses and the documents leads to the conclusion that A1 V.Subramaniam, A2 A.V.Krushnun and Neelakandan-A4 along with absconding accused A3-Ragavendra Rao and A5-Mukerjee had connived with A8-Natarajan, Assistant General Manager, Indian Bank and V.Subramaniam-A9 Deputy General Manager, Indian Bank to avail huge credit facilities from the Indian Bank, East Abhiramapuram Branch in the name of M/s.Plastimar Products and from Indian Bank, North Usman Road Branch in the name of M/s.Austral Plastics and thereby defrauded the bank by way of submitting forged and fabricated invoices, financial statement, work orders and caused huge loss to the bank.

12. In this connection, the trial court has relied upon Ex.P162, the report of PW20-V.Krishnamurthy who inspected M/s.Plastimar Products account, after the loan became over due under DABP to a tune of Rs.84.14 lakhs and the testimony of PW16 K.Jayakumar who verified the records maintained at Central Railways had deposed that the purchase order No.12/90/7252/1 dated 05.04.1991 by Central Railways for purchase of 19125 numbers of SMS window shutters at the rate of Rs.151/- per piece marked as Ex.P140 and the purchase order

No.12/90/1429/1/08742 dated 24.04.1991 by Central Railways for the purchase of 21045 numbers of FRP windows shutters at the rate of Rs.142/- per piece which is marked as Ex.P141 does not indicate any such purchase order placed by the Central Railways or goods received by the Central Railways. This would prove that Railway orders Ex.P140, Ex.P141 and Ex.P142 submitted to Indian Bank by M/s.Austral Plastics for availing the credit facilities were forged and fabricated.

13. Based on the evidence of Commercial Tax Officers and Income Tax Officers who dealt with the accounts of M/s.Austral Plastics and M/s.Union Plastics Private Limited, the trial court has held that the evidence of PW15 Mathiyazhagan and assessment orders of M/s.Austral Plastics Private Limited marked through him and the commercial tax assessment of M/s.Union Plastics Private Limited marked through him, prove that as per Ex.P42, TNGSC number and CST number of one firm has been used by the other firm contrary to the law and also the turn over of M/s.Austral Plastics Private Limited and M/s.Union Plastics Private Limited during the relevant period is not in consonance with the letter of credits marked as Ex.P48 to Ex.P91 opened by M/s.Austral Plastics with

the Indian Bank, Usman Road Branch in the name of M/s.Union Plastics Private Limited.

14. The turn over shown to the bank as per L/C opened in the name of M/s.Union Plastics Private Limited not been reflected in the commercial tax return indicating that the alleged business with M/s.Union Plastics Private Limited is a fake transaction and Accounts were fabricated to cheat the Bank and avail loan. Likewise, the commercial tax assessment of M/s.Industrial Polymer Company been verified viz-a-viz the supply claimed to have been made by M/s.Austral Plastics Private Limited and found manipulations in respect of invoice for Rs.8,00,000/- in the name of M/s.Union Plastics sent to M/s.Austral Plastics during the year 1994-95.

15. M/s.Union Plastics is only a company on paper and entire bank operation was handled by A1 while this fact has been elicited by PW12-Davidraj who was working as DCTO regarding the fact that M/s.Sai Chem Dyes Private Limited having branch office at SIDCO Industrial Estate, Ambattur as per the commercial tax return on perusal of the records, PW14-N.Thiyagarajan has stated that annual returns for the turn over for the accounts year 1991-92 are Ex.P126 and Ex.P127.

The files pertaining to this assessment year are Ex.P127 and Ex.P128 respectively. Invoices Nos.P132, 133 and 134 of M/s.Sai Chem Dyes Limited raised in the name of M/s.Austral Plastics Private Limited indicates that as if chemicals to the tune of Rs.20,91,000/- was sold during the assessment period 1991. However, the returns filed before the commercial tax authority indicates that the total annual turn over of M/s.Sai Chem Dyes Limited was only Rs.1,07,405 and 55 paise. Thus the three invoices raised in the name of M/s.Austral Plastics Private Limited obviously are make belief documents to induce the bank to issue L/C without actual business or transaction of goods effected as per the bills.

16. Regarding V.P.Ragavendra Rao-A3, appellant in Crl.A.No.685 of 2013, the trial court has observed that PW17-A.N.Balakrishnan has identified this accused as one of the customers of Baroda Bank, Alwarpet Branch and his account was introduced by A1 and A2. Ragavendra Rao (A-3) in turn introduced one, Venkataraman, Proprietor of M/s.Variety Plastics. He also introduced D.K.Mukerjee-A5 to open an account in the name of M/s.Deccan Chemical Agency. The statement of account of M/s.Variety Plastics, M/s.Deccan Chemical

Agency and M/s.Jupiter Agency marked through PW17 A.N.Balakrishnan. According to this witness, the credit voucher pertaining to the account of M/s.Jupiter Agency, M/s.Deccan Chemical Agency, M/s.Variety Plastics, M/s.Industrial Polymers and V.P.Ragavendra Rao-A3's personal account and M/s.Sai Chem Dyes numbering 53 marked as Ex.P153 (series) and the cheques debited into these accounts numbering 74 marked as Ex.P157 series. The pay orders issued by the Bank of Baroda on the strength of those cheques to the accounts of M/s.Jupiter Agency, M/s.Deccan Chemicals, M/s.Variety Plastics, M/s.Industrial Polymer and Ragavendra Rao prove that M/s.Variety Chemicals and M/s.Deccan Chemicals were opened to accommodate LC's Ex.P84 to Ex.P91 opened by M/s.Austral Plastics with Indian Bank and cheat the bank through these companies floated in the name of other accused without doing any actual business or transfer of goods. The trial court has observed that A1 and A2 are the owners of M/s.Austral Plastics Private Limited and they are in charge for its affairs availing loan raising L/C and laying the money in the accounts of other accused and later withdrawn by them and these facts are proved through PW18-Srinivash and other documents.

17. The postmen working in the respective area were examined as PW33, PW34 and they have deposed that they never delivered letter to M/s.Industrial Polymers at door No.3/58, Veteran Lines, Cantonement, Pallavaram since there was no such firm functioning in that address. PW33 Babu Rao, Postman deposed that at door No.17, Ramakrishnan Street one, Venkatraman is residing and there is no commercial establishment in the name of M/s.Industrial Polimar. PW34, Rajendran, Postman corroborates the evidence of PW33 regarding door No.17 in Ramakrishnan Street, T.Nagar. Through these witnesses, the trial court has concluded that M/s.Industrial Polymar is a fictitious company and to defraud the Indian Bank they were created as per the idea conceived by A1 and A2.

18. The trial court had analysed the evidence of each and every witnesses and the documents they have spoken, had concluded that the transactions alleged to have been occurred between M/s.Austral Plastics and other companies were mostly fictitious and furthermore, most of the company itself is a non existing company created only for the purpose of

accommodating LC's raised by M/s.Austral Plastics owned by A1 and A2.

19. In the scheme of conspiracy unraveled through witnesses and exhibits is that A3-Ragavendra Rao has introduced A1 and A2 to Sri.M.Gopalakrishnan, then Chairman cum Managing Director of Indian Bank and all three (A1 to A3) together has sought more credit facilities. M.Gopalakrishnan then CMD had referred them to A8-Natarajan, Assistant General Manager and thus, DABP credit facilities to the tune of Rs.60,14,215/- been extended to M/s.Austral Plastics run by A1 and A2. The loan facility been utilised by furnishing fabricated documents as if materials were supplied to the companies M/s.Sai Chem Dyes Private Limited and M/s.Industrial Polymer run in the name of A4 and M/s.Deccan Chemical Agency in the name of A5. Knowingly they are fabricated documents, A8 and A9 processing it without following the practice and procedures which ought to have been followed before extending credit facilities sanctioned the facilities. Therefore accused A3 and A5 in parent case CC.No.225 of 1997 found guilty and convicted in CC.Nos.32 and 33 of 2013 split up cases.

20.**Unsuccessful defence raised by the accused:**

The contention of the accused persons that the transactions are all genuine and no fabricated document produced to avail the credit facility. Further, immediately after registration of the case, the entire due on both the accounts been paid with interest and the complainant bank has sent letter Ex.D1 and Ex.D2 to withdraw the complaint. Though these letters been received by CBI Higher officials and the investigating officer, ignoring the request to withdraw investigation they proceeded with investigation and filed final report contrary to the promise given by the bank at the time of settling the issue in entirety this plea was negatived by the trial court on the ground that while the prosecution has proved that through fabricated documents fraudulently loan be availed from Indian Bank through fictitious company and the said crime been committed in connivance of public servants namely A8 and A9 by private parties particularly A1 and A2, who were the major beneficiaries of the crime, the subsequent conduct of the accused repaying the loan amount will not exonerate them from culpability.

21. While prosecution able to prove loan was availed by way of submitting forged and fabricated document, the invoices, delivery challan and other documents produced by A1 and A2 to the bank are not supported by any genuine business. The fabrication of balance sheet, profit and loss account are documents which prove the intention of the accused persons at the inception itself to cheat the bank and thereby has availed credit facilities and obtained unlawful gain. The case of being very serious nature and affecting the economy of the country, mere withdrawal of the said complaint by the bank on repayment of the dues will not nullify the prosecution. The misutilisation of the public money by accused / borrower with the connivance of the public servant is an offence against State and therefore it neither can be withdrawn nor be compounded.

22. The learned counsels appearing for the appellants in common, submitted that while the bank which has initiated the investigation through complaints registered as 1(S) and 2(S)/ 1994/CBI/SCB/Chennai on 05.01.1994 had subsequently requested the Superintendent of Police as well as the Director General of CBI vide

letters dated 12.11.1994 and 11.08.1995 marked as Ex.D1 and Ex.D2 respectively expressing their intention to withdraw the complaint in view of the fact that the entire loan amount been repaid. While so, contrary to the dictum laid down by the Hon'ble Supreme Court of India in the case of ***Gian Singh Vs. State of Punjab*** reported in ***(2012) 10 SCC 303***, the respondent police continued the investigation and laid the final report in the year 1997. By the time the final report filed, then three years has lapsed from repayment in full. When the entire due been paid and cleared by the accused persons and the complainant had no grievance of any kind, the prosecution ought not to have launched.

23. Further, it was contended that there is no witness on the side of the prosecution to prove the alleged forgery and fabrication of document used for the purpose of availing loan. There is no whisper that any of the document marked as Ex.P1 to Ex.P254 were forged or fabricated. To prove the charge of forgery and fabrication, the documents ought to have been sent for analysis of hand writing and signature by expert and opinion of that expert ought to have been obtained. Having

failed to place the opinion of the handwriting expert to prove the charge of forgery, the prosecution cannot succeed. However, the trial court had by submises held the accused are guilty and convicted them for forgery and cheating. When there is no evidence of forgery and when the bank itself has clearly come out with the letter that entire due been paid, there cannot be any allegation of cheating also. While so, the conviction of forgery and cheating is legally not sustainable. Having acquitted A6 and A7 for want of proof that they have forged the document, the same analogy applies to the other accused also. Since there is no evidence for forging the document used to avail credit facility, the other charges that fraudulently cheated the bank ought to fail.

24. Regarding the allegation of fictitious company opened in the name of the other accused persons namely A3 and A4, A5, the learned counsel appearing for the appellants submitted that M/s.Industrial Polimar, M/s.Deccan Chemicals and M/s.Sai Chem Dyes Limited are establishments registered with Commercial Tax Department, paid tax both for the turn over and income derived and witnesses have spoken about the returns filed on behalf of these companies. Just because some

of the transactions not disclosed in the Tax return, that will not render these companies a fictitious company while the State has collected tax from those companies and records indicates that they had been in existence at the relevant point of time and records maintained by the Departments, discounting bills, raising letter of credit and later failure to honour by its cannot be construed as an act of crime. In business, at times, due to fluctuation in trade or failure of the customer to pay the money due will have a cascading effect and the borrower from the bank may default. However in the instance case, after recovery from the financial crisis, accused 1 & 2 had repaid the entire loan amount much prior to filing of final report. The investigation Officer in spite of request by the defacto complainant to withdraw the complaint on the ground that entire due amount have been cleared, not disclosing this fact and filed final report three years after repayment of the due in entirety.

25. Therefore the counsels appearing for the appellants submit that this is nothing but a malafide prosecution against the bonafide trader who was unable to repay the loan in time, but honestly repaid it after mobilising fund. Though it is after registering the complaint, but much

before filing of final report.

26. Heard, the learned counsels and records perused.

27. The entire case of the prosecution starting from the complaint Ex.P1 and Ex.P2 dated 04.01.1994 these two complaints indicates that M/s.Austral Plastics Limited owned by A1 and A2 had in the course of business availed credit facility from Indian Bank. The loan application has been processed by A8 and A9 who are the Assistant General Manager and Deputy General Manager at the relevant point of time.

28. For availing the credit facility, A1 and A2 had submitted documents to substantiate their financial and trade capacity and those documents are relied by the prosecution and marked as Ex.P6 assets and liability statement and Ex.P9 credit report. Based on the request for sanctioning the loan, inspection has been conducted in respect of M/s.Plastimar Products and M/s.Austral Plastics Private Limited and the inspection report is marked as Ex.P10. Thereafter, the loan amount been

disbursed by the bank and utilised by the borrower namely A1 and A2. The purchase bills and hundies, letter of credits in connection with purchase of raw materials are all relied by prosecution and marked as exhibits. The accounts of the other accused A3, A4 and A5 in the name of their respective firm or in the individual name been mostly introduced by A1. But that alone will not be a ground to infer the existence of conspiracy to cheat the bank. Likewise, though it is contended by the prosecution that these firms are all fictitious firm created to accommodate the bills of A1 and A2, the documents relied by the prosecution and the witnesses from Commercial Tax Department and Income Tax Department goes to show that they are not fictitious company. May be the transactions referred by the prosecution might have been a fake transaction.

29. In the light of the above facts, it is relevant to consider the letter marked as ExD1 dated 12.11.1994 from Indian Bank, Central Office marked as Ex.D1 and the letter dated 11.08.1995 from Indian Bank, Central Office marked as Ex.D2. These two documents were marked in the cross examination of PW53-Muruganantham, Deputy

Superintendent of Police who completed the investigation and filed final report on 04.10.1997 before the X Metropolitan Magistrate Court, Chennai and later transferred to Principal Sessions Court, Chennai and thereafter to Special Court for CBI Cases at Chennai. When Ex.D1 letter dated 12.11.1994 was shown to this witness and confronted, he admitted the content of Ex.D1 and had stated that he has not acted upon that letter since he was not the investigation officer during the period meaning it was received by his predecessor who was investigating the case prior to him. The content of Ex.D1, it reads as below:

> *"Your attention is invited to our letters No.32 &33/1195/94/VO both dated 04.01.1994 under which bank had lodged two separate complaints against the above borrowers and requested you to investigate the matter. You are also kind enough to register two separate cases with RC.No.1/(S)/96 and Rc.2/(S)/94 dated 05.01.1994.*
>
> *Due to constant follow up, our North Usman Road Branch and East Abhiramapuram Branch now pleased to inform us that both the above accounts viz. M/s.Austral Plastics (P) Ltd and M/s.Plastimar Products have completely adjusted their liabilities with them. As*

on date there is no liability at all. Since the parties have completely adjusted their liabilities at both the branches, our bank decided to withdraw both the complaints dated 06.01.1994 lodged by the bank against the above parties. I request you to treat both the complaints lodged by me on 04.01.1994 against the above parties as withdrawn.

Kindly see that bank could recover the full amount in both the cases on the assurance of the Management that complaint with CBI could be withdrawn.

This letter is signed by S.C.Vohra, General Manager(I&V) and Chief Vigilance Officer and it is addressed to the Superintendent of Police(CBI), Chennai.

30. This witness went confronted with the content of the Ex.D2, he has admitted that he is aware of the letter. The content of Ex.D2 dated 11.08.1995 reads as below:

In regard to the above mentioned cases registered by Central Bureau of Investigation on 5/1/94 subsequent to our bank lodging separate complaints, we have been able to recover the amounts due as a result of which the liabilities in both *accounts have been completely adjusted at both the branches. Our General Manager(Vig) and Chief Vigilance Officer, had also addressed a letter to the Superintendent of Police, Central Bureau of Investigation, Madras on 12.11.1994 requesting that both complaints lodged by us on 04.01.1994 against the above parties to be treated as withdrawn as the parties had completely adjusted their liabilities at both the branches. A copy of the said letter is enclosed for your kind information.*

In the light of the circumstances mentioned above, we request you to kindly look into the matter and do the needful in this regard.

This letter is signed by Managing Director, Indian Bank addressed to Joint Director, CBI, Chennai.

31. As pointed out by the trial court, even if the defacto complainant has thought fit to withdraw, if grave offence against the State is committed, there is no bar for the investigation agency to proceed with the investigation and file final report. It is for the trial court to appreciate the culpability of the individual accused. However, in the instant case of money transaction between banker and its customer, on

surmises, complaint been given when there is a default in payment and later the borrower had come forward to repay the money in full without any negotiation. Then, whether he had intention to cheat the bank right from inception has to be looked into. Also when the charge is for conspiracy, fabrication of documents and fraud, the prosecution has to place evidence beyond reasonable doubt that the documents produced to avail loan are fabricated or forged.

32. The trial court while considering the allegation of forgery and fabrication has found the accused guilty of offence under Sections 468 and 471 of IPC, but to prove the forgery, no adequate evidence placed before the court. As contended by the counsels for appellants, out of 254 documents, none of the witnesses have spoken about these documents and contended that they are forged documents. If one look for evidence, whether these documents used for purpose of cheating, the element of intention to cheat at the time of availing loan not been elicited through these witnesses. While subsequent conduct of the prime accused repaying the loan in the year 1994 and the same been informed to the investigation agency, first to the Superintendent of Police and then to the

Zonal Director as early as in the year 1994 and 1995 respectively, the investigation agency ought to have brought, considered it and before laying final report and in the trial ought to have placed strong reason whey despite request to withdraw the complaint, they have continued the investigation and filed final report. There is no explanation from the prosecution side in this aspect.

33. At least, the trial court which considered the evidence ought to have appreciated the fact that the proof for forgery and cheating miserably missing in this case. While the ingredient for attracting Sections 468 and 471 of IPC is wanting, the complaint been lodged under suspicion that A1 and A2 had raised LC's in the name of non existing company since the bills discounted were not honoured even after 180 days. However, the prosecution evidence speaks about the existence of those companies but only doubts the transactions pertaining to the LC's. To suspect the genuineness of the transaction between M/s.Austral Plastics, M/s.Polymar Products, M/s.Sai Chem Dyes Private Limited and M/s.Deccan Chemicals, materials placed before this Court do not substantiate the charge. No material proof that forged documents were

used for the purpose of cheating. Further the vigour of the prosecution has substantially lost its credentiality in the light of the non disclosure of the fact by the prosecution about repayment of the loan in the year 1995 and the letter Ex.D1 and Ex.D2 given by the bank expressing their intention not to prosecute the borrowers in view of the repayment.

34. The judgment of the Hon'ble Supreme Court of India in the case of ***Gian Singh Vs. State of Punjab and another*** reported in (2012) 10 SCC 303, squarely applies which reads as below:

> 61. *The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be*

exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the *parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.*

35. The transaction narrated by the prosecution predominantly carries a civil flavour and without affecting the financial interest of the bank, the accused have come forward to clear the due long before filing

the final report. In spite of that fact been intimated to the higher officials of the investigation agency, that intimation has not percolated to the investigation officer at DSP level and therefore, the exercise of completing the investigation and prosecution been pursued by the CBI in the year 1997 for the loan which was availed in the year 1991 and cleared in the year 1994.

36. Nonetheless, the case ended in conviction after full trial before Special Court in the year 2013. And now the Appeals heard after 10 years. While considering the fact that the financial interest of the complainant bank not affected and the act of the borrowers who have repaid the dues, it is appropriate to reverse the finding of the trial court.

37. Further, while charge against the principle borrower itself is found not to be proved beyond doubt, besides the expressed intention of the complainant to withdraw the complaint as well as the repayment of the dues by the accused 1 and 2, there is no valid reason to punish the other accused persons.

38. For the reasons stated, the appeals are allowed. The judgment of conviction and sentence in CC.No.225 of 1997, CC.No.33 of 2013 and CC.No.35 of 2013 by the learned XI Additional Special Judge (CBI Cases relating to Banks and Financial Institutions), Chennai are set aside. Fine amount if any to be refunded. Bail bond shall stand cancelled.

30.03.2023

Index:Yes/No
Internet:Yes/No
Speaking/Non-speaking order

lok

Dr.G.JAYACHANDRAN, J.

lok

To

1.The learned XI Additional Special Judge for CBI Cases,
Chennai.

2. The Inspector of Police,
   ACB: CBI,
   Chennai

3. The Public Prosecutor,
   Madras High Court,
   Chennai.

Crl.A.Nos.656, 678, 684, 685 of 2013 and 1 of 2014

30.03.2023