IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:10.07.2023	Pronounced on:10.08.2023

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.A.Nos.743, 762 and 764 of 2013
& Crl.A.No.34 of 2014

Crl.A.No.743 of 2013:

V.Rajkumar .. Appellant/Account No.2

/versus/

State Rep.by Inspector of Police,
BS & FC,
CBI, Bangalore. .. Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 of Cr.P.C., against the judgment of conviction and sentence passed by the learned Principal Special Judge for CBI Cases, Chennai and made in C.C.No.55 of 2000 by judgment dated 23.10.2013.

For Appellant :Mr.R.Rajarathinam, Senior Counsel for
Mr.G.Saravanan
For Respondent :Mr.B.Alexander Lenin Raja
Spl.Public Prosecutor for CBI

Crl.A.No.762 of 2013:

K.Sai Jagannathan .. Appellant/3rd Accused

/versus/

The State,
Rep.by the Inspector of Police,
CBI/BS & FC/BLR,
Bangalore. .. Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374(2) of Cr.P.C., to set aside the judgment dated 23.10.2013 passed in C.C.No.55 of 2000 by the Principal Special Judge for CBI Cases, Chennai convicting the appellant for the offences under Sections 120-B r/w 420, 109 r/w 420 IPC and Section 13(2) r/w 13(1)(c)(d) of the PC Act, 1988 under Section 420 IPC (2 counts) and sentencing the appellant to undergo RI for one year and to pay a fine of Rs.5,000/- for each offence.

For Appellant :Mr.N.Ramakrishnan for
M/s Waraon and Sai Rams
For Respondent :Mr.B.Alexander Lenin Raja
Special Public Prosecutor for CBI

Crl.A.No.764 of 2013:

N.Ramakrishnan .. Appellant/Accused No.4

/versus/

The State Rep by
Inspector of Police,
CBI:EOW,
Chennai,
Rc.No.11(E)/1996 .. Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374(2) of Cr.P.C., to set aside the judgment passed against the appellant on 23.10.2013 in C.C.No.55 of 2000 by the Hon'ble Principal Special Sessions Judge for CBI Cases, Chennai and acquit him from all the charges.

For Appellant :Mr.S.Kingston Jerold

For Respondent :Mr.B.Alexander Lenin Raja
Special Public Prosecutor for CBI

Crl.A.No.34 of 2014:-

M.Varadharajulu .. Appellant/5th accused

/versus/

The State
Rep.by the Inspector of Police,
CBI/BS & FC/Bangalore. .. Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374(2) of Cr.P.C., to set aside the judgment dated 23.10.2013 passed in C.C.No.55 of 2000 by the Principal Special Judge for CBI Cases, Chennai and sentencing the appellant to undergo a Rigorous Imprisonment of one year and to pay a fine of Rs.5,000/- for each offence.

For Appellant :Mr.N.Ramakrishnan for
M/s Waraon and Sai Rams

COMMON ORDER

Based on the source information, Bank Securities and Fraud Cell (BS & FC), Bangalore Branch, on 30.01.1996, registered a case in

R.C.11(E)/96-CBI/BSFC/BLR, against five suspects for conspiracy to cheat, cheating and misconduct by public servants namely, M.Gopalakrishnan, (Chairman-cum-Managing Director, Indian Bank) along with private individuals causing pecuniary loss to the Indian Bank, Muthialpet Branch to a tune of Rs.6,58,54,709/-.

2. On completion of investigation, Final Report filed against the following persons:-

(1)M.Gopalakrishnan

(2)V.Rajkumar

(3)K.Sai Jaganathan

(4)N.Ramakrishnan

(5)M.Varadharajulu

3. The trial Court based on the materials collected during investigation and relied by the prosecution, framed the following 15 charges:-

Charge No.1:

Between July, 1988 and March 1994, you, A1 M.Gopalakrishnan Executive Director, and later Chairman and Managing Director Indian Bank, you A2 V.Rajkaumar, Director, M/s Arrun Builders Pvt.Ltd. you. A3 K-sai Jagannathan, Director M/S Income Builders Pvt. Ltd., you. A4 Ramakrishnan Approved Valuer in Pondicherry along with the absconding accused M.Varadarajulu alias M.V.Raja and M/s Fashion Builders Pvt. Ltd., represented by A.V.Anand, son of M.Varadarajulu alias M.V.Raja as its Director, were parties to a criminal conspiracy to do illegal acts or legal acts through illegal means to wit, to chest the Muthialpet branch, Saidapet; Chetput and East Abhiramapuram branches respectively by dishonestly and Fraudulently inducing the said branches to deliver huge funds (1) by applying for credit facilities on false representation by (a) M/s Arrun Builders Pvt. Ltd., represented by its you Director, A2, V.Rajkumar & (b) M/s Income Builder's Pvt. Ltd.,represented by its Director A3 K.sai Jaganathan for Rs. 2 Crores each from the Muthialpet and Saidapet branches and (C) M/s Fashion Builders represented by A.V. Anand Son of the absconding accused M.Varadarajulu alias M.V.Raja, for Rs. 1 crore as working capital from the Chetput branch and for Rs.2 Crores from the East Abhiramapuram branches respectively with an inflated valuation you report given by you A4, N.Ramakrishnan, Approved Valuer, Pondicherry (2) by A 1.M.Gopalakrishnan as Executive Director orally sanctioning the said amount and later confirming them and as-Chairman, and Managing Director being entrusted with or being in dominion over property viz., Public funds in the bank, dishonestly disposed of the property and being a public servant, abusing his position as such public servant allowed other persons to convert it to their own used by converting the overdraft facilities to Medium Term Loans, adjusting majority of over dues which include the principal amount loaded with interest of M/s Arrun Builders Pvt. Ltd., M/s Income, Builders Pvt.Ltd., and M/s Fashion Builders Pvt.Ltd (3) by diverting funds from the accounts of M/s MVR Exports Pvt. Ltd., later changed to M/s MVR Industries Pvt.Ltd., and M/S Maxwell Exim formerly known as M/s Maxwell promotion which were enjoying various credit facilities with the Muthialpet branch Indian Bank and were already overdrawn and (4) waiving at the instance of the absconding accused Rs.64,64,543/- and Rs.50,52,278/- respectively in the accounts of M/s Arrun Builders Private Limited and M/s Income Builders Private Limited and and writing of Rs.6,72,888 in the account of M/s Arrun Builders on their mere application despite availability of security reply obtaining for the above said accused pecuniary advantage without public interest, disposing of Rs.6,58,54,709/- and causing wrongful loss to Indian Bank and committed the offence punishable under Sections, 120B read with 420, 109 read with 420 IPC and 13 (2) read with 13 (1) (e) and (d) the Prevention of Corruption Act, 1988.

<u>Charge No.2:</u>

In pursuance of the criminal conspiracy and in the course of the same transaction, you A2.V.Rajkumar, Director M/s Arrun Builders Private Limited dishonestly and fraudulently cheated the Muthialpet branch of Indian Bank, by submitting 8: letters between 21.7.1988 and 16.8.1988 to the said branch of which 5 letters were for release of Rs.135 lakhs for the purported purchase of lands and the remaining 3 letters for Rs.65 lakhs without mentioning of any purpose, thus aggregating to Rs.2 crores furnishing inflated valuation report of A4.N.Ramakrishnan and withdrawing the entire Rs.2 crores between 23.7.1988 and 16.8.1988 causing wrongfull loss to Indian Bank and wrongful gain to himself and thereby committed the offence punishable under section 420 IPC.

Charge No.3:

In pursuance of the criminal conspiracy and in the course of the same transaction. You A2.V.Rajkumar dishonestly and fraudulently cheated Indian Bank, Muthialpet branch by purchasing only 77.33 grounds for only Rs.25,77,972/- out of Rs.2 crores on the GST Road, in the names relatives and employees of the absconding accused M.Varadarajulu alias M.V.Raja while the amount was obtained for the purported construction of commercial and residential complex, in haphazard locations and not in one stretch thereby vitiating the very project and thereby committed the offence punishable under Section 420 IPC.

Charge No.4:

In pursuance of the criminal conspiracy and in the course of the same transaction you A2 V.Rajkumar, Director of M/s Arrun Builders Pvt.Ltd., with the active assistance of the absconding accused M.Varadharajulu alias M.V.Raja, dishonestly and fraudulently cheated Muthialpet branch of Indian Bank, by inducing it to convert the overdraft of Rs.2 Crores already disbursed into a Medium Term Loan on the basis of letter and proposal with false details and gained A1, M.Gopalakrishnan, Chairman and Managing being a public servant abusing his position as such public servant, permitted the conversion of Overdraft into a Medium Term Loan, and thereby, you A2 V.Rajkumar committed the offence of cheating punishable under Section 420 IPC. Charge No.5:

In pursuance of the criminal conspiracy and in the course of the same transaction you A1 M.Gopalakrishnan, Chairman and Managing Director, Indian Bank, public servant committed the offence of criminal misconduct by abusing his position as such public servant, allowed the conversion of overdraft to medium term loan of obtaining pecuniary advantage to A2 V.Rajkumar of M/s Arrun Builders without public interest and thereby punishable under Section 13 (2) read with 13 (1) (d) of Prevention of Corruption 1988.

Charge No.6:

In pursuance of the criminal conspiracy and in the course of same transaction you A2, V.Rajkumar and A3 K.Sai Jaganathan, Director M/s Income Builders Pvt Ltd., dishonestly and fraudulently cheated the Muthialpet branch of

Indian Bark, by diverting funds from the already overdrawn accounts of M/s MVR Exports Pvt. Ltd.. later changed as M/s MVR Industries and M.s Maxwell Promotion, later changed as M/s Maxwell Exim maintained at the Mathialpet branch to adjust the huge liabilities to the tune of R.3,64,13,559/- and thereby committed the offence punishable under Section 420 1PC.

Charge No.7:

In pursuance of the Criminal conspiracy and in the course of the same transaction, you A2 V.Rajkumar with the active assistance of the absconding accused M.Varadarajulu alias M.V.Raja, dishonestly and fraudulently cheated Mathialpet branch of Indian Bank, by false representation in the letter dated 3.3.1994 to induce Indian Bank to waive Rs.64,64,543/- causing wrongful loss to the Bank and wrongfully gaining to the extent of the waive and thereby committed the offence punishable under Section 120 IPC.

Charge No.8:

In pursuance of the Criminal conspiracy and in the course of the same transaction, you A1 M.Gopalakrishnan, Chairman and Managing Director, Indian Bank, a public servant abusing his position as such public servant orally sanctioned the release of Rs.2 crores and granted the waiver of Rs.64,64,543/- on the letter dated 03.03.1994 with false representation in the board of Directors Meeting on 20.03.1994 thus obtaining pecuniary advantage to A2 V.Rajkumar of M/s Arrun Builders without public interest and thereby committed the offence punishable under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

Charge No.9:-

In pursuance of the criminal conspiracy and in the course of same transaction you A3 K.Sai Jaganathan, Director M/s Income Builders Pvt Ltd., dishonestly and fraudulently cheated the Indian bank, Saidapet branch by inducing it to deliver Rs.125 lakhs out of Rs.195 lakhs of rupees sanctioned on false representation of purported purchase of lands for commercial and residential complex but purchasing only 15 grounds in the name of relatives and employees of the absconding accused M.Varadharajulu alias M.V.Raja for Rs.16,49,921/- diverting funds to settled the outstanding of M/s Sathyam Foods of the said M.V.Raja and on false representation in the letter dated 03.03.1994 with the active assistance of A1 M.Gopalakrishnan, CMD Indian Bank, getting Rs.6,72,888/- written off and Rs.50,52,278/- waived by the Board of Directors on 28.03.1994 causing wrongful loss to Indian Bank to the extent of Rs.57,25,166/- and thereby committed the offence punishable under Section 420 1PC.

Charge No.10:

In pursuance of the criminal conspiracy and in the course of same transaction you A1 M.Gopalakrishnan, CMD, Indian Bank, a public servant committed the offence of criminal misconduct by abusing his position as such public servant by orally sanctioning the grant of Rs.195 lakhs and release of Rs.125 lakhs to M/s Income Builders Pvt Ltd., as Medium Term Loan permitting diversion of fund by the absconding accused M.Varadharajulu alias M.V.Raja, to settle the outstanding of M/s Sathyam Foods, another group of company of the said accused on 21.02.1991 and on the letter dated 03.03.1994 of A3, K.Sai Jaganathan, ordered the waiver of Rs.50,52,278/- and writing off of Rs.6,72,888/- thus obtaining pecuniary advantage to A3, K.Sai Jaganathan without public interest thereby committed the offence punishable under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

Charge No.11:

In pursuance of the criminal conspiracy and in the course of same transaction M/s Fashion Builders Pvt. Ltd., a company floated by the absconding accused M.Varadharajulu alias M.V.Raja represented by his son A.V.Anand as Director, dishonestly and fraudulently cheated Indian bank, Chetpet Branch, on the representation of purported purchase of 70 grounds at Guindy for construction of commercial and residential complex in his letter dated 10.9.1988 inducing it to release Rs.50 lakhs and transferring the over draft facility to East Abhiramapuram branch with a fresh proposal for Rs.300 lakhs, inducing it to release Rs.2,11,65,000/- purchasing lands for Rs.33,97,872/- only in the names of relatives and employees of the absconding accused and in the name of you A3 K.Sai Jaganathan, in haphazard locations making the project not viable and thereby committed the offence punishable under Section 420 IPC.

Charge No.12:

In pursuance of the Criminal Conspiracy and in the course of the same transaction you A3 K.Sai Jagannathan with active assistance of the absconding accused M.Varadharajulu alias M.V.Raja dishonestly and fraudulently cheated Indian Bank, Muthialpet branch by inducing it to divert funds from the already overdrawn accounts of M/s MVR Exports Pvt.Ltd., later changed as M/s MVR Industries Pvt.Ltd., and M/s Maxwell Promotion, later changed to M/s Maxwell Exim maintained with Muthialpet branch of Indian Bank to adjust the huge liabilities of M/s Fashion Builders Pvt.Ltd., with East Abhiramapuram Branch, and thereby committed the offence punishable under Section 420 IPC.

Charge No.13:

In pursuance of the criminal conspiracy and in the course the same transaction you A1 M.Gopalakrishnan, CMD, Indian Bank, a public servant, committed criminal misconduct abusing his position as such public servant permitting M/s Fashion Builders Pvt.Ltd., to withdraw Rs.2,11,65,000/- on the purported purchase of lands and A3, K.Sai Jaganathan to purchase lands in his own name out of the amount released to M/s Fashion Builders Pvt.Ltd and diverted funds from the already overdrawn accounts of M/s MVR Exports Pvt.Ltd., later changed as M/s MVR Industries Pvt.Ltd.. and M/s Maxwell promotion's later change as M/s Maxwell Exim Pvt Ltd., maintained with Muthialpet branch to adjust the huge liabilities of M/s Fashion Builders Pvt.Ltd., thus obtaining pecuniary advantage to M/s Fashion Builders Pvt.Ltd., without public interest and thereby committed the offence punishable under Section 13 (2) read with 13(1)(d) of the Prevention of Corruption Act 1988.

Charge No.14:

In pursuance of the criminal conspiracy and in the course of the same transaction, you A4, N.Ramakrishnan, Approved valuer of Pondicherry, intentionally aided and abetted A2 V.Rajkumar A3 K.Sai Jaganathan and the absconding accused M.V.Varadharajulu alias M.V.Raja by furnishing false valuation reports to inflate the value of the lands purported to be purchased for the project of construction of flats and commercial complex in order to dishonestly and fraudulently cheat the Muthialpet, Saidapet, Chetput and east Abhiramapuram branches of Indian Bank to the tune of Rs.5,36,65,000/- and thereby committed the offence punishable under Section 109 read with 420 IPC.

Charge No.15:

In pursuance of the Criminal Conspiracy and in the course of the same transaction, you A1,M.Gapalakrishnan, CMD, Indian Bank, a public servant being entrusted with or having dominion over property namely public funds abusing his position as such public servant orally sanctioned Rs.2 Crores to be released from Muthialpet branch to M/s Arrun Builders Pvt.Ltd., Rs.1,25,00,000/- to be released from Saidapet Branch to M/s Income Builders Pvt.Ltd.. and Rs.2,11,65,000/- from Chetpet and East Abiramapuram branches to M/s Fashion Builders Pvt.Ltd., respectively waived Rs.64,64,543/- and Rs.50,52,278/ respectively to M/s Arrun Builders Pvt.Ltd.. and M/s Income Builders Pvt.Ltd., besides writing off Rs.6,72,888/- to M/s Income Builders Pvt.Ltd., in all aggregating to Rs.6,58,54,709/- and permitted the said accused to convert it to their own use without public interest and thereby committed the offence of criminal misconduct punishable under Section 13 (2) read with 13 (1) (c) of the Prevention of Corruption Act 1988.

4. On the date of filing the Final Report, the 5th accused was shown as absconding accused. Therefore, initially charges were framed against A1 to A4 showing A5 as absconding accused. Later, the 5th accused was secured and split up the case in C.C.No.12 of 2001 got clubbed with the main case in C.C.No.55 of 2000. Charges under Sections 120-B r/w 420, 109 r/w 420 IPC and 13(2) r/w 13 (1) (c) and (d) of Prevention of Corruption Act, 1988 were framed against A5 and he was treated along with A1 to A4.

5. All the accused denied the charges and claimed for trial. To prove the charges, prosecution examined 62 witnesses. Marked 342

exhibits. In defence, 3 documents marked. The trial Court on considering the evidences held the accused 1 to 5 guilty and sentenced them for charges held guilty as below:-

> "In the result,
>
> A-1 is found guilty and convicted for the offence under Sec.120B r/w.420, 109 r/w.420 IPC and Sec.13(2) r/w.13(1)(c) & (d) of Prevention of Corruption Act, 1988 and sentenced to undergo Rigorous Imprisonment for ONE Year and also to pay a Fine of Rs.10,000/- in default to undergo R.I. for FOUR Months.
>
> A-1 is found guilty and convicted for the offence under Sec.13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988 (4 Counts) and sentenced to undergo Rigorous Imprisonment for ONE Year for each Count and also to pay a Fine of Rs.5,000/- for each Count and in default to undergo R.I. for TWO Months for each Count. The sentences are ordered to run concurrently.
>
> A-1 is found guilty and convicted for the offence under Sec.13(2) r/w.13(1)(c) of Prevention of Corruption Act, 1988 and sentenced to undergo Rigorous Imprisonment for ONE Year and also to pay a Fine of Rs.5,000/- and in default to undergo R.I. for TWO Months. (Total Amount of Fine to be paid by A-1 is Rs.35,000/-)

A-2 is found guilty and convicted for the offence under Sec.120B r/w.420 IPC, 109 r/w.420 IPC and Sec.13(2) r/w.13(1)(c) and (d) of Prevention of Corruption Act, 1988 and sentenced to undergo Rigorous Imprisonment for ONE Year and also to pay a Fine of Rs.10,000/- in default to undergo R.I. for FOUR Months.

A-2 is found guilty and convicted for the offence punishable under Sec.420 IPC (5 Counts) and sentenced to undergo Rigorous Imprisonment for ONE Year for each Count and also to pay a Fine of Rs.5,000/- for each Count and in default to undergo R.I. for TWO Months for each Count. The sentences are ordered to run concurrently.

A-2 is found guilty and convicted for the offence punishable under Sec.109 r/w.420 IPC and sentenced to undergo Rigorous Imprisonment for ONE Year and also to pay a Fine of Rs.5,000/- and in default to undergo R.I. for TWO Months. (Total Amount of Fine to be paid by A-2 is Rs.40,000/-)

A-3 is found guilty and convicted for the offence under Sec.120B r/w.420 IPC, 109 r/w.420 IPC and Sec.13(2) r/w.13(1)(c) and (d) of Prevention of Corruption Act, 1988 and sentenced to undergo Rigorous Imprisonment for ONE Year and also to pay a Fine of Rs.10,000/- and in default to undergo R.I. for FOUR Months.

A-3 is found guilty and convicted for the offence under Sec.420 IPC (2 Counts) and sentenced to undergo Rigorous Imprisonment for ONE Year for each Count and also to pay a Fine of Rs.5,000/- for each Count and in default to undergo R.I. for TWO Months. The sentences are ordered to run concurrently.

A-3 is found guilty and convicted for the offence under Sec.109 r/w 420 IPC and sentenced to undergo Rigorous Imprisonment for ONE Year and also to pay a Fine of Rs.5,000/- and in default to undergo R.I. for TWO Months. (Total Amount of Fine to be paid by A-3 is Rs.25,000/-)

A-4 is found guilty and convicted for the offence under Sec. 120B r/w.420 IPC, 109 r/w 420 IPC and Sec.13(2) r/w.13(1)(c) and (d) of Prevention of Corruption Act, 1988 and sentenced to undergo Rigorous Imprisonment for ONE Year and also to pay a Fine of Rs.10,000/- and in default to undergo R.I. for FOUR Months.

A-4 is found guilty and convicted for the offence under Sec.109 r/w 420 IPC and sentenced to undergo Rigorous Imprisonment for ONE Year and also to pay a Fine of Rs.5,000/- in default to undergo R.I. for TWO Months.(Total Amount of Fine to be paid by A-4 is Rs.15,000/-)

A-5 is found guilty and convicted for the offence under Sec.120B r/w.420 IPC, 109 r/w.420 IPC and Sec.13(2) r/w.13(1)(c) and (d) of Prevention of Corruption Act, 1988 and sentenced to undergo Rigorous Imprisonment for ONE Year and also to pay a Fine of Rs.10,000/- in default to undergo R.I. for FOUR Months.

A-5 is found guilty and convicted for the offence under Sec.420 IPC (3 Counts) and sentenced to undergo Rigorous Imprisonment for ONE Year for each Count and also to pay a Fine of Rs.5,000/- for each Count and in default to undergo R.I. for TWO Months for each Count The sentences are ordered to run concurrently. (Total Amount of Fine to be paid by A-5 is Rs.25,000-)

The period of Sentence, if any already undergone by the accused is ordered to be set off as provided under Law. The sentences for each accused are ordered to run concurrently.

A-3 is found not guilty of Charge No.11 under Sec.420 IPC and is acquitted of the said Charge only."

6. Aggrieved by the judgment of conviction, all the five accused had preferred appeals individually and they are:

Crl.A.No.722 of 2013 ::M.Gopalakrishnan(A1) died pending appeal. Hence, appeal abated.

Crl.A.No.743 of 2013 ::V.Rajkumar(A2), Director of M/s Arun Builders Pvt. Ltd.

Crl.A.No.762 of 2013 ::K.Sai Jagannathan(A3), Director of M/s Income Builders Limited.

Crl.A.No.764 of 2013 ::N.Ramakrishnan(A4), Valuer

Crl.A.No.34 of 2014 ::M.Varadharajulu(A5,Co-conspirator

(Appeal dismissed as withdrawn, since the counsel has made an endorsement as "since the period of sentence imposed on the appellant is set off against the period of custody undergone by him, the appellant may be permitted to withdraw this appeal.)

7. <u>The case of the prosecution as per the oral and documentary evidence:-</u>

A.V.Anand (deceased), S/o Varadarajulu (A5) floated a company by name M/s Fashion Builders Private Limited and another company by name M/s Arrun Builders Private Limited was floated and in this company, V.Rajkumar (A2) the brother's son of A5 was one of the Directors. Simultaneously, the 3rd company by name M/s Income Builders Private Limited was floated and in this company, Sai Jaganathan (A3), brother-in-law of A5 was one of the Directors. All these three companies floated through relatives of A5. M/s Arrun Builders Private Limited incorporated on 20.07.1988 showing its registered office at No.26A, Radhakrishnan Street, Pondicherry. M/s Fashion Builder incorporated on 29.08.1988 showing its registered office at Pondicherry. M/s Income Builders incorporated on 07.06.1990 showing Registered Office at Chennai. Current Account at Indian bank, Muthialpet Branch was opened on 21.07.1988 by M/s Arrun Builders Private Limited. The day next to its incorporation through its Managing Director applied for Over Drawing facility of Rs.65 lakhs immediately for its project of proposed construction of office, shopping and residential flats at Guindy. Letter Ex.P2 addressed to the Manager, Indian Bank, Muthialpet Branch, Chennai. A2 signed as Managing Director of M/s Arrun Builders Private Limited. A2 had sought Over Drawing facility immediately even before making an application for advance, which is Ex.P4, dated 23.07.1988. The Over Drawing facility sanctioned and A2 has withdrawn Rs.65 lakhs on 23.07.1988 through a self cheque (Ex.P5). Thereafter, A1 on 26.07.1988 had addressed a letter (Ex.P7) confirming the action of Regional Manager permitting Muthialpet Branch to release a sum of Rs. 65 lakhs. The Regional Manager also directed to submit the Regional Proposal through the Zonal Manager for regular sanction.

8. The term loan application for Rs.200 lakhs submitted on 23.07.1988 was under process, but even before completing the process, further advance of Rs.25 lakhs on 28.07.1988, Rs.15 lakhs on 29.07.1988, Rs.5 lakhs on 30.07.1988, Rs.20 lakhs on 02.08.1988, Rs.14 lakhs on 03.08.1988, Rs.6 lakhs on 06.08.1988, Rs.10lakhs on 09.08.1988 and Rs.40 lakhs on 16.08.1988. These ODs were released either on the written request of A2 on the promise that the money is requested for purchase of land and the formality of creating EM will be done later or on oral instruction or telephonic request. M/s Fashion Builders (P) Ltd., incorporated on 29.07.1988 at Pondicherry. ROC on 10.09.1988 addressed to Indian Bank Manager, Chetpet Branch, Chennai

enclosing a Project Report for the proposed construction of office, shopping and residential flats at Guindy and sought for Rs.300 lakhs finance. Out of Rs.3 crores, Rs.200 lakhs was meant for the purchase of land proposed at Guindy. The project report accompanied by feasibility report of Architect Mr.K.S.Srinivasan dated 21.07.1988 does not even disclose the survey number or the present owner of the property. The report does not carry the specific location of the proposed site. It is vaguely referred as a site situated in a prestigious location at Anna Salai, Madras, ideally located midway between Railway Station and Airport. Total extent 200 grounds= 480000 sq.ft**.** Based on the vague description, initial loan of Rs.15 lakhs released on 31.10.1988 for purchase of land even before processing the application. The Manager of the Bank had released this amount and informed the Regional Office to confirm the action of releasing Rs.15 lakhs. Before getting confirmation from the Regional Office, the Manager has released further sum of Rs.10 lakhs on 15.11.1988 (Ex.P150 to Ex.P155 speaks about these transactions). On 16.11.1988 the first accused, M.Gopalakrishnan as Executive Director had written a letter marked as Ex.P158 addressed to the Regional

Manager, confirming the accused of releasing the loan to M/s Fashion Builders Private Limtied pending sanction of WC/TC proposal. The entire loan sanctioned were withdrawn to self cheque of M.V.Anand, Director of M/s Fashion Builders (P) Ltd.

9. After disbursing several lakhs of rupees, only on 08.02.1989, the Assistant General Manager, from credit Division, Central Office vide his letter Ex.P159 called for the loan documents from the Branch Manager. Soon thereafter, the account of M/s Fashion Builders (P) Ltd directed to be transferred from Chetpet Branch to R.A.Puram Branch by the Regional Office vide communication dated 21.03.1989 (Ex.P160). On 01.04.1989, the Zonal Office through Zonal Manager informed to the Regional Manager through letter Ex.P161 that the loan of Rs.50 lakhs sanctioned to M/s Fashion Builders (P) Ltd., on various dated between 31.10.1988 and 02.03.1989 is confirmed. Even till that day, loan proposal not regularised.

10. M/s Income Builders (P) Ltd., one week after its

incorporation on 18.06.1990 made application to Indian Bank, Saidapet, Chennai for loan of Rs.200 lakhs with a proposal for the project of construction shopping complex and office premises in 30 grounds of land in Guindy. The Directors of this Company are Ramanujan and Madhusoothanan. The proposal while processing on 25.10.1990 (Ex.P145), a fresh proposal from M/s Income Builders submitted showing Ramanujam and Abinesh Babu as its Directors with an undertaking that the loan will be repaid in one lump sum at the end of 3 years from the date of advance or date of completion of project, whichever is earlier. Loan sanction ticket Ex.P139 issued on the next day i.e. on 26.10.1990 fixing limit of Rs.50 lakhs. The borrower came with fresh proposal Ex.P145 because in the earlier proposal dated 18.06.1990(Ex.P138) the exact location of the proposed project and agreement with land owners not enclosed. Further, several other details necessary for consideration of the proposal though it did not provide the necessary particulars sought under Ex.P163 dated 25.06.1990, sanction ticket Ex.P139 dated 26.10.1990 issued for loan limit of Rs.50 lakhs and on 26.03.1991 extending the secured loan upto Rs.195 lakhs (Ex.P140) by the Manager, Indian Bank, Saidapet branch.

11. M/s Income Builders Private Limited withdraw the loan amount vide letter dated 25.10.1990 Rs.50 laksh vide letter dated 19.02.1991 Rs.58 lakhs and vide letter dated 19.02.1991 Rs.2 lakhs. The valuation report of A4, which is marked as Ex.P166, dated 12.02.1991 and Ex.P167, dated 18.11.1990 and Ex.P170, dated 20.02.1991. The properties given as collateral security relied for sanctioning the loan.

12. While loans for these three companies were sanctioned and disbursed in a manner not in terms of any banking rules of caution, but for some extraneous reasons. After the fund being diverted to the third parties to clear their loan, on 03.03.1994 one of the Directors of M/s Income Builders (P) Ltd., wrote to the Chief Manager, Indian Bank a letter marked as Ex.P141, which reads as below:-

> "We have been sanctioned with a term loan of Rs. 195.00 lakhs and we have so far availed Rs. 125.00 lakhs. We have originally planned to complete the project before 1983, but due to unforeseen circumstances, we could not

implement the project as scheduled. We have already created Equitable Mortgage for the lands purchased by us.

As discussed with you we had talks with the other builders of that area viz. Fashion Builders (P) Ltd. and Arrun Builders (P) Ltd. But we could not arrive at a comprehensive proposal for the combined project. Moreover we cannot take up the project independently because of the financial constraints From the Balance sheet submitted you may observe that we are already having accumulated cash losses.

Under the above circumstances we could not afford to lose further with the additional interest burden. Hence we had decided to close the loan with you and take up the project at a later date.

We are already in accumulated loss and we have to mobilise funds for closure of the accounts. Hence we request you to kindly give us some consideration for the interest charged by you.

Kindly permit us to pay the principal of Rs.125.00 lakhs and simple interest at the rate of 15% from the date of availment till settlement.

As a token of our commitment we have already deposited Rs. 12.00 lakhs and undertake to deposit another Rs. 106.00 lakhs before 31.03.94. We will settle the balance amount with the reduction of interest before 30.04.94. Kindly help us to settle the account and sve from further loss."

13. The evidence clearly reveals that, all these three companies not purchased land in the location they mentioned in their loan proposal. Whatever they purchased were not contingents land but, in bits and pieces, so they could not commence the project for want of feasibility. However, while availing loan, feasibility certificate from Architect claiming falsely the land is feasible for promotion were obtained. The valuation report from A4 Ramakrishnan obtained with inflated value. The loanee not repaid the loan amounts but diverted for discharge of the loans availed by M/s MVR Exports or M/s Maxwell Exam Private Limited. Both these two companies were operated by A5. The prosecution had established through evidence that M/s Arrun Builders (P) Ltd was incorporated only to facilitate M/s MVR Exports(P)Ltd., and M/s Maxwell Exam (P) Ltd.

14. The credit facility of Rs.2 Crores availed by A-2 sanctioned by A-1 at the instance of A-5 who have enjoyed the credit has facility by furnishing false address while registering the company at Puducherry, is spoken to by PW8 who has stated that he is a practising C.A., in the

address furnished by the Company as its address and that no company by the name M/s. Arrun Builders Pvt. Ltd., ever functioned in his address and that he used to receive and redirect the correspondence of MVR Group Companies for some time and stopped his service when he came to know about the legal problem discloses the dishonest intention of A-2, A-5 to cheat the Bank and that the dishonest intention of A-2, A-5 to cheat the Branch is further strengthened by the purchase of lands in haphazard locations at Guindy and not in one stretch of area and which was low lying and water logged area as per the evidence of PW17 N.Kumarasamy, bank official who has visited the site.

15. The account in the name of Company M/s. Arrun Builders Pvt. ltd., was only a facility to meet the needs of M/s.MVR Exports Pvt. Ltd., and M/s.Maxwell Exim Pvt. Ltd., who were also enjoying credit facilities from Indian Bank, Muthialpet Branch and not for the purchase of lands as stated by the Company since only Rs.25,77,972/- out of Rs.2 Crores was used for the purchase of 77.73 Grounds and that the evidence of PW10 G.Mahesh who worked in M/s.MVR Industries at Manapakkam

stating that he used to deposit Cheques and corresponding Challans of M/s.MVR Industries in the account of M/s Arrun Builders Pvt. Ltd., marked as Exs.P119 to P124 between 03.03.1994 and 02.05.1994 and that he has not received cash though he has signed for receipt of cash proves that the cash was withdrawn to meet the expenses for running the MVR Group. The adjustments between the two accounts is clear from Ex.P119 Cheque drawn by M/s.MVR Industries for Rs.8 Lakhs in favour of M/s. Arrun Builders Pvt. Ltd., and corresponding Ex.P120 Challan dated 03.03.1994 for Rs.8 Lakhs signed by PW10. Ex.P121 Challan dated 29.04.1994 for Rs.15,13,559/- signed by PW10 and corresponding Ex.P122 Cheque dated 29.04.1994 drawn by M/s.MVR Industries in favour of cash on the reverse of which PW10 has signed for receipt of cash but has not received the cash as deposed by him proves the adjustment of Cheque in the account of M/s. Arrun Builders Pvt. Ltd.,

16. PW11 D.Vishnuram Jothi, Clerk-cum-Shroff in Indian Bank, Muthialpet Branch, has deposed that Ex.P125 is the certified copy of Rough Cash Book from 27.04.1994 in which he has made Ex.P126

entry as 1149 for Rs.23 Lakhs on the payment side and that 1149 is the account of M/s.Maxwell Exim Pvt. Ltd., and that in Ex.P125 Rough Cash Book he has made Ex.P127 entry on 16.04.1994 mentioning tonight balance as Rs.7,61,648.12 representing the previous day transaction and the balance at the end of the day and that Exs.P126 and P127 entries are in respect of M/s. Arrun Builders Pvt. Ltd., and M/s.Maxwell Exim Pvt. Ltd., and that they were the cash adjustments and that no cash was actually received and paid and that he has made Ex.P.128 entry in Ex.P125 dated 02.05.1994 in which he has written M/s.MVR Exports Rs.8 Lakhs and it was only cash adjustment and no cash was received by him as per Ex.P123 Credit Challan dated 02.05.1994 for Rs.8 Lakhs and that no payment was made by him regarding the corresponding Ex.P124 Cheque.

17. PW-34 Sathyamurthy who worked in M/s.MVR Exports Pvt. Ltd., and PW47 T.S.Srivatsan who has worked as Clerk-cum-Shroff in Indian Bank, Muthialpet Branch have deposed about the money credited to the account of M/s. Arrun Builders Pvt. Ltd., from the account

of M/s.MVR Exports Pvt. Ltd., and M/s.Maxwell Exim Pvt. Ltd., Ex.P259 is the Credit Challan dated 27.03.1992 for remitting Rs.50 Lakhs in the account of M/s. Arrun Builders Pvt. Ltd., filled up and signed by PW34 and Ex.P260 corresponding cheque signed by A-3 for Rs.50 Lakhs from the account of M/s.Maxwell Exim Pvt. Ltd., on the reverse of which Rao has signed for withdrawal of amount and likewise Exs.P261 to P275 Credit Challans and corresponding Cheques show that money was credited to the account of M/s. Arrun Builders Pvt. Ltd., from the account of M/s.MVR Exports Pvt. Ltd., and M/s.Maxwell Exim Pvt. Ltd., PW34 has further stated that he has filled up and signed the Challans as per the instructions of A-3 and Subramanian who used to accompany him to the Bank and that A-5 is the Managing Director for the above group of Companies. Exs.P264 and P266 Cheques for Rs.25 Lakhs each were issued from the account No.1195 of M/s.MVR Exports Pvt. Ltd., and account No.1149 of M/s.Maxwell Exim Pvt. Ltd., respectively and PW47 has made an endorsement on the reverse side of these Cheques to the effect that the amounts shown in the Cheques have been adjusted and no cash was paid to the person who have presented the

Cheques and the corresponding challan Exs.P265 and P267 have been filled up and signed by PW34 Sathyamurthy. The evidence of PW34 and PW47 establish that M/s.Arrun Builders Pvt. Ltd., account was only a facility for the adjustment of accounts of M/s.MVR Exports and Maxwell Exim Pvt. Ltd.,

18. M/s. Arrun Builders Pvt. Ltd., did not apply for license to construct the building or planning permit at the site purchased by it and PW13 Chitra and PW14 Ragunath from CMDA and PW54 Varadarajan have deposed that no plans were submitted and permission was sought to build on the lands in Survey Nos. 16 to 21 in Alandur Village purchased. Hence, the inability to implement the project due to delay in obtaining clearance from statutory bodies as represented by the Company in Ex.P56 letter dated 09.03.1994 praying for waiver of interest and repayment of amount is false as per the argument of the Special Public Prosecutor which is acceptable. The recommendation by the Branch for the compromise proposal with its covering letter is Ex.P135. Ex.P136 note dated 10.03.1994 signed by PW19 Thyagarajan in the Regional

Office was sent to the Zonal Office and Ex.P137 letter was addressed to the Zonal Office recommending the compromise proposal.

19. On the basis of Ex.P282 Circular dated 18.01.1994 and Ex.P283 Note to General Manager, Management Services, PW41 S.Arunachalam, General Manager at Head Office, Chennai, has endorsed the note for placement to the Committee of the General Managers and on the basis of Ex.P284 Note to the Board of Directors by Dy. General Manager, Legal Services, the Board had sanctioned one time settlement on 28.03.1994. The Branch reported on 07.01.1995 as per Ex.P285 Note that the account of M/s. Arrun Builders Pvt. Ltd., was closed on 02.05.1994. M/s. Arrun Builders Pvt. Ltd., has paid Rs.253.77 Lakhs and 18.75% compound interest is more than the minimum prescribed in the norms for compromise and the balance of Rs.93,13,559/- was to be recovered before 31.03.1994 according to PW41 and the evidence of PW50 Mohanachandran corroborates the evidence of PW41. The compromise proposal is Ex.P134 and the total amount waived is Rs.64,64,543/- according to PW17 N.Kumarasamy.

20. Thus, for the loan availed and interest accrued, by way of waiver and compromise, the loan due of M/s Arrun Builders settled after waiver of Rs.64,64,543/-. The loan account of M/s Fashion Builder(P) Ltd. settled after waiver of Rs.50,52,278/- and write off of Rs.6,72,888/-. In respect of M/s Income Builders (P) Ltd., the loan account got settled after waiver of Rs.57,25,166/-.

21. The evidence also indicates that M/s Arrun Builders, after availing loan to a tune of Rs.195 lakhs, on claiming that finance is urgently needed to purchase land, had utilised only Rs.25,77,972/- for purchase of land. M/s Fashion Builders out of loan amount of Rs.2,11,65,000/- withdrawn purchased land worth only Rs.33,97,872/-. M/s Income Builders Private Limited for withdrawal of advance for purchase of 30 grounds of land had purchased only 11 grounds. Ex.P281 the report of the Inspector, Indian Bank narrates low loan availed to cheat the bank.

22. Out of 5 Criminal Appeals filed against the judgment of the trial Court rendered in C.C.No: 55 of 2000, the appeal by A1, C.A.No.732 of 2013 dismissed as abated and the Appeal by A-5, Crl.A.No.34 of 2014 dismissed as withdrawn. The remaining 3 appeals are Crl.A.No.743/2013, Crl.A.No.762/2013 and Crl.A.No.764/ 2013, are preferred by A-2, A-3 and A-4 respectively.

23. Apart from the grounds of appeal raised in their respective appeals, one ground common in all these appeal is regarding the way the criminal prosecution set against them. According to them, three specific cases of loan transactions by three different entities sanctioned by three different branches of the Indian Bank been clubbed together and tried as one single case. M/s Arrun Builders (P) Ltd, M/s Fashion Builders (P) Ltd and M/s Income Builders (P) Ltd are companies duly incorporated under the Companies Act and independent juristic body. The loan transactions at different periods at different banks been clubbed and tried together on the premise that the *modus operendi* in all the three cases are one and the same. Such clubbing of different offences at different point of

time and tried as single case is contrary to the procedure laid under law.

24. Next, the belated registration of the case suo moto. In all three cases, the loan availed between 1988 to 1991, the over dues were settled in the year 1994 itself under the One Time Settlement Scheme, which was in vague at the relevant point of time. After nearly two years a suo motu complaint registered by CBI on 03/01/1996 after 4 years of investigation, deleting the Bank Manager and others except the Chairman-cum-Managing Director, those who were privy to advancing the loan and the companies, which availed the loan. Final Report which was laid against the Bank CMD, the accused 2 and 3 from the borrowing companies for being one of the Directors for a short period and the Valuer is an incomplete and truncated proceedings. The Final Report came to be filed after four years on 08/09/2000. Whereas the business transaction between the bank and the borrowers concluded even long before FIR. The projects for which the loans availed could not take off for the reasons mentioned in the proposal dated 03.03.1994 for One Time Settlement. The bank accepted the reasons and waived part of the interest

and after collecting simple interest at the rate of 18%, settled the accounts. Witnesses have explained, why the project failed. The disjoint location of land purchased by them and lack of co-ordination between the three promoters/the borrower's who availed loan for identical purpose of constructing shopping complex, office complex and residential building in Guindy area were the reason for the failure of the projects. Having realized that the project cannot take through proposals were sent by the borrowers and the same was accepted by the Board of the Indian Bank. The entire dues agreed under OTS paid and accounts closed. Therefore, the criminal prosecution itself is baseless and erroneous.

25. Mr.R.Rajarathinam, the learned Senior Counsel appearing for A-2 Mr.V.Rajkumar, the appellant in C.A.No.743 of 2013, specifically submitted that this appellant was only a name lender and was the Director of M/s Arrun Builders Private Limited for a short period. At the time of incorporation of the company, he was shown as one of the Director along with one Alawanthar. The Articles of Association shows him as Director holding 10 equity shares, each at face value of 10 as

against the authorized capital of 5,00,000 equity share. The Bank sanctioned loan only to the company and not to the individual. The cheques Ex.P-5, Ex.P16, Ex.P18, Ex.P19, Ex.P21, Ex.P23, Ex.P25, Ex.P27 and Ex.P29 are the self drawn Cheques by him in the capacity of Director M/s Arrun Builders Private Limited and not in his private capacity. Without prosecuting the company, which borrowed loan i.e M/s Arrun Builders Private Limited, a juristic body, A-2 the Director who represented the company incorporated cannot be prosecuted, in his personal capacity.

26. It is contended that the money received as advance not misutilized or diverted. The properties were purchased through the power agent of the Company to avoid land Ceiling Act restriction. This has been spoken by PW-56, the Auditor, who was advised them to purchase land in name of individuals who hold the power of attorney for the Company. As far as the diversion of fund alleged against M/s Arrun Builders Private Limited, in favour of M/s MVR Exports and M/s Maxwell Exim company, it is contended that, those diversions were made not during his

period of Directorship. This accused was relieved from the Directorship in the Board of Directors Meeting dated 9/1/1992. He was relieved from the Directorship post and one Mr.Seetharaman and Mr.G.Selvam were appointed as Directors. This could be seen from exhibits P-53 and P-54 which are the minutes copies of the Board of Directors Meeting dated 06/01/1992 and 09/01/1992 respectively. While so, this appellant cannot be held responsible for the events which alleged to have been taken place after 09/01/1992.

27. In any case, OTS proceedings was initiated on 03/03/1994. Ex.P-54 the letter from the Director, Mr.G.Selvam to the Chief Manager, Indian Bank explains the reason for the failure to complete the project and the readiness to settle the outstanding principle with simple interest at the rate of 15% from the date of loan till the date of settlement. This is evidence to show, the company never had intention to deceive or cheat the Bank. The compromise proposal was taken into consideration by the Zonal office, after waiver of interest to a tune of Rs.64,64,543/-, a sum of Rs.2,53,77,362/- collected by the Bank and the account closed on

02/05/1994. This fact is proved through Ex.P-285. The alleged loss, which was the waiver of interest, is only a notional loss and not in true sense a loss. Even otherwise, the waiver of interest portion was only after this appellant left the directorship of M/s Arrun Builders Private Limited. Hence, the allegation that he induced the Bank to go for One Time Settlement, in spite of valuable properties given as collateral security by the borrowers available will not apply to this appellant since the proposal dated 03/03/1994 emanated from Mr.G.Selvam the then Director but, not from him.

28. The Learned Senior Counsel appearing for the appellant further submitted that this petitioner was 24 years old at the time of M/s Arrun Builders Private Limited incorporated and shown as one of the Directors. He lend the name, since the company was floated by his Senior Uncle A5 and he was not aware of anything regarding the loan transaction. He had never with dishonest intention acted either to cheat the bank or mislead the bank. Referring the judgment of Honourable Supreme Court rendered in ***M/s Kothari Polymers Limited and others v.***

SIU(X)/SPE/CBI in Crl.A.No.239 of 2015, dated 16.02.2022, wherein the Hon'bke Apex Court has held that in case of bank fraud, offence can be compounded if the loan amount is paid. However, compensation to the bank ,which has suffered loss due to act of fraud, to be imposed. The Learned Senior Counsel submitted that in this case even payment of compensation will not arise, since the bank is not the complainant.

29. The Learned Counsel appearing for the Appellant in C.A.No:762 of 2013, Mr. Sai Jaganathan, Director of M/s Income Builders (P) Ltd, submitted that CBI registered the suo motu complaint years after the settlement of entire dues, even though the bank which advanced loan had no grievance against the borrower. This appellant Sai Jaganathan became the Director of M/s Income Builder Private Limited much later after disbursement of the loan. He was not the Director or signatory to the loan application or the cheques used to withdraw the loan amount. His endeavour to settle the due exploring the One Time Settlement Scheme which was in vague during the relevant point of time was a bonafide attempt to settle the dues. This cannot be construed as an

act of dishonest done with the intention to cheat the Indian Bank.

30. There is no evidence to show, this appellant forwarded the OTS proposal with dishonest intention. The expression of willingness to settle the entire principal amount with 18.75% simple interest can by no stretch of imagination be drawn as a inducement to deceive the bank and to cheat it. Particularly, when the rate of interest offered by the appellant was more than the rate of interest prescribed by RBI at the relevant point of time. Ex.P-282, the RBI Circular deals about the manner in which One Time Settlement can be done. In this case, the lending bank had satisfactorily received the amount arrived at One Time Settlement and closed the account. Yet, years after the settlement of account, CBI had registered the complaint suo motu without any base for registration of a criminal case in a contractual dispute.

31. This appellant never been a party to the loan transactions. Hence, he cannot be accused of conspiracy with the other accused. The allegation that this appellant arranged the valuer (A-4) to give inflated

value for the property given as collateral security is baseless. He prosecution has not proved that the valuation report of A-4 is inflated and over valued. Ex.P- 44, Ex P-45 and Ex.P-166 are the valuation report of A-4. On perusal of these reports, it will reveal that it was not given for the borrower company or the appellant. Therefore, the conviction of this appellant either for conspiracy or for cheating or for aiding others to cheat the bank not sustainable.

32. The Learned Counsel for the appellant in Crl.A.No.764/2013 (N.Ramakrishnan, A-4) submitted that four valuation reports given by this appellant are relied by the prosecution to prosecute this appellant. Those reports are marked as Ex.P-44, Ex.P-45, Ex.P-165 and Ex.P-166. There is no indication in these reports to show that the valuation reports were given to the Indian bank for availing loan or for the company which has sought loan from the Indian Bank. The valuation report is given at the request of the land owners and as a professional valuer, on collecting data, the value for the properties mention been given. Nowhere in these four documents, there is any indication of meeting of

mind with the bankers or the borrowers to do an illegal act namely, cheating. The report regarding the valuation of the properties is based on the material collected during the inspection of the properties.

33. As a professional, after collecting data regarding the prevailing market value and the guidelines value for the lands around, he has ascertained the value. The Indian Bank, Saidapet Branch, to which the valuation report of A-4 given for consideration, in fact had vide its letter dated 20/02/1991 marked as Ex.P169 had requested the borrower to get cross verify the valuation given by N Ramakrishnan,(A-4) with revalued by any other Engineer Approved by the bank and report back. This communication would prove that the lending bank was not induced by A-4 report to advance loan. Therefore, in the absence of inducement or deception to deliver the property, which is the prime ingredient for the offence under Section 420 IPC, this appellant has to be acquitted for want of proof.

34. The learned Public Prosecutor for CBI, submitted that. A2 V.Rajkumar, the appellant in Crl.A.No.743 of 2013 is the founder Director of M/s Arrun Builders Private Limited. In the Memorandum of Association and Articles of Association, A-2 is show as one of the two Directors. This company was registered at the ROC in Pondicherry. A-2 had declared that he has four years experience in exports and construction lines and declaring that he possess property worth Rs.11,55,000/-. Ex.P-38, Ex.P-39 were documents submitted by this appellant for availing loan. The loan application is Ex.P-4, which is presented by this appellant. The letters to advance loan prior to regularizing the loan and self drawn cheques on behalf of M/s Arrun Builders Private Limited are the overtact of this appellant done with knowledge and personally. The company failed to invest in the property as promised by this appellant in his letters addressed to the Bank while availing the loan. The loan amount not repaid and the project claimed for availing loan did not take place. The part of the loan due recovered after granting substantial waiver. In connivance with A1 cannot even be a mitigating reason to interfere the trial Court judgment.

35. The date of application for loan and immediate disbursement of money prior to scrutiny of the proposal, withdrawal of the money immediately through self cheques and later diverting the money for other purpose without utilizing it for the purpose of purchasing land at Guindy area feasible for the project, clearly satisfies the ingredient of Section 420 IPC, namely the inducement to deceive the bank and cheat. Ex.P-2 the application to advance Rs.65,00,000/- immediately with a promise to the Bank that they will comply the formalities at the earliest, but failed to fulfil the promise but successfully drawing loan repeated on request to sanction various amounts on various dates on the same promise is sufficient to hold the deceptive intention to cheat. This appellant knowingly, with the dishonest intention induced the bank to sanction loan. His relinquishment from directorship subsequently will wipe away his criminal intention of cheating the Indian bank in connivance with others and aiding them to cheat the bank.

36. Regarding A3-Sai Jaganathan, who is the appellant in

Crl.A.No.762 of 2013, the learned Special Public Prosecutor for CBI submitted that on 18/6/1990, when Income Builders Private Limited submitted their proposal for loan, they declared Ramanujan (father-in-law of this appellant) and Madhusoothanan as its Directors. Later after queries raised by the bank regarding the details of the land to be purchased for the proposed project and the copy of the agreement with the land owners, the company gave its revised proposal Ex.P145 on 25/10/1990. Even before regularizing the proposal substantial amount released without proper adherence of bank guidelines. By 03/03/1994 Rs.125 lakhs released as loan but admittedly the company did not progress with the project. The company admitting that the project could not be proceeded further, had inform the Bank to grant waiver of interest and accept One Time Settlement. The suggestion has been approved by A1 in connivance with the borrowers.

37. The borrower companies not arrayed as accused righlty because they are sham and nominal company floated at the instance of A-5 in the names of his close relatives. A-2 and A-3 are prosecuted for their

personal overt act of aiding, inducing and cheating the Bank. The personal overt tact of these two appellants, namely V.Rajkumar and Sai Jagannathan been established by the prosecution through the evidence spoken by the witnesses and the documents which the appellants are parties. Therefore. The ground raised by the appellant that by not prosecuting the respective companies the prosecution suffers misjoinder, is incorrect. Further, the learned Special Public Prosecutor relying upon the evidence of PW7, who had spoken about the proximity between A1 and A5 and the evidence of PW-32 Abinash Babu, who was made as one of the Directors of M/s Income Builders Private Limited at the instance of A-5 submitted that A-1 the Chief Adviser for M/s MVR exports engaged PW-32 as Architect in his company. He was made as one of the Directors in M/s Income Builders Private Limited, one Ramanujam was the other Directors. Though he signed the self cheques on behalf of the Company, in which he was made a Director, the money was drawn by somebody else and they have signed on the back of the cheques. All the cheques, which were drawn by him on behalf of M/s Income builders, were withdrawn by somebody else who are know to A-5 as his relativews or employees.

38. In the respect of A-4, the Appellant in Crl.A.No:764 of 2013, the learned Special Public Prosecutor for CBI, submitted that the valuations reports of A-4 had its own influence in sanctioning the loan. The reference of his report in the loan proposal is proof for the same. Therefore, he cannot claim any immunity from the prosecution, because he is a professional.

39. This Court, on considering the submissions made by the defence and the prosecution, finds that the appellant in Crl.A.No:743/2013, V.Rajkumar(A2) and the appellant in Crl.A.No: 762 of 2013, Sai Jagannathan(A3) cannot be termed as an innocent name lenders to the Scheme of cheating devised by A5 in connivance with A1. No doubt, A-2 left the Directorship of M/s Arrun Builders Private Limited before the amount settled and A-3 became Director of M/s Income Builders Private Limited after the loan disbursement and was its Director only at the time of settling the loan.

40. These two appellants, plead that they were not part of the scheme or conspiracy. Enough doubt about their involvement in the conspiracy along with A-1 and A-5 raised by the appellants and those doubt has substance. However, their active assistance to carry forward the conspiracy hatched by A-1 and A-5 is proved beyond any doubt. As far as these two appellants A-2 and A-3 are concerned, they had at different stages prompted the bank to disburse loan or to accept One Time Settlement granting major waiver. They have aided the company to divert the loan amount and allowed the company to divert the fund. They know that the loan amount is utilized for investment on speculation and not for the purpose of the project for which the loan was sanctioned.

41. Hence, this Court hold that the prosecution has failed to prove the charge of conspiracy as against A2 and A3. The charge No.1 not made out as against A2 the appellant in Crl.A.No.743 of 2013 and A3 the appellant in Crl.A.No.762 of 2013.

42. Hence, as against A-2 and A-3, the conviction and sentence imposed for the offence under Sections 120 B r/w 420, 109 r/w 420 IPC and Section 13(2) r/w 13(1)(c) and (d) of PC Act, 1988, as far as A-2 and A-3 is concerned, is set-aside.

43. As against A-2, the conviction under Section 420 IPC (5 counts) is restricted to one count held as proved. The conviction of One year RI with fine of Rs.5000/- is confirmed. Also the conviction and sentence imposed under Section 109 r/w 420 IPC is upheld and confirmed.

44. As against A-3, the conviction and sentence under Section 420 IPC (Charge No.2) is held to be proved. The conviction of One year RI with fine of Rs.5000/- is confirmed. Also the conviction and sentence imposed under Section 109 r/w 420 IPC is upheld and confirmed.

45. The period of substantive sentence ordered to run concurrently. Period already undergone ordered to be set off. Bail bond if

any executed by the appellants shall stand cancelled. The respondent police is directed to secure the accused and commit them into judicial custody to undergo the remaining period of sentence imposed on them.

46. As far as A-4, the appellant in Crl.A.No.764/2013 is concerned, this Court finds force in his submissions. The valuation report given by him is marked as Ex.P-44, Ex.P-45, Ex.P-166 and Ex.P-167. These reports of A-4 ,if examined in the light of Ex.P-169, this Court finds that the bank, which advanced the loan not been inducement of the valuation report of A-4. The reports given by this appellant is neither meant for the lending bank nor for the borrower. It is in respect of the property without any reference to the Bank or Borrower. Because these reports been used by the borrower as well as the officials in the bank for advancing the loan, this appellant cannot be presumed to be a part of the conspiracy team or had intention to cheat the bank by giving these reports. Further, it is not the case of the prosecution that these reports are false. Their case against this appellant is that the value shown in this

reports are inflated. The comparitive valuation relied by the prosecution does not indicate any excessive valuation. Marginal difference in the estimation of two different valuers cannot be a reason to suspect the honesty of A-4. The guidelines value relied by the prosecution is more or less the value given by the appellant. In the said circumstances, the conviction of A-4 is to be set aside for want of evidence to establish that the value for giving the valuer is knowingly and dishonestly inflated or exorbitant or over valued.

47. As a result, **Criminal Appeal No.764 of 2013 is allowed.** Conviction and sentence imposed by the trial Court in C.C.No.55/2000 against this appellant (N.Ramakrishnan) is set aside. The fine amount paid by the appellant is order to be refunded. Bail bond stands cancelled. The appellant is at liberty forthwith unless his presence is not required in connection with any order case.

48. The learned counsel appearing for the appellant (A5) in Crl.A.No.34 of 2014 seeks permission of this Court to withdraw the

appeal and he has also made an endorsement to that effect.

49. In view of the endorsement made by the learned counsel appearing for the appellant, **this Criminal Appeal No.34 of 2014 is dismissed as withdrawn.**

50. In fine,

(i)Crl.A.No.743/ 2013 and Crl.A.No.762 /2013 are partly allowed.

(ii)Crl.A.No.764/2013 is allowed. The conviction and sentence imposed on A-4 is set aside.

(iii)Crl.A.No.34 of 2014 is dismissed as withdrawn.

10.08.2023

Index:yes
Speaking order/non speaking order
ari
To:
1.The Principal Special Judge for CBI Cases, Chennai.

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

3.The Special Public Prosecutor for CBI Cases,
Chennai.

Dr.G.JAYACHANDRAN,J.

ari

delivery common judgment made in
Crl.A.Nos.743, 762 & 764 of 2013
and 34 of 2014

10.08.2023