IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :03.07.2023

Pronounced on :31.07.2023

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.No.812, 821 and 833 of 2013

Crl.A.No.812 of 2013:-

K.B.Sampath .. Appellant/Accused-4

/versus/

The Inspector of Police,
CBI/ACB/Chennai. .. Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 of the Cr.P.C., to set aside the judgment dated 26.11.2013 in C.C.No.15 of 2008 on the file of the learned XI Additional Special Judge for CBI Cases, Chennai and sentenced to undergo 1 year of RI and to pay a fine of Rs.1000/- for offences under Sections 120-B IPC r/w 420, 467, 468, 471 r/w 467 and 468 IPC and under Section 13(2) r/w 13(1)(d) of the P.C. Act 1988 and in default to undergo SI for 3 months. The appellant is also sentenced to undergo RI for 1 year and to pay a fine of Rs.1000/- and in default to undergo SI 3 months for the offence under Section 420 of IPC. The Fine amount Rs.2000/- has been paid. The above sentences shall run concurrently. The period of imprisonment already if any, is ordered to be set off.

For Appellant :Mr.L.V.Rohith

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

Crl.A.No.821 of 2013:

V.Gopalakrishnan .. Appellant/Accused No.2

/versus/

The State
Rep.by the Inspector of Police,
CBI/ACB/Chennai. ..Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374(2) of the Cr.P.C., to set aside the judgment dated 26.11.2013 passed in C.C.No.15 of 2008 by the XI Additional City Civil & Sessions Judge (CBI Cases Relating to Banks and Financial Institutions), Chennai and sentencing the appellant to undergo a Rigorous Imprisonment for a period of one year and to pay a fine of Rs.1000/- for each offence.

For Appellant :Mr.A.Ramesh, Senior Counsel for
M/s Waraon and Sai Rams
For Respondent :Mr.K.Srinivasasan
Senior Counsel and
Special Public Prosecutor (CBI)

Crl.A.No.833 of 2013:-

N.K.Ravindran .. Appellant/Accused No.1

/versus/

Union of India,
Rep. by Inspector of Police,
CBI/ACB, Chennai. .. Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 of the Cr.P.C., against the judgment and conviction dated 26.11.2013 made in C.C.No.15 of 2008 on the file of the XI Additional City Civil & Sessions Judge-CBI Cases Relating to Banks and Financial Institutions, Chennai-1.

For Appellant :Mr.R.Thiagarajan

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

COMMON JUDGMENT

During the regular inspection conducted in the month of March, 2003, by Mr.K.Lakshmanan, Senior Manager, Indian Bank, Inspection Centre, Chennai, he found that in Indian Bank, Royapuram Branch, Trade advances under MDL, powers were not judiciously used. Head Quarters guidelines are not complied with about 16 customers. Out of 16 loans, 15 loans were sanctioned by N.K.Ravindran, after he assumed charge as the Branch Manager on 09.09.2002.

For all these 15 loans, a consolidated report dated and for each of the loan, specific report were prepared and submitted by Mr.K.Lakshmanan to the Deputy General Manager, Indian Bank, Inspection Centre, Chennai, The irregularities noticed in respect of the loan sanctioned to M/s Vee Gee Kay Enterprises engaged in wholesale and retail plastic raw materials business are:

The panel lawyer has instructed to get the original title deeds from the owner of the property situated at S.No.193, Peravallur Village owned by Soundararajan given as collateral security. But the manager has not obtained the original documents. The credit report of V.Gopalakrishnan indicates the borrower's credit worthiness is enquired from A.S.Suresh, who is none other than the 2nd guarantor for the loan. No independent enquiry made by the branch about the borrower's creditworthiness. The loan amount utilised to pay parties who are not shown as suppliers. The diversion of fund happened through A.S. Suresh.

2. While so, the Inspector of Police attached to SPE/CBI/ACB/Chennai on 28.10.2005 registered the case on source information for offence under Section

13(2) r/w 13(1)(d)of the Prevention of Corruption Act, 1988 and Sections 120-B r/w 420, 409, 467, 468, 471 IPC suspecting the following persons:-

(1)N.K.Ravindran(Manager Scale II), the then Branch Manager, Indian Bank, Royapuram Branch, Chennai.

(2)Shri Dinesh Kumar Mishra, No.13/6, Doulatkhan Street, Anna Salai, Chennai 600 002, Proprietor of M/s Steelex Impex India, chennai.

(3)Shri Andrews Thamba, No.1/90, Kannadasan Nagar, Chennai 600 118, Proprietor of M/s Imperial Corporation, Chennai.

(4)Shri.S.Thiagarajan,No.10-41, II Avenue, Anna Nagar, Chennai 600 040, Proprietor of M/s Best Computers, Chennai.

(5)Shri.V.Gopala Krishnan, No.48, 6th Main Road, Nanganallur, Chennai 600 061, Proprietor of M/s VEE GEE KAY Enterprises, Chennai.

(6)Shri.V.G.Krishnan, No.47, Selva Vinayagar Koil Street, Razack Garden, Chennai 600 106, Proprietor of M/s RSV Chemical Corporation, Chennai and others.

3. Out of 15 cases, five clear case of cheating by forgery and fabrication of document as genuine was available to the prosecution. Hence, 5 separate Final

report were filed before the Special Court for CBI cases. Those 5 cases were taken on file as C.C.No.12/2008 to C.C.No.16/2008.

4. The information necessitated to register First Information Report in respect of loan advanced to M/s Vee Gee Kay Enterprises is:-

The current account was opened in the name of fictitious firm, M/s Vee Gee Kay Enterprises with Indian Bank, Royapuram Branch. An open cash credit of Rs.15 laksh was sanctioned by A1 on 21.02.2003 exceeding the discretionary powers. A5 Shri.V.Gopalakrishnan created forged EM property in the name of Shri.Soundararajan, who is not the real owner by forging the documents. In the EC submitted for the period from 04.01.1976 to 22.01.2002 at the time of availing loan, the sale deed executed by Shri.M.Soundararajan in favour of Shri R.Palaniappan, vide Document No.2855/99 dated 30.04.1999 is not appearing. The sale agreement dated 28.08.2002 has been reportedly cancelled on 04.09.2002. A1 [Shri.Ravindran] without conducting the proper EM verification, sanctioned the limits and allowed A5 to issue Bank Pay Orders for large amounts favouring the same beneficiary within a month of sanction of the limit violating the existing bank procedures and norms. After diverting the loan amount to A5, the account became inoperative. In this connection, the bank had lost an amount of Rs.17.21 lakhs and it is outstanding as of January 2005.

5. In respect of the loan advanced to M/s Vee Gee Kay Enterprises, on completion of Investigation, Final Report filed against:

(1)N.K.Ravindran (Bank Manager)

(2)V.Gopalakrishnan(Owner of M/s Vee Gee Kay Enterprises)

(3)A.S.Suresh (deceased)

(4)K.B.Sampath(Valuer)

6. The trial Court framed charges under Sections 120-B r/w 420, 467, 468 and 471 r/w 467 and 468 of IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 against A1 to A4 and under Sections 420, 467, 468 and 471 r/w 467 & 468 of IPC against A2 and under Section 420 of IPC against A3 and A4 and Section 13(2) r/w 13(1)(d) of PC Act against A1.

Charge No.1: That you A-1 to A-4, with dishonest and fraudulent intentions to cheat Indian Bank, Royapuram Branch, Chennai, entered into a criminal conspiracy, during the year 2002-2003 at Chennai, in the matter of sanctioning and release of Trade Well Loan in the name of M/s Vee Gee Kay Enterprises, No.92, Varadhamuhtiappan Street, Chennai-1 owned by you A-2 as Proprietor, by way of submitting false and fabricated documents like fabricated sale deed, forged encumbrance certificate, TNGST & CST Certificates etc. and thereby induced the Bank to part with the Trade Well Loan / Open Cash Credit to the tune of Rs.15 lacs from the bank by way of committing criminal mis-conduct by you A-1 and by abusing the official position of you A-1 as Public Servant sanctioned and released the said loan by way of accepting the said forged documents and also by you A-3 filling up the forged and fabricated documents and alsoyou A-4 by issuing a false and fabricated valuation report to the Bank in support of the sanctioning of the loan and the acts of you A-1 to A-4 caused the Bank to suffer a loss to the tune of Rs.15,39,051/- and thereby you A-1 to A-4 have committed the offences punishable U/s. 120-B r/w 420, 467, 468 and 471 rw 467 & 468 of IPC & Sec. 13(2) r/w 13(1)(d) of PC Act, 1988 and is within my cognizance.

Charge No.2: That in pursuance of the aforesaid criminal conspiracy and in furtherance thereof, you A-2 as proprietor of M/s M/s Vee Gee Kay Enterprises, No.92, Varadhamuhtiappan Street, Chennai-1, during the year 2002 applied for Trade Well Loan / Cash Credit of Rs.15 lacs with Indian Bank, Royapuram Branch, Chennai, by way of submitting false and fabricated documents like; fabricated sale deed, forged encumbrance certificates pertains to the property at survey No. 193 Ramnagar Main Road, Peravallur Perambur,, Chenna, TNGST & CST Certificates etc. and thereby induced the Bank to part with the Trade Well Loan/Open Cash Credit from the bank to the tune of Rs. 15 Lakhs, with active connivance of A-1, the Bank Manager, and misappropriated the funds of the Bank by diverting the funds other than the business referred in your application and thereby committed the offences punishable U/s.420 IPC and is within my cognizance.

Charge No.3: That in pursuance of the aforesaid criminal conspiracy and in furtherance thereof, you A-2 as proprietor of M/s Vee Gee Kay Enterprises, No.92, Varadhamuhtiappan Street, Chennai-1 during the year 2002-2003 dishonestly and fraudulently applied for Trade Well Loan / Cash Credit of Rs.15 lacs with Indian Bank, Royapuram Branch, Chennai, by way ofsubmitting fabricated valuable securities like invalid sale deed, forged encumbrance certificates pertains to the property at survey No. 193 Ramnagar Main Road, Peravallur Perambur,, Chennai, TNGST & CST Certificates etc. and thereby induced the Bank to part with the Trade Well Loan/Open Cash Credit to the tune of Rs.15 Lakhs, from the bank, with active connivance of A-1, the Bank Manager and misappropriated the funds of the Bank by diverting the funds other than the business referred in your application and thereby committed the offences punishable U/s.467 IPC and is within my cognizance.

Charge No.4: That in pursuance of the aforesaid criminal conspiracy and in furtherance thereof, you A-2 as proprietor of M/s Vee Gee Kay Enterprises, No.92, Varadhamuhtiappan Street, Chennai-1, during the year 2002-2003 dishonestly and fraudulently applied for Trade Well Loan / Cash Credit of Rs.15 lacs with Indian Bank, Royapuram Branch, Chennai, by way of submitting fabricated valuable securities like fabricated sale deed, forged encumbrance certificates pertains to the property at survey No. 193 Ramnagar Main Road, Peravallur Perambur,, Chennai, TNGST & CST Certificates etc, and thereby induced the Bank to part with the Trade Well Loan/Open Cash Credit to the tune of Rs. 15 Lakhs, from the bank with active connivance of A-1, the Bank Manager and misappropriated the funds of the Bank by diverting the funds other than the business referred in your application and thereby committed the offences punishable U/s.468 IPC and is within my cognizance.

Charge No.5: That in pursuance of the aforesaid criminal conspiracy and in furtherance thereof, you A-2 as proprietor of M/s Vee Gee Kay Enterprises, No.92, Varadhamuhtiappan Street, Chennai-1, during the year 2002 dishonestly and fraudulently applied for Trade Well Loan / Cash Credit of Rs.15 lacs with Indian Bank, Royapuram Branch, Chennai, by way of submitting fabricated valuable securities like fabricated sale deed, TNGST & CST Certificates, forged encumbrance certificates, TNGST & CST Certificates etc., used the same as genuine and thereby induced the Bank to part with the Trade Well Loan/Open Cash Credit to the tune of Rs. 15 Lakhs, from the bank with active connivance of A-1, the Bank Manager, and misappropriated the funds of the Bank by diverting the funds other than the business referred in your application and thereby committed the offences punishable U/s.471 r/w 467 and 468 IPC and is within my cognizance.

Charge No.6: That in pursuance of the aforesaid criminal conspiracy and in furtherance thereof, to cheat Indian Bank, Royapuram Branch, Chennai, you A-3 dishonestly and fraudulently filled up loan application, knowing fully well that there is no such firm in the name and style of M/s Vee Gee Kay Enterprises, Chennai, further stood as a guarantor for the said firm for sanctioning the loan and thereby induced the Bank to part with Trade Loan / Open Cash Credit of Rs.15 lacs to M/s Vee Gee Kay Enterprises, No.92, Varadhamuhtiappan Street, Chennai-1, owned by A2, thereby you A-3 have committed the offence punishable U/s.420 IPC and is within my cognizance.

Charge No.7: That in pursuance of the aforesaid criminal conspiracy and in furtherance thereof, to cheat Indian Bank, Royapuram Branch, Chennai, you A-4, as an Approved Valuer of Indian Bank, Royapuram Branch, Chennai dishonestly and fraudulently prepared a false valuation report dated 18.02.2003 valuing the property at survey No. 193 Ramnagar Main Road, Peravallur Perambur, Chennai in the name of M. Soundararajan for Rs.22,28,000/- without visiting the property and identifying the same and thereby induced the Bank to sanction a Trade Well / Cash Credit of Rs.15 lacs In favour of M/s Vee Gee Kay Enterprises, No:92 Varadhamuhtiappan Street, Chennai-1 owned by A-2 and thereby committed the offences punishable U/s.420 IPC and is within my cognizance.

Charge No.8: That in pursuance of the aforesaid criminal conspiracy and in furtherance thereof, you A-1, as Branch Manager of Indian Bank, Royapuram Branch, Chennai, dishonestly and fraudulently sanctioned and released Trade Well Loan / Open Cash Credit of Rs.15 lacs to M/s Vee Gee Kay Enterprises, No.92, Varadhamuhtiappan Street, Chennai-1 owned by A-2 on 21 02 2003, by way of abusing your official position as a Public Servant, knowing fully well that the property documents offered as collateral securities are forged and fabricated, without verifying the real owner of the property and also by violating the specific instructions given by the Panel Lawyer to obtain Nil Encumbrance Certificate on the property and further without verifying the official premises of M/s Imperial Corporation while sanctioning the loan as stipulated by the BankGuidelines, without verifying the genuineness of documents like: fabricated sale deed, forged encumbrance certificates etc, enclosed by A-2 to the Bank and thereby caused a loss to the tune of Rs. 15,39,051/- to the Bank and thereby you A-1 have committed the offences punishable U/s.13(2) r/w13(1)(d) of PC Act, 1988 and is within my cognizance.

7. To prove these charges, the prosecution examined 13 witnesses, marked 77 documents. On the side of the defence, two exhibits were marked as Ex.D1 and Ex.D2.

8. Gist of prosecution evidence and documents:-

N.K. Ravindran (A1), Manager, Indian Bank, Royapuram Branch, Chennai, V. Gopalakrishnan (A2), Proprietor of M/s. Vee Gee Kay Enterprises, K.B. Sampath (A4) an approved valuer of Indian Bank and charge abetted accused A.S. Suresh (A3) during 2002-2003, with dishonest and fraudulent intentions to cheat Indian Bank, Royapuram Branch, Chennai entered into criminal conspiracy, during the year at Chennai in the matter of sanctioning and release of Trade Well Loan in the name of M/s. Vee Gee Kay Enterprises owned by V. Gopalakrishnan, by way of submitting Ex.P.31 which is a false and fabricated invalid Sale Deed, Ex.P.37 forged Encumbrance Certificate, TNGST and CST certificates found in Ex.P.3 series and thereby induced the Bank to part with the Trade Well Loan/Open Cash Credit to the tune of Rs.15,00,000/- (Rupees Fifteen lakhs only) from the bank by the way of - committing criminal misconduct by N.K. Ravindran(A1) by abusing his official position as Public Servant, sanctioned and released the said loan by way of accepting the above said forged documents and also K.B. Sampath(A4) by issuing a false and fabricated valuation report Ex.P.14 to the Bank in support of the sanctioning of the loan and the act of N.K. Ravindran(A1), V. Gopalakrishnan(A2) and K.B. Sampath (A4) along with charged abetted accused A.S. Suresh caused the Indian Bank, Royapuram Branch, Chennai to suffer a loss to the tune of Rs. 15,39,051/-(Rupees Fifteen lakhs Thirty nine thousand and fifty one only).

9. P.W.1 [Maruthan], then Assistant Manager, Indian Bank, Royapuram Branch, Chennai, the evidence of P.W.2. [K.Lakshmanan], the Inspector of Branch of Indian Bank at Chennai during 2003-2007, in respect of Ex.P.34, the evidence of P.W.3[S.Sarveshwaran], then Manager, Indian Bank, Royapuram Branch during July 2003 to January 2008, the evidence of P.W.4. [P. Suhadev], then Panel Lawyer for Indian Bank, the evidence of P.W.5. [A.Mohan], Chartered Accountant in respect of annexure in Ex.P.3, the evidence of P.W.6. R. Palaniappan in respect of ownership of the property at Plot No.15, Survey No.193, T.S.No.2, Ram Nagar Main Road, Per- avallur, Perambur, Chennai, the evidence of P.W.7 [Ravichandran], Sub-Registrar, Sembium Sub-Registrar Office, in respect of Ex.P.37, the evidence of P.W.8. [R.Venkatesan], then Commercial Tax Officer, Chennai in respect of Ex.P.40, the evidence of P.W.11. [N.Ravi], Principal Scientific Lab, New Delhi and posted at Chennai Branch, in respect of his opinion Ex.P.52, the evidence of P.W.13. [C. Anboli], Inspector of CBI, ACB, Chennai in

respect of FIR Ex.P.53 the evidence of P.W.12. [V.D.Sebastian], Inspector of CBI, ACB, Chennai in respect of investigation and filing the charge sheet. Through the documents which are marked by the prosecution as Ex.P.1 to Ex.P.33, Ex.P.34, Ex.P.35, Ex.P.36, Ex.P.37, Ex.P.38, Ex.P.39, Ex.P.40 and Ex.P.52. The application from advance to traders of Indian Bank submitted by V. Gopalakrishnan(A-2) as Proprietor of the M/s. Vee Gee Kay Enterprises, along with Ex.P.2 loan application of V. Gopalakrishnan(A-2), has enclosed the copies of certificate of M/s. Vee Gee Kay Enterprises issued by the Commercial Tax Officer, Chennai dated 20.05.2000 and the acknowledgement copy of Form 2-D, Income Tax Returns for the assessment year2001-2002, the evidence of P.W.3. S. Sarveshwaran, then Manager, Indian Bank, Royapuram Branch during July 2003 to January 2008 in respect of Ex.P.35 to Ex.P.38, the evidence of P.W.4. P. Suhadev, then Panel Lawyer for Indian Bank, the evidence of P.W.6. R. Palaniappan in respect of ownership of the property at Plot No.15, Survey No. 193, T.S.No.2, Ram Nagar Main Road, Peravallur, Perambur, Chennai, the evidence of P.W.7 [Ravichandran], Sub-Registrar, Sembium Sub-Registrar Office, in respect of Ex.P.37, the evidence of P.W.8. R. Venkatesan, then Commercial Tax Officer, Chennai in respect of Ex.P.40.

10. The valuation report dated 18.02.2003 issued by the K.B. Sampath(A4) the Panel Valuer of the Indian Bank for valuing the property at Plot No.15, Survey No. 193 of Ramnagar Main Road, Peravallur, Perambur, Chennai for Rs.22,28,000/- in the account of M/s. Vee Gee Kay Enterprises. The valuation report was prepared by the A-4 without visiting the property and in the valuation report one M. Soundarajan was shown as a owner of the above said property. But originally the property was belonging to one P. Palaniappan, who is the real owner of the said property and who was examined by the prosecution as P.W.6. Through the evidence of P.W.6.P. Palaniappan, it is proved that M.Soudarajan was not owner of the property upon which the valuation report has been given by K.B. Sampath(A4) which shows that the valuation report Ex.P.14 was prepared by A-4 in furtherance of the above criminal conspiracy and A-4 prepared the Ex.P.14 valuation report without visiting the property and prepared it as requested by other accused and thereby induced the Bank t sanction a Trade Well Loan/Open Cash Credit in favour of M/s Vee Gee Kay Enterprises owned by A-2 and thereby cheated the Indian Bank, Royapuram Branch, Chennai.

11. Pending trial, the third accused A.S.Suresh died and charge against him got abated.

12. The Court below, on appreciating the evidence, held charges proved and convicted them as below:-

Rank of the accused	Conviction	Sentence
A1	Sections 120-B r/w 420, 467, 468 and 471 r/w 467 & 468 of IPC & 13(2) r/w 13(1)(d) of PC Act, 1988.	To undergo RI for 3 years and to pay a fine of Rs.2,000/- in default to undergo SI for six months
A2 and A4	Sections 120-B r/w 420, 467, 468 and 471 r/w 467 & 468 of IPC and Section 13(2) r/w 13(1)(d) of PC Act, 1988	To undergo RI for 1 years each and to pay a fine of Rs.1,000/- each, in default to undergo SI for three months each
A2	Section 420 IPC	To undergo RI for 1 year and to pay a fine of Rs.1000/- in default to undergo SI for 3 months
A2	Section 467 IPC	To undergo RI for 1 year and to pay a fine of Rs.1000/- in default to undergo SI for 3 months
A2	Section 468 IPC	To undergo RI for 1 year and to pay a fine of Rs.1000/- in default to undergo SI for 3 months
A2	Sections 471 r/w 467 and 468 IPC	To undergo RI for 1 year and to pay a fine of Rs.1000/- in default to undergo SI for 3 months

Rank of the accused	Conviction	Sentence
A4	Section 420 IPC	To undergo RI for 1 year and to pay a fine of Rs.1000/- in default to undergo SI for 3 months
A1	Section 13(2) r/w 13(1)(d) of PC Act, 1988	To undergo RI for 3 years and to pay a fine of Rs.2,000/-, in default to undergo SI for six months.
The sentence of imprisonment was ordered to run concurrently and the period of imprisonment already undergone as under trial prisoner was ordered to be set off. The sentence in default in fine was ordered run consecutively.		

13. Being aggrieved, the following appeals are preferred by A-1(N.K.Ravindran), A-2(V.Gopalakrishnan) and A-4(K.B.Sampath).

CA 812/2013: K.B.Sampath A-4

CA 821/2013: V.Gopalakrishnan A-2

CA 833/2013: N.K.Ravindran.A-1.

14. The learned counsels for respective appellants made their oral and written submission exhaustively. The Special Public Prosecutor for CBI cases made his consolidated reply. The submissions and the finding of this Court is as under:-

15. Crl.A.No.812 of 2013:-

The appellant K.B.Sampath is an approved valuer. His valuation report Ex.P-14. As per the valuation report, the property at S.No.193, Ram Nagar Main Road, Paravallur, Perambur, Chennai worth Rs.22,28,000/-. This valuation has been arrived after identification of the property. As per the documents and the legal opinion, the owner of the property shown as Mr.Soundara Rajan. After getting the guideline value from the SRO, the value of the landed property measuring to an extent of 3840 sq.ft. Been assessed at Rs.22,28,000/-. Charge that valuer without actual visit the property falsely certified the value of the property given as collateral security is baseless.

16. As far as the ownership of the property is concerned, the role of the valuer is not to verify the ownership. He based on the panel lawyer opinion, mentioned in the valuation certificate that the property belongs to one Soundara Rajan. There is no material placed before him that Soundara Rajan sold the property to Palaniappan in the year 1996. With the documents available, he has mentioned the ownership of the property as Soundara Rajan but it is not his

responsibility to verify or check the ownership. His only responsibility is to give the opinion on the value of the property. He based on the guideline value and the prevailing market value, has given his opinion Ex.P14 . PW-12[V.D.Sabastian], the investigating officer in the cross examination has admitted that the opinion given by the panel lawyer is correct. While so, the reference of the ownership in the valuation certificate cannot be wrong. If the panel lawyer is not an accused for giving opinion regarding the ownership of the property, the valuer cannot held responsible for giving value for the property, which is in existence and there is no contra evidence to show that the value mentioned in his report is inflated or over value.

17. In *L.N.Rajagopalan –vs- State reported in [CDJ 2009 MHC 3754]*, at para 11 and12, this Court has observed:-

> 11. Firstly, the Valuer is not associated with the business transaction when the application for loan is submitted by the borrower. Therefore, there is no occasion for the Valuer to see the persons who appear before the bank. Some of the properties might have been Government properties. It is not the duty of the Valuer to go to the Registrar's Office to verify whether the lands belong to the Government or private individuals.
> 12. The next allegation is that the petitioner violated the guidelines of the bank and submitted valuation reports of properties which do not exist. The prosecution has not

produced any documents to show that there are specific guidelines issued to the Valuers for valuing the property.

18. The dictum laid by this Court cited supra regarding the role of valuer wholly applies to the facts of the case. Hence, when the prosecution failed to prove, the valuer had some extraneous interest in the loan transaction or had any meeting of mind to act dishonestly along with A-1 and A-2, the professional act of valuing the property identified by the person apparently to be the owner of the property will not attract the ingredients of offences charged. When there is no apparent error or dishonesty in the valuation report, valuer cannot be hauled for prosecution. Therefore, there is no adequate evidence to hold that this appellant had conspired with the other accused to cheat the bank.

19. <u>Finding in Crl.A.No.812 of 2013:-</u>

Hence, **the Criminal Appeal No.812/2013 stands allowed.** The judgment of conviction and sentence passed by the learned XI Additional City Civil & Sessions Judge for CBI Cases relating to Banks and Financial Institutions, Chennai made in C.C.No.15 of 2008 dated 26.11.2013 is hereby set aside. Bail bond if any executed by the accused shall be cancelled. Fine amount if any paid by the accused shall be refunded to him. The appellant is at liberty forthwith unless his presence is not required in connection with any other criminal case.

20. Submission by the counsel for the appellant in Crl.A.No.821 of 2013:-

The appellant V.Gopalakrishnan, who is the proprietor of M/s Vee Gee Kay Enterprises, contended that PW-1[M.Marudhan], PW-2[K.Lakshmanan] and Pw-3[S.Sarveswaran] had admitted in their evidence that the loan was sanctioned to M/s Vee Gee Kay Enterprises in accordance with the guidelines laid by the bank and there is no violation of guidelines. The loan was sanctioned after due verification of the property and the document ought to have been accorded. Inspection report submitted by Lakshmanan is marked as Ex.P34, except recording of minor defects while investigation of the godown and the business. It is admitted that M/s Vee Gee Kay Enterprises is a running concern. The property offered as collateral security to the bank belongs to Soundara Rajan and the documents produced as genuine. Without examining the guarantor Soundara Rajan, the trial Court has erroneously arrived at conclusion that the pursuant to the conspiracy with the bank Manager false and fabricated. The document Ex.P31 along with the value certificate Ex.P14 was produced this appellant to induce the bank to advance trade loan. Without examining the guarantor on surmises, the trial Court has concluded the properties given as collateral security are false documents. The deceased accused A.S.Suresh arranged for collateral security and Soundara Rajan, who come forward to give his property as collateral security and he personally deposited the title deed of the immovable property with intention to create equitable mortgage. This appellant had no knowledge about the alleged sale of the property by Soundara Rajan to Palaniappan on 30.04.1999 for the alleged forging of document such as encumbrance certificate is the handy work of the deceased Suresh. The writing expert [PW-11] in his opinion Ex.P52 had categorically opined that the signature and writing in the disputed documents are that of Suresh and sale deed Ex.P31 and the encumbrance certificate Ex.P35 to Ex.P37 were produced by Suresh (deceased) and not by this appellant.

21. The learned Senior Counsel appearing for the appellant submitted that before adverting merit and demerit of the case, being a commercial transaction between the banker and the borrower criminal prosecution is not at all sustainable even otherwise by way of one time settlement, a sum of Rs.12,00,000/- along with the delayed interest been paid to the bank as early as 8th February 2011 and

therefore, there can be no criminal liability fasten on the appellant, who is the borrower. Even otherwise, the prosecution has failed to prove the charge of conspiracy, no evidence to show that there was a meeting of mind between the accused persons to dishonestly induce the bank for sanction of loan. None of the document alleged to be forged and false were in the writing of this appellant. PW-11 handwriting expert has clearly deposed that he has not attributed any of the writing or disputed signatures to A2. Therefore, when there is no evidence to show that this appellant had any intention to cheat the bank dishonestly or to produce false document, the conviction is liable to be set aside.

22. Submission by the learned counsel for the appellant in Crl.A.No.833 of 2013:-

The Learned Counsel for the appellant/first accused submitted that the scrutiny of the loan documents and verification of the borrowers credit worthiness has to be done by the loan officer, who is PW-1 in this case. The procedure to be followed before sanctioning loan is deposed by PW-1 to PW-3. They all admit that the loan was sanctioned by the appellant on the recommendation of PW-1, the loan officer and it was well within his pecuniary limits. Further, PW-3 admits that pre-sanction field inspection by the Manager was made mandatory only after the Head Office Circular dated 20/03/2003. Therefore, the omission to verify whether the documents given by the borrower is genuine or fake is not the responsibility of the Manager, it is is the duty of the loan officer and the panel lawyer, who gave the opinion about the title found in the documents or omission to make pre-sanction inspection by him may not even be a negligence or wilful negligence. Certainly, the material evidence does not bring home the charges of conspiracy or intentional and dishonesty to commit any of the crime mentioned in the charges.

23. In addition, the learned counsel for the appellant/A-1 reiterated the argument that A-1 is a public servant. Prior sanction ought to have been obtained for prosecuting as contemplated under Section 197 Cr.P.C and Section 19 of Prevention of Corruption Act, 1988. In the absence of sanction, the entire prosecution is liable to be set dropped.

24. Contra submissions in Crl.A.Nos.821 and 833 of 2013 made by the

learned Special Public Prosecutor for CBI:-

A-1 was working as Manager, Indian Bank, Royapuram Branch, Chennai, in the year 2002 and during the course of discharge of his duties as public servant, he along with the accused 2 to 4 entered into a criminal conspiracy at Chennai and with dishonest and fraudulent intention to cheat Indian Bank had sanctioned Trade Well Loan to M/s. Vee Gee Kay Enterprises, No.92, Varadhamuhtiappan Street, Chennai-1 for which A-2 projected himself as Proprietor, knowing fully well that the documents submitted for availing loan were Copy se and fabricated documents like invalid sale deed, forged TNGST and CST Certificates, forged encumbrance certificate, forged chitta and adangal etc., A1 by abusing his official position, had sanctioned Trade Well Loan/Open Cash Credit to the tune of Rs.15 lacs to A2 V. Gopalakrishnan, proprietor of M/s. Vee Gee Kay Enterprises, A4, who is the bank's Panel Valuer, without physically inspecting the property offered as collateral security, had issued a false and fabricated valuation report to the Bank, thereby, inducing the bank to sanction loan and by the collusive acts of A-1 to A-4, caused a wrongful loss of Rs.15,39,051/- to Indian Bank, Royapuram branch. The false and fabricated documents like invalid sale deed, forged encumbrance certificates, forged chitta and adangal referred to the property at S.R. No.193, Ram

Nagar Main Road, Peravallur Village, Perambur purportedly belonging to M.Soundararajan, besides forged TNGST & CST Certificates, etc. A2 to A4 with the active connivance of A1-the Bank Manager having misappropriated the funds of the Bank, had diverted the funds for purposes other than the business mentioned in application. Further, Al knowing fully well that the property documents offered as collateral securities are forged and fabricated, without verifying the real owner of the property and also by violating the specific instructions given by the Panel Lawyer to obtain Nil Encumbrance Certificate on the property and further without verifying the official premises of M/s. Vee Gee Kay Enterprises, No.92, Varadhamuhtiappan Street, Chenna!-1 while sanctioning the loan as stipulated by the Bank Guidelines, without verifying genuineness of the documents like; invalid sale deed, forged TNGST and CST Certificates, forged encumbrance certificate, forged chitta and adangal etc, enclosed by A-2 to the Bank had sanctioned loan to A2 and thereby caused loss to the bank to a tune of Rs.15,39,051/-. The prosecution has proved through evidence that A1 sanctioned loan to A2 without following the instruction of the panel lawyer. The property received to create equitable mortgage were not the property of Soundara Rajan. The fake encumbrance certificate given by A2 accepted by A1 to advance the loan. The case in which loan sanctioned soon after A2 opened his account in Indian Bank is sufficient to show that there was no real inspection and scrutiny of the document. The trade loan sanctioned to A2 for purchase of raw material not utilised for the said purpose. The first accused without conducting visit had given a report Ex.P11 as if he visited the godown of the borrower on 18.02.2003 and found sufficient stock if that being so, when PW-2 conducted the inspection within 40 days ie. 30.03.2003, he ought to have seen enough stock or turn over. Whereas, he found plastic in bags worth only Rs.12,00,000/-. The prosecution has proved through witnesses that Soundara Rajan is not the owner of the property, he had sold the property in the year 1996 itself to Palaniappan. The encumbrance certificate lay out of Ram Nagar and the valuation Certificate were not genuine and therefore, A1 the Manager who has advanced the loan without property scrutiny of the ownership and credibility of the borrower liable to be punished for conniving with the borrower/A2 and for allowing him to withdraw the loan amount for the purpose other than for the trade.

25. <u>Findings in Crl.A.No.821 of 2013 and Crl.A.No833 of 2013:-</u>

Al [N.K.Ravindran] a public servant working as Manager Indian Bank, Royapuram Branch during the year 2002-2003 entered into criminal conspiracy at Chennai and other places with private individuals and one K.B.Sampath approved valuer to cheat the Indian Bank, Royapuram Branch, Chennai in the matter of sanctioning Trade Well Loan on the basis of forged and invalid documents offered by the individuals taken as collateral security for the loan. Out of 5 such cases, the loan sanctioned to M/s Vee Gee Kay Enterprises Mr.V.Gopalakrishnan is one.

26. Section 197(1)(a)(b) of Cr.P.C, 1973 reads as below:

> *197. Prosecution of Judges and public servants (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-*
>
> *(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;*
>
> *(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government: 1*

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression" State Government" occurring therein, the expression" Central Government" were substituted.

27. Section 19 of Prevention of Corruption Act, 1988:

19. Previous sanction necessary for prosecution.—

(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time

when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purposes of this section,—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or

any requirement of a similar nature.

28. As far as offence under Prevention of Corruption Act, 1988, to take cognizance of offence committed by a public servant, prior sanction is required if he is in service at the time of taking cognizance. In respect of other offences, whether the pubic servant is or was a public servant prior sanction of the respective government is required provided the said public servant must have been employed in connection with the affairs of the Union or State. In this case, A-1 was not an employee under the State or Union. Hence, though he fall under the definition of Public Servant as per the definition under Section 2 (c) of Prevention of Corruption Act, 1988, he will not come under the definition of Public Servant under Section 21 of Indian Penal Code. The below cited judgments shall butress the above view.

(i)The Hon'ble Supreme Court in *K.Ch.Prasad –vs- Vanalatha Devi reported in [(1987) 2 SCC 52]*held that:-

> "**6.**It is very clear from this provision that this section is attracted only in cases where the public servant is such who is not removable from his office save by or with the sanction of the Government. It is not disputed that the appellant is not holding a post where he could not be removed from service except by or with the sanction of the government. In this view

of the matter even if it is held that appellant is a public servant still provisions of Section 197 are not attracted at all.

7. It was contended by the learned counsel that the competent authority who can remove the appellant from service derives his power under regulations and those regulations ultimately derive their authority from the Act of Parliament and therefore it was contended that the regulations are framed with the approval of the Central Government but it does not mean that the appellant cannot be removed from his service by anyone except the Government or with the sanction of the Government. Under these circumstances on plain reading of Section 197 the view taken by the courts below could not be said to be erroneous. We therefore see no reason to entertain this appeal. It is therefore dismissed."

(ii)In *Md. Hadi Raja –vs- State of Bihar reported in [(1998) 5 SCC 91]*, the Hon'ble Supreme Court held that :-

"**19.**"Public servant" has not been defined in the Code of Criminal Procedure but Section 2(*y*) of the Code of Criminal Procedure provides that the words used in the Criminal Procedure Code but not defined in the Criminal Procedure Code but defined in the Penal Code, 1860 shall be deemed to have the same meaning attributed to them in the Penal Code, 1860. Section 21 of the Penal Code, 1860 defines "public servant" and therefore the expression "public servant" will have the same meaning in the Criminal

Procedure Code. It will be appropriate to refer to clauses 9 and 12 of Section 21 IPC.

"21.*Ninth*.—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the government, or to make any survey, assessment or contract on behalf of the government or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of the government, or to make, authenticate or keep any document relating to the pecuniary interests of the government or to prevent the infraction of any law for the protection of the pecuniary interests of the government.

Twelfth.—Every person—

(*a*) in the service or pay of the government or remunerated by fees or commission for the performance of any public duty by the government;

(*b*) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956)."

20. Although the instrumentality or agency with a corporate veil, for all intents and purposes may be held to be a third arm of the Government and such instrumentality discharges the duties and functions which the State intends to do as indicated in *Ajay Hasia case* [(1981) 1 SCC 712 : 1981 SCC (L&S) 258] such instrumentality or agency is none the less a juridical person having a separate legal entity. Therefore, such instrumentality must be held to have an independent status distinct from the State and cannot be treated as a government department for all purposes. Therefore, even if an officer of such instrumentality or agency takes or receives, keeps or expends any property or executes any contract, such acts even though in ultimate analysis may be held to have been done in the interest of the State, such action cannot be construed, as of rule, an action of the Government by its employees or by an authority empowered by the Government. It may be indicated here that it is not necessary that persons falling under any of the descriptions given in various clauses under Section 21 of IPC need to be appointed by the Government. If such person falls under any of the descriptions as contained in various clauses of Section 21 of the Penal Code, 1860, such person must be held to be a public servant. Explanation 1 of Section 21 indicates that persons falling under any of the above descriptions are public servants whether appointed by the Government or not. Explanation 2 indicates that wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation. Sub-clause (*b*) of clause twelve of Section 21 expressly makes the officers of local authority and corporation established by or under a Central, Provincial or State Act or a government-owned company as defined in Section 617 of the Companies Act, 1956, public servants. But protection under Section 197 CrPC is not available to a public servant unless other conditions indicated in that section are fulfilled.

21. It is to be noted that though through the contrivance or mechanism of corporate structure, some of the public undertakings are performing the functions which are intended to be performed by the State, ex facie, such instrumentality or agency being a juridical person has an independent status and the action taken by them, however important the same may be in the interest of the State cannot be held to be an action taken by or on behalf of the Government as such within the meaning of Section 197 CrPC.

25. It will be appropriate to notice that whenever there was a felt need to include other functionaries within the definition of "public servant", they have been declared to be "public servants" under several special and local acts. If the legislature had intended to include officers of an instrumentality or agency for bringing such officers under the protective umbrella of Section 197 CrPC, it would have done so expressly.

26. Therefore, it will not be just and proper to bring such persons within the ambit of Section 197 by liberally construing the provisions of Section 197. Such exercise of liberal construction will not be confined to the permissible limit of interpretation of a statute by a court of law but will amount to legislation by court.

27. Therefore, in our considered opinion, the protection by way of sanction under Section 197 of the Code of Criminal Procedure is not applicable to the officers of government companies or the public undertakings even when such public undertakings are "State" within the meaning of Article 12 of the Constitution on account of deep and pervasive control of the Government. The appeals are disposed of accordingly."

(iii)In *K.Veeraswami v. Union of India and others reported in [(1991) SCC (cri) 734], the Hon'ble Supreme Court held:-*

"**107.**Clauses (*a*), (*b*) and (*c*) in sub-section (1) of Section 6 exhaustively provide for the competent authority to grant sanction for prosecution in case of all the public servants falling within the purview of the Act. Admittedly, such previous sanction is a condition precedent for taking cognizance of an offence punishable under the Act, of a public servant who is prosecuted during his continuance in the office. It follows that the public servant falling within the purview of the Act must invariably fall within one of the three clauses in sub-section (1) of Section 6. It follows that the holder of an office, even though a 'public servant' according to the definition in the Act, who does not fall within any of the clauses (*a*), (*b*) or (*c*) of sub-section (1) of Section 6 must be held to be outside the purview of the Act since this special enactment was not enacted to cover that category of public servants in spite of the wide definition of 'public servant' in the Act. This is the only manner in which these provisions of the Act can be harmonized and given full effect. The scheme of the Act is that a public servant who commits the offence of criminal misconduct, as defined in the several clauses of sub-section (1) of Section 5, can be punished in accordance with sub-section (2) of Section 5, after investigation of the offence in the manner prescribed and with the previous sanction of the competent authority obtained under Section 6 of the Act, in a trial conducted according to the prescribed procedure. The grant of previous sanction under Section 6 being a condition precedent for the prosecution of a public servant covered by the Act, it must follow that the holder of an office who may be a public servant according to the wide definition of the expression in the Act but whose category for the grant of sanction for prosecution is not envisaged by Section 6 of the Act, is outside the purview of the Act, not intended to be covered by the Act. This is the only manner in which a harmonious construction of the provisions of the Act can be made for the purpose of achieving the object of that enactment. This appears to be the obvious conclusion even for a case like the present where no such sanction for prosecution is necessary on the view taken in *Antulay* [(1984) 2 SCC 183 : 1984 SCC (Cri) 172 : (1984) 2 SCR 495] , and not challenged before us, that the sanction for prosecution under Section 6 is not necessary when cognizance of the offence is taken after the accused has ceased to hold the office in question."

(iv)The Hon'ble Supreme Court judgment in *Abhay Singh Chautala –vs- CBI [(2011) 7 SCC (cri) 141] held that:-*

"**41.**It is in the light of this that the Court did not have to specify as to under what circumstances would a duty arise for locating the authority to give sanction. The doubt could arise in more manners than one and in more situations than one, but to base the interpretation of Section 19(1) of the Act on the basis of Section 19(2) would be putting the cart before the horse. The two sections would have to be interpreted in a rational manner. Once the interpretation is that the prosecution of a public servant holding a different capacity than the one which he is alleged to have abused, there is no question of going to Sections 6(2)/19(2) at all in which case there will be no question of any doubt. It will be seen that this interpretation of Section 6(1) or, as the case may be, Section 19(1), is on the basis of the expression "office" in three sub-clauses of Section 6(1), or as the case may be, Section 19(1). For all these reasons, therefore, we are not persuaded to accept the contention that *Antulay case* [(1984) 2 SCC 183 : 1984 SCC (Cri) 172] was decided per incuriam of Section 6(2). In our opinion, the decision in *K. Veeraswami* v. *Union of India* [(1991) 3 SCC 655 : 1991 SCC (Cri) 734] or, as the case may be, *P.V. Narasimha Rao case* [(1998) 4 SCC 626 : 1998 SCC (Cri) 1108] are not apposite nor do they support the contention raised by the learned Senior Counsel as regards *Antulay case* [(1984) 2 SCC 183 : 1984 SCC (Cri) 172] being per incuriam of Section 6(2).

54. The learned Senior Counsel tried to support their argument on the basis of the theory of "legal fiction". We do not see as to how the theory of "legal fiction" can work in this case. It may be that the appellants in this case held more than one offices during the check period which they are alleged to have abused; however, there will be no question of any doubt if on the date when the cognizance is taken, they are not continuing to hold that very office. The relevant time, as held in *S.A. Venkataraman* v. *State*[AIR 1958 SC 107 : 1958 Cri LJ 254] , is the date on which the cognizance is taken. If on that date, the appellant is not a public servant, there will be no question of any sanction. If he continues to be a public servant but in a different capacity or holding a different office than the one which is alleged to have been abused, still there will be no question of sanction and in that case, there will also be no question of any

> doubt arising because the doubt can arise only when the sanction is necessary. In case of the present appellants, there was no question of there being any doubt because basically there was no question of the appellants' getting any protection by a sanction."

29. To establish its case, the prosecution examined PW1 to PW13. Marked documents Ex.P1 to Ex.P77. On the side of the defence, two documents were marked. The evidence of the prosecution witnesses coupled with all the official documents produced on record and marked as exhibits before this Court tend to show that in pursuance of the aforesaid criminal conspiracy, A2 [Gopalakrishnan], in his capacity as the sole proprietor of M/s Vee Gee Kay Enterprises opened a Current Account in the Indian Bank, Royapuram Branch on 10/02/2003. (Ex.P-1). He applied for Rs.15 lakhs for Traders Advance. A1 being the Manager of the branch had sanctioned loan and his appraisal report Ex.P13 indicates that the borrower has projected the actual gross sale for the ensuing year as Rs.256.81 lakhs and has shown the previous turn over as Rs.168.33 laksh as on 31.03.2001. Whereas the inspection report of PW-2 marked as Ex.P46 dated 21.04.2003, hardly 40days after indicates that the turn over for the period from the date of the loan till the date of inspection is Rs.15.85 lakhs. There is no suspicion or exhaustion found in the projected turnover. However, he found that equitable

mortgage of property created with certified copy and not with the original. PW-4 the panel lawyer while giving his opinion Ex.P28 had listed 5 documents to be obtained in original for creating equitable mortgage. While so, without obtaining those documents, equitable mortgage has been created and the encumbrance certificate for the period not obtained. Had A1 followed the instruction of the panel lawyer and had obtained original encumbrance certificate for the property for the relevant period, the transfer of the property to Palaniappan could have been noted. PW-6 [Palaniappan] had mounted the witness box and had deposed that he had produced the property in S.No.193, Block No.21, Plot No.15, From Soundara Rajan as a vacant site in the year 1999 for the consideration of Rs.6,30,000/-. Though the said Soundara Rajan not been examined, the present owner of the property had deposed before the Court and his claim been proved through encumbrance certificate obtained by the bank subsequent to the investigation. More incriminating evidence had come through PW-9 A.S.Rangarajan, who is brother of the deceased Suresh. He had deposed that from the account of M/s Vee Gee Kay Enterprises . He received Rs.5,43,200/- as cheque drawn in favour of M/s R.R.Pearl Foam which is owned by him and another cheque for Rs.4,20,000/- These two cheques were marked as Ex.P41 and

Ex.P42 which were received by him through his brother, A1, A2 and A3, who are the accused. He also deposed by these witnesses after realising the cheque amount he had paid back to Suresh. He has not done any business with Suresh or his conduct M/s Vee Gee Kay Enterprises.

30. These evidences however indicates that transaction in the name of M/s Vee Gee Kay Enterprises substantially carried out by the deceased accused Suresh, though V.Gopalkrishnan been shown as Proprietor of M/s Vee Gee Kay Enterprises. Yet another incriminating evidence against this accused person is the evidence of PW-5 [A.Mohan] who is the Chartered Accountant by profession. He had deposed that he never issued any profit and loss account statement for M/s Vee Gee Kay Enterprises. Using his name, address and fake seal, the profit and loss account Ex.P3 for M/s Vee Gee Kay Enterprises been falsely created.

31. Thus, it is made clear through the witnesses that profit and loss account to avail loan falsely created and produced to the bank. The title document and encumbrance certificate are false. Based on these documents, the valuer (A4) has given the valuation certificate. The property which sold to Palaniappan been

shown as property of Soundara Rajan and taken as collateral security for the loan availed by A2. If A1 had bona fidely followed the instruction of the Panel Lawyer, he could not have sanctioned the loan for A2 without obtaining the original documents. His conduct for not obtaining original document for scrutiny, EM for sanctioning the loan with defects and fake documents disclose that there was meeting of mind to dishonestly cheat the bank and make pecuniary advantage.

32. These incriminating evidence are adequately enough to hold A-1 and A-2 guilty of conspiracy to cheat the Bank, making false documents, using those false documents as genuine to cheat the bank.

33. In the result, **Crl.A.Nos.821 and 833 of 2013 stand dismissed**. The judgment of conviction passed by the learned XI Additional city Civil & Sessions Judge for CBI Cases relating to Banks and Financial Institutions, Chennai made in C.C.No.15 of 2008, dated 26.11.2013 is hereby confirmed. The period of substantive sentence shall run concurrently. **The period of sentence imposed on the first accused, N.K.Ravindran (Crl.A.No.833 of 2013) shall run concurrently with the period of substantive sentence imposed in C.C.No.13 of**

2008. The period of sentence already undergone by the accused is set off. Bail bond if any executed by the accused shall be cancelled. The respondent police shall secure the accused and remand them to the judicial custody to undergo the remaining period of sentence imposed by the trial Court, if any.

In the result,

(i)Crl.A.No.812 of 2013(K.B.Sampath) is allowed.

(ii)Crl.A.No.821 of 2013 (V.Gopalakrishnan) is dismissed.

(iii)Crl.A.No.833 of 2013 (N.K.Ravindran) is dismissed.

31.07.2023

Index:yes/no
speaking order/non speaking order
ari
To:
1.The XI Additional City Civil & Sessions Judge for CBI Cses, Chennai.
2.The Inspector of Police, CBI/ACB/Chennai.
3.The Special Public Prosecutor CBI Cases, High Court, Madras.

DR.G.JAYACHANDRAN,J.

ari

delivery Common judgment made in
Crl.A.Nos.812, 821 and 833 of 2013

31.07.2023