



Crl.A.Nos.814, 832 and 838 of 2013

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.814, 832 and 838 of 2013

Crl.A.No.814 of 2013:-

K.B.Sampath

.. Appellant/Accused-3

/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.12 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.L.V.Rohith

For Respondent :Mr.K.Srinivasasan(SC)
Special Public Prosecutor (CBI)



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Crl.A.No.832 of 2013:

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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.12 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(SC)
Special Public Prosecutor (CBI)

Crl.A.No.838 of 2013:-

Govind Prasad Tiwari

.. Appellant/Accused-4

/versus/

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

.. Respondent/Respondent



Crl.A.Nos.814, 832 and 838 of 2013

Prayer: Criminal Appeal has been filed under Section 374 of the Cr.P.C., to set aside the conviction and sentence imposed on the appellant in C.C.No.12 of 2008 on the file of the Learned XI Additional City City & Sessions Judge for CBI Cases at Chennai dated 26.11.2013.

For Appellant :Mr.R.Rajarathinam,
Senior Counsel for
Mr.A.G.Rajakumar

For Respondent :Mr.K.Srinivasasan (SC)
Special Public Prosecutor (CBI)

COMMON JUDGMENT

On 18.03.2003, during the regular inspection conducted by Mr.K.Lakshmanan, Senior Manager, Indian Bank, Inspection Centre, Chennai, it was found that in Royapuram Branch, Trade advances under MDL, powers were not judiciously used. Head Quarters guidelines are not complied in about 16 loans. Out of 16 such irregular loans, 15 were sanctioned by N.K.Ravindran, Manager who assumed charge on 09.09.2002. For all these 15 loans irregular loan accounts, a consolidated report for each individual loan exclusive report submitted by Mr.K.Lakshmanan to the Deputy General Manager, Indian Bank, Inspection Centre, Chennai. His report in short outlined that to M/s Steelelex Impex (India) is a



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fictitious firm. Trade Loan sanctioned based on fake documents. Stocks were not available in the premises. Loan sanctioned by accepting third party security. The account become irregular and declared NPA.

2. About 30 months later, the Inspector of Police attached to SPE/CBI/ACB/Chennai on 28.10.2005 registered the case based on source information for offences 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 Steelix 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



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600 061, Proprietor of M/s VEE GEE KAY Enterprises, Chennai.

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(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. Five specific instances of conspiracy, cheating, fabrication of documents and use of false documents as genuine were narrated in the FIR. One such instance is in respect of M/s Steelex Impex (India), which is the subject matter of these appeals.

4. According to the FIR, on 04.10.2022, Current Account was opened in the name of fictitious firm, M/s Steelex Impex India by Dinesh Kumar Mishra(A2). An open Cash Credit of Rs.15 lakhs was sanctioned by A1 on 19.12.2002 exceeding the discretionary powers. As collateral security for the loan, A-2 [Shri Dinesh Kumar Mishra],the proprietor of M/s Steelex Impex India, had offered a property in the name of Jawahar and created EM. Whereas, the real owner of the property given as collateral security was one Kannan. This property was purchased by Kannan in an auction sale and he had availed home loan from Indian



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Bank North Usman Road Branch. However, title deeds were fabricated as if the property belongs to Jawahar. In the fake EC submitted by the accused persons to the Indian Bank, the registration of mortgage deed No.837/1996 dated 14.02.1996 executed by one Mrs.K.Lakshiammal in favour of M/s Chennai Park Town Benefit Fund Ltd., not reflected. For the loan sanctioned to M/s Steelex Impex India, the death certificate of Smt.Lakshmiammal and legal heir certificate declaring Jawahar as the legal heir of Smt.Lakshmiammal produced. EM created in the name of Jawahar. In fact, Smt.Lakshmiammal alive and the death certificate of Lakshmiammal proved as false. The Branch Manager Ravindran(A-1) had sanctioned the loan without conducting proper verification. He had sanctioned the loan dishonestly and on the same day also allowed the borrower to withdraw the loan amount for purchase of Bank Pay Orders favouring 3rd parties for almost equal to the loan amount. After the diversion of money, the loan account of M/s Steelex Impex became inoperative. In this connection, the bank had lost an amount of Rs.17.51 lakhs.

5. On completion of Investigation, Final Report filed against the following four persons. The borrower was one among the four accused. He



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absconded during trial. Hence, the case against him got spilt up.(While re-arranging the ranking of the accused after split up, error has crept when referring the accused Govind Prasad Tiwari by his rank).

6. To avoid confusion, the ranking of the accused both in the charge sheet and the judgment given below:

Ranking found in the Charge Sheet:-

- (1)N.K.Ravindran(Manager)
- (2)Dinesh Kumar Mishra (Borrower-absconding and split up)
- (3)Govind Prasad Tiwari(guarantor)
- (4)K.B.Sampath(Valuer)

7. Ranking in the Judgment:-

- (1)N.K.Ravindaran(Manager)
- (2)Dinesh Kumar Mishra (Borrower-absconding and split up)
- (3)K.B.Sampath(Valuer)
- (4)Govind Prasad Tiwari(guarantor)



8. The trial Court framed charges against A1 to A4 (A2 absconding and split up) 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 A3 to A4 and under Section 420 of IPC and against A1: Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

9. To prove these charges, the prosecution examined 13 witnesses, marked 100 documents. One D.Namachivayam was examined as CW-1 as Court witness and the Statement of Accounts of M/s Steelex Impex India along with covering letter was marked as CW-1. Pending trial, A2 absconded and his case spilt up and assigned new number for the split up case as C.C.No.1 of 2009. Accepting the case of the prosecution, the trial Court convicted A1, A3 and A4 and sentenced 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 and Section 13(2) r/w 13(1)(d) of PC Act.	To undergo RI for 3 years and to pay a fine of Rs.2,000/- in default to undergo SI for six months
A3 and A4	Sections 120-B r/w 420, 467, 468 and 471 r/w 467 &	To undergo RI for 1 year each and to pay a fine of Rs.1,000/- each, in



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Rank of the accused	Conviction	Sentence
	468 of IPC and Section 13(2) r/w 13(1)(d) of PC Act, 1988	default to undergo SI for three months each
A3	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
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.		

10. Criminal Appeals C.A.No.814/2013 by A-3 [K.B.Sampath]; C.A.No.832/2013 by A-1 [N.K.Ravindran]; and C.A.No.838 2013 by A-4 [Govind Prasad Tiwari] are filed, on being aggrieved by the conviction and sentences.

11. These appellants faced trial for the following charges:-

Charge No.1: 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 at Chennai, in the matter of sanctioning and release of Trade Well Loan in the name of



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M/s Steelex Impex (India), No 4, Sembudoss Street, Chennai-1 owned by you A-2 as Proprietor, by way of submitting false and fabricated documents like invalid sale deed, forged TNGST and CST Certificates, forged encumbrance certificates, forged death certificates etc. and thereby induced the Bank to part with the Trade Well Loan / Open Cash Credit 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 also you A-4 by issuing a false and fabricated valuation report to the Bank in support of sanctioning the loan and further the acts of you A-1 to A-4 caused the Bank to suffer a loss to the tune of Rs. 14,90,248/- and thereby you A-1, A-3 and A-4 have committed the offences punishable U/s. 120-B r/w 420, 467, 468 and 471 r/w 467 & 468 of IPC and Sec.13(2) r/w 13(1)(d) of PC Act, 1988 and is within my cognizance.

Charge No.2: 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 the application forms and other documents like false and fabricated consent letter, form of Assets and Liabilities, false stock statements etc. of M/s Steelex Impex (India), Chennai and further by providing your residential address No.152, Mint Street, Chennai as the residential address of A-2, Dinesh Kumar Mishra and also provided your office address of M/s Mahalakshmi Steels running in the name of your father Shri Srinivas Tiwari as Office Address of M/s Steelex Impex (India) knowing fully well that A-2 was not running any steel trading company in the said address at No.4, Sembudoss



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Street, Chennai and thereby induced the Bank to part with the funds of the Bank to the tune of Rs.15 lacs to A-1 and thereby you A-3 have committed the offences punishable U/s.420 IPC and is within my cognizance.

Charge No.3: 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 11.10.2002 valuing the property at No.69, SR No.200, Poonamallee High Road, Ekkatuthangal. Chennai of one Mr. K.Jawahar for Rs.21,38,000/- 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 Steelex Impex India Ltd. Owned by A-2 and thereby committed the offences punishable U/s.420 IPC and is within my cognizance.

Charge No.4: 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 Steelex Impex India Ltd. owned by A-2 on 19.12.2002 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 Pariel Lawyer to obtain Nil Encumbrance Certificate on the property and further without verifying the official premises of M/s Steelex Impex (India) Ltd. while sanctioning the loan



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as stipulated by the Bank Guidelines, without checking with the genuineness of the TNGST and CST Certificates enclosed by A-2 to the Bank and thereby caused a loss to the tune of Rs.14,90,248/- to the Bank and thereby you A- 1 have committed the offences punishable U/s. 13(2) r/w 13(1)(d) of PC Act, 1988 and is within my cognizance.

12. The case of the prosecution as spoken by the witnesses and relied by the trial Court:-

To prove the above charges, the prosecution examined PW-1 to PW-13 & CW-1 and marked Ex.P1 to Ex.P100 & Ex.C1. 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[Dinesh Kumar Mishra], in his capacity as the proprietor of M/s Steelex Impex (India), applied for Trade well Loan/Open Cash credit of Rs.15lakhs (Rupees Fifteen lakhs only) on 08.10.2002 and offered property at No.69, S.R.No.200, Poonamallee High Road, Ekkattuthangal, Chennai purportedly belonging to one K.Jawahar as Collateral Security. He also enclosed TNGST and CST certificate pertaining to M/s Steelex Impex (India) purported to have been issued by Commercial Tax Officer, Harbour-V, Assessment Circle.



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A4[Govind Prasad Tiwari], filled up the application forms and other documents of M/s. Steelex Impex (India) on behalf of A2. A2 and A4 submitted invalid TNGST & CST Certificates issued by CTO, Harbour-V, Assessment Circle in the year 1999, which was valid only for one year. The said certificates were not valid for the year 2002. Further, A2 furnished his residential address as No.152, Mint Street, Chennai as his residential address and also dishonestly provided the office address of M/s. Mahalakshmi Steels at No.4, Sembudoss Street, Chennai, run in the name of his father Srinivas Tiwari as the office address of M/s. Steelex Impex (India). In fact, A2 Dinesh Kumar Mishra was not running any steel Trading Company in the aforesaid address.

13. A3-K.B.Sampath, an approved Valuer of properties in the panel of Indian Bank prepared a valuation report dated 11.10.2002 valuing the property at No.69, S.R. No.2000, Poonamallee High Road, Ekkattuthangal, Chennai of K. Jawahar for Rs.21,88,000/-. A3 has dishonestly and without actually visiting the property falsely certified in the valuation report that the property is in the name of Jawahar. In reality, the said property had already been mortgaged to M/s. Park Town Benefit Fund by its legal owner Lakshminarsammal in the year 1996 and as



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he committed default in repayment of loan, M/s. Park Town Benefit Fund had sold

the aforesaid property to one M. Kannan on 10.07.2002 in public auction.

Further, A2 dishonestly and knowingly submitted the title deed No.940/1982, pertaining to the property offered as collateral security which became invalid due to subsequent transactions, produced forged encumbrance certificates for the periods 01.01.1990 to 03.03. 2001, 01.03.2001 to 06.06.2002 and 01.06.2002 to 05.09.2002, forged death certificate No.14563/2000 of Lakshminarasammal and legal heir certificate purportedly issued by Tahsildar, Mambalam, Guindy Taluk, Chennai-78 in favour of K.Jawahar, the property Tax receipt dated 11.06.2002 and forged valuation report dated 11.10.2002 prepared by A3, before the bank as documents for collateral security and induced the bank to part with its fund in the form of Trade well Loan/Open Cash Credit

14. Al-Ravindran, having connived with A2 to A4 and by abusing his official position as Manager, Indian Bank, Royapuram Branch, had dishonestly sanctioned Trade well Loan/Open Cash Credit to the tune of Rs.15Lakhs (Rupees Fifteen lakhs only) to M/s. Steelex Impex (India) on 19.12.2002. The evidences of P.W.1 to P.W.3 would go to show that though the entire loan papers were



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processed by P.W.3-Loan Officer, the ultimate loan sanctioning authority is only

Al and therefore, it is the case of the prosecution that Al ought to have been vigilant by verifying the genuineness of documents, existence of the property offered as collateral security and he should have adhered to the instructions given by the Panel Advocate in his legal opinion, to obtain up to date Nil Encumbrance Certificate on the property. The evidences of the prosecution witnesses further go to prove that Al did not go to the property and verified the true owner of the property on which equitable mortgage was created and he also did not personally go the Sub Registrar Office, Saidapet to check who was the actual owner of the property on the date of creating equitable mortgage on the property offered as collateral security. The evidences of the prosecution witnesses also go to show that before loan, Al did not visit the office premises of M/s. Steelex Impex (India) as stipulated by the bank. He also did not check with the Commercial Tax Department, Harbour-V, Assessment circle about TNGST and CST certificates enclosed by Dinesh Kumar Mishra. During the course of investigation, Commercial Tax Department confirmed that the TNGST No.0081058 and CST certificates having No.793224 are not valid for the year 2002 since the above registration had been cancelled by Commercial Tax Department in the year 2000



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itself. It is also the case of the prosecution that Lakshmi Narasammal is alive and presently residing at Old No.57, New No.31. S.V.Koil Street, Kakkanallur Village, Uthiramerur, Kanchipiram District with her son K. Jawahar and that K. Jawahar has not parted with any documents nor signed any security documents before the bank.

15. Appeal grounds in C.A.No.814/2013:

The learned counsel appearing for K.B.Sampath, (A-3) the approved valuer/ appellant submitted that the trial Court judgment suffers omission of proper application of law and appreciation of material evidence. The valuation certificate given by the appellant, which is marked as Ex.P-16 not been proved as over valued or a false certificate. The opinion of the panel lawyer about the ownership of the property is relied by the valuer and he need not look into the title for ascertaining the value. It is not his responsibility also. There is no evidence to disprove the assertion of the valuer about his visit to the property in the name of Jawahar situated at Door No:69, R.S.No.200, T.S.No.5, Plot No.1, Poonamallee Road, Gandhi Nagar, Ekkattuthangal, Chennai, before giving the valuation certificate dated 11.10.2002. The prosecution has also not examined Lakshmi Narasammal



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whom they claim the actual owner of the property. The Lawyer and the Valuer both being professional in their respective field are to be treated alike. The allegation of the prosecution is that the property of Lakshmi Narasammal been given as security, falsifying documents as if the property belongs to Jawahar. Then, the panel lawyer PW-4 [Mr.Suhadev] who gave the opinion about the marketable title of the property has to be held guilty and not the valuer who was sought to give his opinion on the value and not on the title.

16. In spite of contra documentary evidence to show the property belongs to Lakshminarasammal, who is alive and not owned by Jawahar, inherited through Lakshminarasammal, PW-12[D.Sebastian] who investigated the case admits that he was satisfied with the genuineness of the opinion given by the panel lawyer. If the legal opinion on title, which is apparently erroneous is believed to be genuine, there is no reason to suspect the genuineness of the valuation certificate. In the absence of any evidence to suspect the valuation of this accused shown in Ex.P-16 is excessive or for a non-existing property, conviction of this appellant is baseless.



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WEB COPY 17. Appeal grounds in C.A.No.832/2013:-

The Learned Counsel for the appellant submitted that the scrutiny of the loan documents and verification of the 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.



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18. 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. In the absence of valid sanction, the conviction is liable to be set aside.

19. Appeal grounds in C.A.No.838 of 2013:

According to the learned Senior Counsel appearing for this appellant, Govind Prasad Tiwari(A-4) the guarantor, pointing the error in ranking this accused as A-3 in the charges and describing him as A-4 in the judgment, contended that the mis-description is the trial judge manifestation of non application of mind. There is no evidence to prove that this accused made the false documents namely, the title deeds, tax receipts, assets and liabilities report etc., The handwriting expert opinion only indicates that the loan application form in the name of Dinesh Kumar Mishra, the borrower is in the hand writing of this appellant. The specimen signature collected from him was not in accordance with the procedure contemplated under Section 311A of the Code of Criminal Procedure. Even otherwise, his writings found in the account opening form, loan



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application and agreement of guarantee cannot be a material evidence to convict him for conspiracy or cheating. He had no intention to cheat the bank while offering guarantee to the loan sanctioned to the absconding accused. His conduct of paying Rs.10 lakhs as One Time Settlement in the Lok Adalat conducted by High Court is a proof that he never had any intention to cheat the bank. The trial Court failed to consider the order passed in Lok Adalat conducted on 23/09/2010 which is marked as Ex.C-1 through DW-1

20. Submission by the Learned Special Public Prosecutor (CBI) for the Respondent:

Based on source information, FIR [Ex.P-62] was registered on 28/10/2005 and taken up for investigation. The investigation culminated in filing of 5 separate charge sheets. In each case, though the borrower name is different, the modus operandi is one and the same. For non-existing or non functioning firms loan was advance. Pre-loan inspection not conducted. The title deeds offered for EM were not genuine. The legal opinion and valuation certificates were accepted by A-1 to sanction loan knowing well that they are not genuine. In all the five cases, the title documents and the revenue documents were found to be false. After availing loan,



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the amount had been withdrawn immediately and loan was not repaid. The persons who were paid from the loan amount, had no business transactions with the borrowers. The loan, which is meant for improving the business of mid scale traders been misused for personal enrichment. The Manager of the Bank A-1, the Panel Lawyer, the Valuer along with the borrower and the guarantor with intention to cheat the bank conceived the design of offering 3rd part property as security created false documents and used it as genuine to sanction loan.

21. A-1 as Manager did not verify the loan documents properly and his failure is a wilful omission and intentional. He cannot blame the panel lawyer who gave the opinion on title. The guarantor cannot get exonerated from criminal prosecution since he had paid part of the loan due after prosecution. The valuer who had ascertained the ownership of the property to Jawahar falsely is liable for giving a misleading certificate.

22. A-3 the valuer though not expected to test the title of the property, he cannot give valuation report without inspection. He knowing well that the property not owned by Jawahar gave the valuation certificate dishonestly to aid A2 to get



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pecuniary advantage wrongfully.

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23. A-4 gave his specimen writing and signatures without any demur during the investigation. Section 311-A of Cr.P.C is only an enabling provision to the investigating officer seeking the intervention of the Court, when a witness refuses to give his specimen signature, when wanted. If the accused in non-co-operative to the investigation, the Investigating Officer may seek the intervention of the Court by filing Section 311-A Cr.P.C. The accused has right to refuse giving signature. If inspite the of the Court direction, he refuses to give signature, the Court can draw adverse inference. If the accused voluntarily gives his signature, such collection of material during the course of investigation cannot be termed as illegal collection of evidence.

24. Heard the learned counsels on either side. Documents perused.

25. M/s Steelex Impex India owned by Dinesh Kumar Mishra, availed Trade well Loan/open cash credit loan of Rs.15 lakhs from Indian Bank, Mount Road Branch. In the account opening form Ex.P-1 and in the application for loan



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Ex.P-2, the business premises of M/s Steelelex Impex India is shown as No.4, Sembudoss Streer, Chennai. Hand writing experts opinion reveals that the forms were filed in the hands of A-4. Further evidence shows that Dinesh Kumar Mishra was not doing any business in that premises, it was 3rd Accused and his father were running business in the name of Mahalakshmi Traders. From loan amount, substantial money reverted to A-4 firm, M/s Mahalakshmi traders. For the loan property of one Jawahar given as collateral security, the goods in trade were given as primary security. The 4th accused is the person, who stood guarantee for the loan. The loan become non-performing assets.

26. To avail loan, firm in the name of M/s Steelelex Impex India was created. Loan was sanctioned based on the false documents such as the said Steelelex Impex India is a running firm having its office at No 4, Semburdoss Street. Documents like sales tax assessments, Assets and Liabilities Statements, income tax returns were falsely created. After availing loan, only a portion of the loan recovered the fourth accused Mr.Govind Tiwari, who is the third party guarantor for the loan. The property given as collateral security is proved to be the property of one Lakshminarasammal, who later sold to one Kannan much prior to creating



EM in the name of Jawahar. The borrower has produced a set of EC to the Bank, which is not the same set of EC produced to the Panel Lawyer for getting his opinion. PW-1 the loan officer had deposed that though he is the loan officer, as far as Trade well loans, the Manager A-1 is the authority to sanction loan and he has dealt with the borrowers directly and collected loan applications from them directly and gave it to him for documentation. On his instruction, he got the signatures of the borrower and the guarantor who were identified by A-1. Ex.P-25 is the agreement of guarantee executed by Jawahar and Ex.P-26 is the agreement of guarantee signed by Govind Prasad Tiwari. The hand writing experts opinion Ex.P-61 indicates that the loan application forms Ex.P-2, the Agreement of Guarantee Ex.P-26 and the consent letter Ex.P-28 are written by A-3. The signature of Jawahar found in the Agreement for Guarantee Ex.25 does not tally with the specimen signature of Jawahar collected during investigation and sent for comparison.

27. The documents for the property given as collateral security been seen by the panel lawyer Suhadev (PW-4). His opinion is marked as Ex.P-32. He had deposed that the xerox copies of the documents were sent for his opinion and he on



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perusing the photocopy given the opinion. His opinion and documents were collected by the party themselves. He claims that it is not his duty to verify with the SRO about the genuineness of the documents. It is the duty of the Manager [A-1] to verify whether the documents are genuine or not. In his opinion he has mentioned that the Bank should collect the originals of the documents at the time of creating EM.

28. PW-5[Thiru.Ansari] in his evidence has deposed that premises bearing Door No.4, Semburdoss Street, Chennai, was let out to A-4 Govind Prasad Tiwari by his father. A-4 was running a business under the name M/s Mahalakshmi Enterprises. It was never let out to Dinesh Kumar Mishra and no business under the name M/s Stelex Impex India was running in that premises.

29. PW-3 [Sarweshwaran] is the Senior Manager of Indian Bank. From his deposition, it is clearly proved that from Rs.15 lakhs loan sanctioned to M/s Stelex Impex been used to pay M/s Mahalakshmi Traders, a sum of Rs.2,36,132/- by demand draft Ex.P-69 and a sum of Rs.68,959/- by cheque Ex.P-79 in favour of M/s Mahalakshmi Traders. A sum of Rs.71,262/- by cheque Ex.P-81 in favour of



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M/s Mahalakshmi Traders.

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30. Further, from PW-3 evidence it is also proved that, PW-4 the Panel Lawyer had specifically instructed A-1 to collect the original documents mentioned in his opinion Ex.P-32. Whereas A-1 had received the EC marked as Ex.P-31 which is manually corrected as dated 18/10/2002 and the period of EC is manually corrected as 21/10/2002 from 21/08/2002. This was not the EC seen by the panel Lawyer, when he gave his opinion. A-1 without any demur had accepted this EC which later proved to be fake document.

31. The loan sanctioned to M/s Steelex Impex by N.K.Ravindran when he was serving as the Manager of the Indian Bank, Mount Road Branch. He was compulsorily retired from service before institution of the final report. The Special Public Prosecutor submitted that prior sanction to prosecute him either under Section 19 of Prevention of Corruption Act,1988 or under Section 197 Cr.P.C not required. The Court took cognizance after he relieved on compulsory retirement. Though he falls under the meaning of public servant, this Section applies only to the public servant, who is employed in connection with the affairs of Union or



State. An employee of a Nationalised Bank does not fall under these two categories. Therefore, no prior sanction under Section 197 Cr.P.C need to be obtained. Like wise, Prevention of Corruption Act contemplates prior sanction only for the public servants, who continue to be in service on the date of taking cognizance. As far as A-1 in this case, before taking cognizance he retired compulsorily.

32. 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.

33. 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.



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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



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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.



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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



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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.”

36. The Bank Manager (A-1) and the Guarantor (A-4) were privy to the account opening in the name of M/s Steelex Impex (India) showing its business address as No. 4, Semburdoss Street, Chennai and Mr.Dinesh Kumar Mishra have 12 years experience in the trade. The prosecution has established that in the said premises, it was A-4 father, who took the premises for rent from PW-5, was running the business in the name of M/s Mahalakshmi Traders and not Dinesh Kumar Mishra or M/s Steelex Impex(India). Just to avail loan, the income tax returns for the Assessment year 2002 – 2003 in the name or M/s Steelex Impex (India) filed in the counter on 03/09/2002. To show as if it has particular amount turnover, fake commercial assessment order created as if on 19/01/2000 and 17/02/2001 the DCTO by name Mohammed Gani passed assessment order. Ex.P-12 is the visit report dated 12/12/2002. The accused A-1 and PW-1 had signed the report saying they visited the office of M/s Steelex Impex (India) i.e No 4, Sembudoss Street, Chennai. Inspected the records. Also visited the property at No.69, Poonamallee High Road, Ekattuthangal, Chennai. Loan is sanctioned on



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19/12/2002. During the regular inspection conducted by PW-3 during the third week of March, 2003 (19/03/2003), he found name of M/s Steelex Impex (India) not displayed neither at the business premises nor in the godown. The stocks were not in the godown. The materials on the street were shown as the stock. The report which is marked as Ex.P-40 had also recorded that the loan released on 20/12/2002. Immediately after the release of loan, on 23/12/2002 Rs.2,36,000/- and on 26/12/2002 Rs.8,57,000/- paid to Sri Mahalakshmi Traders. The copy of the lease deed for No.4, Sembudoss Street and for the godown at PH road to be obtained.

37. Therefore, A-1, the Manager, who sanctioned the loan and A-4, who stood as guarantor for the loan, cannot plead ignorance or innocence about the owner of the said firm Mr.Dinesh Kumar Mishra (absconding accused). A-1 inspite of the instruction from the panel lawyer, has not obtained the lease deed and the Encumbrance certificate for the correct period. Without inspecting the business premises had recorded in Ex.P-12 as if he visited the premises.

38. The contention of the learned Counsel appearing for the first accused



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N.K.Ravindran that he gone by the Panel Lawyer opinion is also not correct. The prosecution has established, A1 failed to get the original documents and proper EC before creating EM. The fourth accused Govind Prasad Tiwari had been with the absconding accused from starting of the bank account, applying for the loan and after availing loan, major portion of the loan money been diverted to his firm account M/s Mahalakshmi Traders. It is not only the money diverted to his firm, the business address of M/s Steelex Impex India itself is the address of his business premises. The borrower has not produced the original rental agreement deed with the owner of the building bearing No.4, Sembudoss Street. During the inspection, PW-2 had noted that original rental agreement from the building owner has to be obtained. Neither A-1 took steps to get the original rental agreement nor the absconding accused (A-2) or the guarantor (A-4) produced it, even after PW-2 instructed to do so.

39. These incriminating materials are adequately enough to hold A-1 and A-4 guilty of conspiracy to cheat the Bank, making false evidence, using those false evidence as genuine to cheat the bank. The subsequent payment in the DRT or through Lok Adalat will at the most mitigate the sentence not exonerate. Hence,



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Crl.A.No.832 of 2013 and Crl.A.No.838 of 2013 stand dismissed. The

judgment of conviction passed by the learned XI Additional city Civil & Sessions Judge (CBI Cases relating to Banks and Financial Institutions), Chennai made in C.C.No.12 of 2008 dated 26.11.2013 is hereby confirmed. The period of substantive sentence shall run concurrently. 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.

40. Crl.A.No.814 of 2013:

The Valuer, who had assessed the value had given his report Ex.P-32. The existence of the property is not disputed. The ownership according to the panel lawyer, is Mr.Jawahar. As per the evidence of PW-3, it presently stands in the name of one Kannan, prior to that, it was in the name of Mrs. Lakshmi Narasammal. To prove this averment, the prosecution has not examined the real owners as witnesses.



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41. *L.N.Rajagopalan –vs- State reported in [CDJ 2009 MHC 3754]*, at

para 11 and 12, 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.

42. 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, except to value the property and when there is no apparent error or dishonest 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.

43. Hence, **the Criminal Appeal No.814/2013 stands allowed.** The



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judgment of conviction and sentence passed by the learned XI Additional City Civil & Sessions Judge (CBI Cases-Relating to Banks and Financial Institutions), Chennai made in C.C.No.12 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.

In the result,

- (i) Crl.A.No.814 of 2013 (K.B.Sampath) is allowed.
- (ii) Crl.A.No.832 of 2013 (N.K.Ravindran) is dismissed.
- (iii) Crl.A.No.838 of 2013 (Govind Prasad Tiwari) is dismissed.

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1.The XI Additional Special Judge (CBI cases relating to Banks and Financial Institutions) Chennai.

2.The Deputy Superintendent of Police, SPE/CBI/ACB,Chennai.

3.The Special Public Prosecutor CBI Cases, High Court, Madras.

DR.G.JAYACHANDRAN,J.



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