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.815 and 835 of 2013 and
Crl.A.No.480 of 2014

Crl.A.No.815 of 2013:-

K.B.Sampath .. Appellant/Accused No.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., against the judgment and conviction dated 26.11.2013 made in C.C.No.13 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)

Crl.A.No.835 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.13 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.480 of 2014:-

S.T.Andrew Thamba .. Appellant/Accused-2

/versus/

State by Inspector of Police,
CBI/ACB/Chennai
Chennai.
(R.C.No.MAI.2005(A)0055) .. Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 of the Cr.P.C., to set aide the judgment of the learned XI Additional City Civil & Sessions Judge for CBI Cases at Chennai-600 001 made in C.C.No.13 of 2008, dated 26.11.2013 and acquit the appellant herein from the charges under Section 120(B) read with Sections 420, 471, r/w 468 IPC and Section 13(2) r/w Section 13(1)(d) of PC Act, 1988 and Sections 420, 471 r/w 468 IPC.

For Appellant :Mr.M.Vijayanand

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, 16 trade advances under MDL, powers were not judiciously used. Head Quarters guidelines were not followed. N.K.Ravindran, Manager who assumed charge on 09.09.2002 had sanctioned 15 loans out of the 16 loans found irregular. A consolidated report for all those 15 loans and specific report for each loan were prepared and submitted by Mr.K.Lakshmanan to the Deputy General Manager, Indian Bank, Inspection

Centre, Chennai, during the third week of March, 2003. Loan of Rs.15 laksh sanctioned to M/s Imperial Corporation sanctioned by A1 on 13.11.2022 was one such irregular loan.

2. About 30 months later, 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 and 471 of 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. At the end of the investigation, 5 Final Reports were filed. They were all taken on file individually as C.C.No.12 to 16 of 2008. M/s Imperial Corporation at No.129, First Floor, Thambu Chetty Street, Chennai is one of the 5 firms which enjoyed the undue courtesy of A1 Branch Manager. The proprietor of the firm Mr.Andrew Thamba, got loan without furnishing genuine title deed of the property for creating equitable mortgage. Fake TNGST and CST certificates were produced by him to induce the bank to advance loan to him. A-1 knowing well, they are fake documents without rejecting it accepted and sanctioned loan. Further, A-1 did not take any attempt to recover the loan amount, thereby had instrumental to cause loss to the bank to a tune of Rs.15lakhs. The final report against M/s Imperial Corporation owned by S.T.Andrew Thamba taken on file as C.C.No.13/2008.

4. The final report alleged that A-1, Bank Manager, A-2 Andrew Thamba the borrower, Suresh a middle man and K.B.Sampath approved valuer conspired and created accounts in the name of M/s Imperial Corporation. Accepting forged documents and the false valuation certificate given by the valuer, A-1 sanctioned the loan to M/s Imperial Corporation. The loan amount immediately withdrawn and disbursed to others instead of being used for the business purpose for which the loan granted. Later, the loan account of M/s Imperial Corporation become NPA causing loss to the bank. The collateral security received from the borrowers found to be fake. The following persons were shown as accused and sent for trial.

(1) N.K.Ravindran(Manager)

(2)S.T.Andrew Thamba(borrower)

(3) A.Suresh (died during trial)

(4) K.B.Sampath(Valuer)

5. Based on the material placed before the Court, the trial Court framed the below charges, which are self explanatory.

> <u>Charge No.1:</u> 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 at Chennai, in the matter of sanctioning and release of Trade Well Loan in the name of M/s Imperial Corporation No. 129, I Floor, Thambu Chetty Street, Chennai 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 certificate, forged chitta and adangal 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 also you 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.17,19,246/- and thereby you A-1 to 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: That in pursuance of the aforesaid criminal conspiracy and in furtherance thereof, you A-2 as proprietor of M/s Imperial Corporation. No 129, 1 Floor, Thambu Chetty Street, Chennai, 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 invalid sale deed, forged encumbrance certificates, forged chitta and adangal pertains to property measuring 13.61 cents of agricultural land comprised in survey No.37/2 Kanagadhara Main Road, Valsaravakkam, Chennai, forged 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 Imperial Corporation No 129, 1 Floor. Thambu Chetty Street, Chennai, 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 false and fabricated documents like invalid sale deed, forged encumbrance certificates, forged chitta and adangal pertains to property measuring 13.61 cents of agricultural land comprised in survey No. 37/2 Kanagadhara Main Road, Valsaravakkam, Chennai, forged 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 Imperial Corporation, No. 129, I Floor, Thambu Chetty Street, Chennai, 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 false and fabricated documents like invalid sale deed, forged encumbrance certificates, forged chitta and adangal pertains to property measuring 13.61 cents of agricultural land comprised in survey No. 37/2 Kanagadhara Main Road, Valsaravakkam, Chennai, forged 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 mereby committed the offences punishable 468 IPC and is with 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 Imperial Corporation No.129, I Floor, Thambu Chetty Street, Chennai, 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 false and fabricated documents like invalid sale deed, forged encumbrance certificates, forged chitta and adangal pertains to property measuring 13.61 cents of agricultural land comprised in survey No. 37/2 Kanagadhara Main Road, Valsaravakkam, Chennai, forged 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 Uls 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 forged Chitta and Adangal dated nil of the property at Survey No.37/2 of Kanagadhara Main Road, Valasaravakkam, purportedly issued by VAO, No 101, Valasravalkam Ambattur Taluk and thereby induced the Bank to part with Trade Loan Open Cash Credit of Rs 15 lacs to Ms imperist Corporation owned by A2 thereby you A-3 have committed the offence punishes u/s 467 and is within my cognizance

Charge No.7: That in pursuance of the aforesaid crimmal conspiracy and in furtherance thereof to cheat Indian Bank, Royapuram Branch Chennai you A-3 dishonestly and fraudulently forged Chitta and Adangal dated off of the property at Survey No.37/2 of Kanagadhana Main Road Valasaravakkam, purportedly issued by VAO, No 101 Valatravalkam Ambattur Taluk and thereby induced the Bank to part with Trade Loan Open Cash Credit of Rs. 15 lacs to M/s Imperial Corporation, owned by A2 thereby you A-3 have committed the offence punishable U/s 468 and is within my cognizance.

Charge No.8: 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 Branchs, Chennai dishonestly and fraudulently prepared a false valuation report dated 12.10.2002 valuing the property of 13.61 cents of agricultural land at survey No. 37/2, Kanagadhara Main Road, Valasaravalkam, Chennal in the name of S.Melkis for Rs 18,16,000/- 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 Imperial Corporation owned by A-2 and thereby committed the offences punishable U/s 420 IPC and is within my cognizance

Charge No.9: 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 Imperial Corporation,Chennai, owned by A-2 on 13.11.2002 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 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 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 and thereby caused a loss to the tune of Rs.17,19,246/- 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

6. To prove these charges, the prosecution examined 15 witnesses, marked 117 documents. On the side of the defence, two documents were marked

as Exs.D1 and D2. Pending trial, A3 died and hence, case against him got abated.

7. The gist of the prosecution witnesses:

To establish its case, the prosecution examined PW1 to PW15 and marked Ex.P1 to Ex.P117. 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, A-2 [Andrew Thamba] in his capacity as the proprietor of M/s Imperial Corporation. No.129, I Floor, Thambu Chetty Street, Chennai, applied for Trade well Loan/ Open Cash credit of Rs.15 lakhs on 05.10.2002 and offered property at measuring 13.61 cents of agricultural land comprised in survey No.37/2 Kanagadhara Main Road, Valsaravakkom, Chennai purportedly belonging to one S.Melkis as Collateral Security. He also enclosed TNGST and CST certificate pertaining to M/s Imperial Corporation, purported to have been issued by CTO Harbour-V, Assessment Circle. A2 and A3 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. Deceased A.S.Suresh (A3) had forged Chitta dated Nil and adangal dated Nil of the property at

S.No.37/2 Kanagadhara Main Road, Valsaravakkam purportedly issued by the Village Administrative Officer, No.101, Valasaravakkam, Ambattur Taluk and A2 had submitted the same to the Bank. A4-K.B.Sampath, an approved Valuer of properties in the panel of Indian Bank prepared a valuation report dated 12.10.2002 valuing the property measuring 13.61 cents of agricultural land comprised in survey No.37/2, Kanagadhara Main Road, Valsaravakkam, Chennai of S.Melkis as Rs.18,16,000/-, A4 has dishonestly and without actually visiting the property falsely certified in the valuation report that the property is in the name of S.Melkis. In reality, the said property had already been sold to Smt. Venkitasubbama and T.Subba Rao in the year 1987. Subba Rao and Venkitasubbamma had constructed a two storied house in the year 1989 and thereafter sold the same to one D.Suresh Kumar in the year 2001. K.B.Sampath (A-4) dishonestly and without visiting the spot has falsely certified in the valuation report that the property is a vacant land in the name of Melkis.

8. Further, A-2 [Andrew Thamba] dishonestly and knowingly submitted the title deed No.435/85, pertaining to the aforesaid collateral security which was

invalid, forged encumbrance certificate and forged valuation report dated 12.10.2002 prepared by K.B.Sampath [A-4], Chitta and adangal pertaining to said property forged by A-3 [A.S.Suresh], before the bank as collateral security documents and induced the bank to part with its funds in the form of Trade Well Loan Open Cash Credit.

9. It is the specific case of the prosecution that N.K. Ravindran (A-1), Manager, Indian Bank by abusing his official position and knowing that the property documents are forged and invalid, without verifying the ownership of the property and by violating the instructions given by the Panel Advocate to obtain upto date Nil Encumbrance Certificate on the property, dishonestly sanctioned Trade Well Loan of Rs. 15 lakhs to M/s. Imperial Corporation on 13.11.2002. N.K. Ravindran (AI) did not confirm the identity of the owner of the property, who mortgaged the property documents to the bank and also did not check with the Sub Registrar, Virugambakkam to find out the present owner of the property while sanctioning the above said Loan. N.K.Ravindran (A1) had also not inspected properly the third party collateral security property as well as the office premises of M/s. Imperial Corporation before sanctioning the loan as stipulated by the bank

circular. He also did not check with the Commercial Tax Department Harbour-II Assessment Circle about TNGST and CST Certificates enclosed by S.T.AndrewThamba. During the course of investigation, Commercial Tax Department confirmed that the TNGST and CST certificates having No.0021040/81810 are forged and are not issued by them to M/s. Imperial Corporation. The evidences of the prosecution witnesses also go to show that before sanctioning loan, Al did not visit the office premises of M/s. Imperial Corporation 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 A2. During the course of investigation, Commercial Tax Department confirmed that the TNGST No.0021040/81810 are not existing and they are fabricated. It is also the case of the prosecution that S. Melkis has not parted with any documents nor signed any security documents before the bank.

10. It is admitted by the accused that after availing the loan, A2 diverted the funds for a purpose other than for improving the fictitious trade and due to

abuse and misuse official powers, Al [N.K.Ravindran] had caused a wrongful loss to Indian Bank, Royapuram Branch and corresponding wrongful gain to themselves to the tune of Rs.17,19,246/- (with interest) and thereby, committed offences punishable under Sections 120-B, r/w 420, 468 and 471 IPC and Section 13(2) r/w 13(1)(d) of PC Act, 1988

11. 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 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
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

Rank of the accused	Conviction	Sentence
A2	Section 468 IPC	To undergo RI for 1 year and to pay a fine of Rs.1,000/-, in default to undergo SI for 3 months.
A2	Section 471 r/w 467 & 468 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	To undergo RI for 3 years and to pay a fine of Rs.2000/- 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.		

12. N.K.Ravindran (A-1) the Branch Manager, who sanctioned Trade Well Loan to M/s Imperial Corporation, Mr.S.T.Andrew Thamba(A-2) the proprietor of M/s Imperial Corporation, who availed the loan on application and Mr.K.B.Sampath(A-4) the valuer who gave the valuation certificate all three being aggrieved, have preferred the appeals as below:-

Crl.A.No.815 of 2013:K.B.Sampath

Crl.A.No.835 of 2013:N.K.Ravindran

Crl.A.No.480 of 2014:S.T.Andrew Thamba

13. Crl.A.No.835 of 2013:-

The Learned Counsel appearing for the appellant Mr. N.K.Ravindran, 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 uniformly admit that the loan was sanctioned by the appellant on the scrutiny of documents by PW-1- the loan officer and the loan of Rs.15 lakhs was was well within his pecuniary limits permitted for a Manager. 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, who gave the opinion about the title found in the documents and the Loan Officer, who done the documentation. The omission to make pre-sanction inspection by him may not even be a negligence or wilful negligence since it was made mandatory only after the loan was sanctioned. Certainly, the material evidence does not bring home the charges of conspiracy or intentional dishonesty to commit any of the crime mentioned in the charges.

14. In addition, the Learned Counsel for the appellant/A-1 reiterated the argument that A-1 is a a public servant prior sanction ought to have been obtained for prosecuting as contemplated under Section 197 Cr.P.C and Section 19 of the Prevention of Corruption Act. In the absence of valid sanction, the conviction and sentence imposed by the trial Court is liable to be set aside.

15. Crl.A.No.815/2013:-

The appellant [Mr.K.B.Sampath] the approved valuer, contended that as far as the title of the property for which he gave value is entirely based on the opinion given by the panel lawyer PW-4 [Suhadev]. The investigation officer, Sabastin, [PW-14], admits that he is satisfied with the opinion given by the panel lawyer. If panel lawyer opinion is valid then there is no reason to suspect the valuation certificate.

16. Not an iota of evidence has been let in by the prosecution for the specific charge framed against the appellant under Section 420 of IPC by the trial

Court, which states that the appellant has dishonestly and fraudulently prepared a false valuation report without visiting the property. The Valuation Report contains the same ownership name as per the document given to the Appellant by the Bank Officials. It is to be noted that the property was identified by the Bank officials to the approved valuer, who then valued the property and gave his report. It is also to be noted, that none of the collateral security, owners as seen in the legal opinion were examined in the Trial Court as witnesses. The Investigating Officer has either investigated the above collateral security owners and their evidence were dispensed with in the Trial Court and in some cases, they were not examined at all. The role of the approved valuer is categorically stated in the Judgment delivered by the Madras High Court in *L.N.Rajagopalan -vs State.* Paragraph 14 of the judgment reads as *"14. Firstly, it is found that the said Parthasarathy was nominated to assess the value of the property only after it had come to light that the properties furnished as collateral security were not in existence. Therefore, it would have been easy for him to say that the documents were not genuine and fabricated. Mr.D.Parthasarathy who is only a Valuer cannot with authority say that a particular document is genuine or fabricated unless he is tipped about the forgery committed in a particular document. It is the handwriting or finger print* *expert's job to determine scientifically whether a document is a genuine or fabricated one."* PW7 [Subba Rao] in his chief examination states that when the sale was made to him by one Damodharan and Melkis, the original parent document of the title deed were retained by the sellers. A rough reading of the Valuation Report (Ex.P14) would elicit that only the survey number of 37/2 is being stated with Melkis as the owner of the property. This would suggest that the document withheld by Melkis and Damodharan as stated by PW7 was handed over to the Appellant by the bank officials. The same ownership name is found in both the Legal Opinion (Ex.P32) and the Valuation Report given by the Appellant (Ex.P14). This would show that the Legal Opinion and the Valuation Report were done as per the document given by the officials of the bank.

17. <u>Crl.A.No.480 of 2014:-</u>

The appellant S.T.Andrew Thamba, claiming ignorance about the alleged forgery of documents contented that he is a bona fide businessman, who availed loan and made all genuine efforts to repay it. At the time of availing loan he had no intention to cheat the bank. In fact even after launching of criminal prosecution he had been trying to settle the dues and given proposal for one time settlement. Already before judgment he had tendered Rs.2.50 lakhs to the bank towards settlement. The Court below ought to have held that the prosecution failed to prove its case beyond all reasonable doubt. The Court below further failed to note that the Appellant/Accused herein was doing genuine business and he has no knowledge regarding the forgery and fabrication of the documents said to be committed in the documents produced in the bank in the name of G.Krishnan. The lower court further failed to see that the Appellant herein has no intention to cheat the bank by way of producing any forged/fabricated documents while he was doing the business and the statement of account of M/s. Imperial corporation would show that he was doing genuine business, even though the collateral securities are alleged to be bogus. The court below ought to have held that it is the 1st accused in this case, who has to verify all the documents and records before sanctioning the loan to the accused herein and without doing so, the appellant herein cannot be fixed as an accused in this case, as he has no intention to cheat the bank as alleged by the prosecution.

18. Special Public Prosecutor for CBI response:-

The appellant as Manager of the Branch trusted with the responsibility of granting

Trade Well Loan to the deserving traders, had in violation of the Head office guidelines, sanctioned loan to M//s Imperial Corporation without ascertaining the facts about the borrower, the genuineness of the documents offered as collateral security and the credential of the guarantor. Same modus operandi been followed by him and the other accused in 4 more cases. Therefore, he cannot claim ignorance or mere negligence by blaming the panel lawyer, who had given a qualifying report. In spite of observing that he has seen only the Xerox copies of the document and before creating EM, originals of the documents has to be obtained from the borrower, A-1 did not collect the original documents. With the Xerox copies, EM created ignoring the instruction given by the Panel Lawyer. When PW-2 did the regular inspection during the third week of March, 2003, he had observed in his report Ex.P-47 that while the borrower own a residential house at SVN Nagar, Ennore, which is unencumbered, 3rd party property is taken as collateral security and the interest of the 3rd party in the business of the borrower is not noted.

19. 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 is jointly and severally liable to repay the loan amount. The valuer, who had ascertained falsely the ownership of the property to S.Melkis is liable for giving the misleading certificate to enable the borrower to avail loan.

On the date of taking cognizance by the trial Court, A-1 was not a public servant. He was employed in the Nationalised Bank thus a public servant as defined under PC Act. He is not a Government Employee. Hence, Section 197(1) Cr.P.C is not applicable to him.

20. Heard Both sides and perused the documents.

21. Based on source information FIR [Ex.P-69] 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 advanced. Pre loan inspection was not conducted by the Manager A-1, however he has recorded that he did pre-loan inspection. 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 accepted for EM were found to be false. After availing loan, the amount had been withdrawn immediately and loan was not repaid. Out of Rs.15 lakhs loan, about Rs.12 lakhs paid to one M/s Arul Murugan Traders. 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 of private individual. The Manager of the Bank [A-1], the Valuer along with the borrower and the guarantor with intention to cheat the bank conceived the design of offering 3rd party property as security, they created false documents and used it as genuine to sanction loan. The name of the land owner for the property given as collateral security is mentioned as Mrs. Melkis. The nature of the land mentioned as agricultural land at Valasarawakkam. As per the Head Quarters Circular dated 04/07/2002 Ex.P-48, agricultural land can be taken as collateral security only in cases of loan sanctioned in semi urban branch, if no residential property of the borrower is available. The acceptance of agricultural land by the Branch at Royapuram is thus violation of the terms. Further, investigation has proved that

Mrs. Melkis is not the owner of the property. The survey numbers mentioned in the lawyer opinion and the documents are different. A-1 has not sought any clarification from the borrower and the lawyer about this discrepancies.

22. As far as the alleged omission to get prior sanction under Section 19 of Prevention of Corruption Act or under Section 197 Cr.P.C. The said plea is unsustainable for the reasons recorded below:-

The trial Court took cognizance much after A-1 relieved from service by the Bank on compulsory retirement. Though he fall under the meaning of public servant as per the Prevention of Corruption Act, he is not protected by Section 197 of the Code of Criminal Procedure for offences alleged to have committed under IPC, since Section 197 Cr.P.C applies only to the persons employed in connection with the affairs of Union or State. An employee of a Nationalised Bank does not fall under these two categories. Therefore, prior sanction under Section 197 Cr.P.C need to be obtained. As far as A-1 in this case is concerned, before taking cognizance, he retired compulsorily. The Prevention of Corruption Act contemplates prior sanction only for the public servants, who continue to be in service on the date of taking cognizance.

23. 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."

24. 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.

25. 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.

26. The above view of this Court is well fortified through the following judgments.

(i)The Hon'ble Supreme Court in *K.Ch.Prasad –vs- Vanalatha Devi:[(1987) 2 SCC 52]*, at paras 6 and 7 has observed :-

> "**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) The Hon'ble Supreme Court in *Md. Hadi Raja –vs- State of Bihar reported in [(1998) 5 SCC 91]*, has held :-

> "**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 has 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 in *Abhay Singh Chautala –vs- CBI [(2011) 7 SCC (cri) 141]* said as below:-

"**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."

27. Thus, from the judgments cited above and from the facts, undoubtedly it is a case, where sanction under Section 19 of the Prevention of Corruption Act or under Section 197 of Cr.P.C, not required for the simple reason that on the date of taking cognizance, the first accused was not a public servant under the definition of the Prevention of Corruption Act and no point of time, he was a public servant under Section 21 of the IPC, which requires sanction under Section 197 of Cr.P.C for the reason that he is not employed by the Government.

28. Regarding the overt act of A-1 the facts proved through the witnesses

indicates that he while working as Manager, Indian Bank, Royapuram Branch, in the year 2002, has sanctioned Trade Well Loan to M/s Imperial Corporation having its address at No.129, I Floor, Thambu Chetty Street, Chennai. The second accused Andrew Thamba is shown as Proprietor of M/s Imperial Corporation. Ex.P1 is the current account opening form dated 18.07.2002. The application for loan advance to the traders marked as Ex.P2. It is stated that A2 has eight years experience in trading and plastic raw materials, like HDPE, PP, LLDPE, LDPE. M/s Imperial Corporation was established in the year 1999. Past performance of the firm was also mentioned in the loan application seeking working capital to the tune of Rs.15 lakhs for the business. The Inspection Report marked as Ex.P47 indicates that the turnover of M/s Imperial Corporation from 16.11.2002 to 31.03.2003 was only 15.90 lakhs and it was far from the satisfactory since the borrower has projected a sale of Rs.197.78 lakhs in the said period as per his loan application Ex.P2 and the stocks maintained in the godown was only for Rs.3,75,000/- and it was inadequate to cover the drawings. The third party property is taken under EM as additional security but the interest of the guarantor in the business had not disclosed in the appraisal note. While borrower had owned house at Door No.6, 4th Street, SVM Nagar, Ennoor, the reason for not securing that property is not explained. The original document of the koorchit not obtained at the time of creating EM, though the panel lawyer has advised to obtain the original. These facts would go to show that A1 has sanctioned the loan ignoring the instructions given by the panel lawyer and also contrary to the bank general instruction. Similar modus operandi been adopted by this appellant for granting loan for few others also. Therefore, having purposefully violated the guideline and not been diligent and knowingly done an undue favour to the borrower attracts offence under Section 19 of the Prevention of Corruption Act, 1988. By his act of indiscretion, the bank has suffered monetary loss. The Auditor Report and sales tax returns were all proved to be fake including acceptance of fake documents creating equitable mortgage.

29. A1 has created a visit report, which is marked as Ex.P10. In the Report, he has stated that he had visited the office of the borrower at Thambu Chetty Street, Chennai, and their godown at No.1/90, Kannadasan Nagar, Chennai. He has recorded the stocks found in the godown. Also he has stated that he has visited the land at No.37/2, Kangadharan Main Road, Valasaravakkam, Chennai along with the bank approved engineer. Valuation in respect of the

properties available, PW-3 Senior Manager of Indian Bank had deposed that, the property offered as security is an agricultural land but as per the head office circular dated 04.07.2002, the bank should not take agriculture land as collateral security. The said circular is Ex.48. The said circular issued by the Credit Division of Indian Bank Review of New Scheme of Financing Trade had mentioned that the agriculture land can be taken as serving only in Semi-Urban branches. Royapuram Branch being an urban branch, agriculture land should not been taken as collateral security. For the reason best known, A1 has accepted the third party security that too agriculture land and more so a fake document. Therefore, the trial court has rightly convicted the first accused for conspiracy and misconduct of a public servant to obtain pecuniary advantage.

30. Hence, **the Criminal Appeal No.835 of 2013 is dismissed.** The judgment of conviction passed by XI Additional City Civil & Sessions Judge-CBI Cases Relating to Banks and Financial Institutions, Chennai made in C.C.No.13 of 2008 dated 26.11.2013 is hereby confirmed. The period of substantive sentence shall run concurrently. **The period of sentence shall run consecutively after expiry of the period of sentence imposed in C.C.No.12 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 him to the judicial custody to undergo the remaining period of sentence imposed by the trial Court, if any.

31. Crl.A.No.480 of 2014:-

The appellant S.T.Andrew Thamba, the second accused had opened his account in Indian Bank, Royapuram Branch, on 18.07.2002. The documents annexed by him for loan does not contain true information about him. There is no evidence to show that he had 8 years experience in the line of plastic products. The assets and liabilities statement found to be false. The Income Tax Return as well as Sales Tax Assessment order prepared with an intention to cheat the bank. As collateral security property of one Melkis offered along with title deed, encumbrance certificate, patta, chitta and adangal connected to that property offered by A2. The encumbrance certificate Ex.P30 is not a genuine certificate. The registration department started issuing computerised encumbrance certificate since 01.01.1985 but Ex.P30 is in writing.

32. PW-6 [V.R.Loganathan], Commercial Tax Officer, Group-III, Enforcement East Division, Chennai, after verifying the sales tax assessment order produced by the second accused, Andrew Thamba, to the bank and on verifying the office register and records, had deposed that TNGST & CST number mentioned in the certificate produced by the accused to the bank which form part of the file marked as Ex.P3 series indicate that M/s Imperial Corporation is a trader under TNGST Act and having assessment number TNGST No.0021040 and CST No.81810. However, this number is in fact assigned to Balaji Poly Pack having office at No.271, Thambu Chetty Street, Chennai and the Trader registration certificate, which form part of Ex.P3 is not issued by the sales tax department and the assessment order enclosed along with the application were not genuine assessment orders issued by CTO Office, Harbour-II.

33. To avail loan, this accused purportedly had given documents for the property, which is in the name of Melkis. Ex.P53 is the sale deed of the year 1987 executed by Melkis and R.Damodharan in favour of one T.Subba Rao. A2 had used these forged documents to avail loan and he had no sufficient stock in his

godown or in the business premises.

34. Ex.P6 is the form of asset and liability in the name of Melkis. The hand writing expert, who has compared the signature found in this form with the signature of the A2 Andrew Thamba has opined that this has been written by A2. Thus, the prosecution has proved that the property given as collateral security by A2 does not belong to Melkis, but to one Subba Rao. Using the old document EC, patta, chitta have been fabricated. The signature of Melkis has been forged to show as if he has deposited the title deed of his property and agreed to be the guarantor for the loan availed by Andrew Thamba (A2).

35. The loan amount sanctioned and credited into the current account of Andrew Thamba(A2), been utilised to purchase the Pay Order for Rs.25,000/- each on application marked as Ex.P95, Ex.P96 and Ex.P97. He has purchased Pay Order for Rs.30,000/- and Rs.1,50,150/- Pay Order application marked as Ex.P98 and Ex.P99 respectively. Further, a sum of Rs.66,000/-, Rs.1,25,000/-, Rs.1,00,150/- and Rs.5,00,000/- were withdrawn for purchase of Pay Order. Likewise, the entire loan amount has been withdrawn for purchasing Pay Orders in

various names and the applications from Ex.P88 to Ex.P114 for various accounts of withdrawal through cheque been proved by the prosecution.

36. The Appellant (A2), relying upon Ex.D1 [Encumbrance Certificate] that the property at No.37/2, Valasaravakkam Village, which is manually reflecting the name of Melkis, contended that the property given as collateral security is the property of Melkis and it is not the property of Subba Rao. It is to be noted that the hand written EC though shows the name of Melkis as a purchaser under the document No.435 of 1985, the subsequent entries in the Encumbrance Certificate, the name of Palanisamy as executant and Damodharan as the claimant, Munusamy as executant and Minor Durai as claimant are shown. This indicates that larger extent of property sold in parts to various buyers. Melkis, who purchased the part of the property in the year 1985 had sold it to Subba Rao in the year 1987. Whereas the loan for this appellant sanctioned by A1 in the year 2002, based on the documents produced by A2 knowingly that they are false documents.

37. The learned counsel appearing for the appellant/A2 submitted that pending trial, the appellant has paid part of the loan amount has no bearing in the

merits of the case. After giving fabricated documents as collateral security only after launching of prosecution, this appellant has come forward to pay the part of the loan amount, after coercive steps taken by the bank for collection. This will not be a reason to mitigate the sentence.

38. For the reasons stated above, this Court finds no merits in the appeal. Hence, **the Criminal Appeal No.480 of 2014 is dismissed**. The judgment of conviction passed by XI Additional City Civil & Sessions Judge-CBI Cases Relating to Banks and Financial Institutions, Chennai made in C.C.No.13 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 him to the judicial custody to undergo the remaining period of sentence imposed by the trial Court, if any.

39. <u>Crl.A.No.815 of 2013:-</u>

The valuer K.B.Sampath had given the valuation certificate in respect of the property and he has not examined the title deed of the property. He had mentioned

Melkis as the owner of the property. This assertion is based on the legal opinion. The genuineness of those documents not tested by him. From the evidence of PW-7 [T.Subha Rao], who had purchased plots Nos.78 and 80 falling under S.No.37/1 and 37/2, who had produced the sale deed Ex.P53 and Ex.P54 indicates his vendor are Damodharan and Melkis. PW-7 had thereafter constructed a house and shed in Plot No.79 and 80. The original title deed was not given to him since the owners had some more property in that survey number. PW-7 and his wife had sold the property in the year 2001 to one Suresh Kumar under Ex.P55 and Ex.P56.

40. Sudhakar Reddy (PW-8) the owner of the plot No.82, in S.No.37/2, had deposed that he purchased the property from one Sumathi in the year 1996. He has not encumbered the property till December 2007. He was in possession of the property and then, he sold the property. Thus, from the prosecution witnesses PW-7 and PW-8, it is clear that S.No.37/2, Valasaravakkam Village, been plotted out by Janaki Real Estates and the same has been purchased by PW-7 in the year 1987 and PW-8 had purchased the property in the year 1996. The valuation certificate given by A4 Sampath is dated 12.10.2002. In his report, A3 has mentioned the property extending 13.61 cents residential site worth Rs.18,16,000/-

based on the Government guideline at the rate of Rs.275.00 per sq.ft.. Neither from the evidence of PW-7 and PW-8 nor from the valuation certificate marked as Ex.P14, the Court find that the certificate issued by A4 is a false certificate.

41. From the evidence of PW-7 and PW-8, it is clear that S.No.37/2, Kangadara Main Road, Valasaravakkam Village a lay out of building sites for construction of the house. According to the valuation certificate, on the date of the inspection, it was vacant. Neither PW-7 nor PW-8, who were the owners of the property on the date of inspection, had deposed that, at that time, they have not constructed any house in the place. Neither the existence of the property nor the value shown in the certificate is disputed. Hence, the valuer cannot be held criminally liable in the absence of evidence to show that he had meeting of mind with A1 and A2 to cheat the bank when he prepared and submitted his report Ex.P14.

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

> "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."

43. The dictum laid by this Court cited supra regarding the role of valuer wholly applies to the facts of this case. The prosecution has failed to prove that the valuer had some extraneous interest in the loan transaction or the valuation certificate is dishonestly inflated. 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.

44. Hence, **the Criminal Appeal No.815/2013 stands allowed.** The judgment of conviction and sentence passed by the learned XI Additional City Civil & Sessions Judge for CBI Cases, Chennai made in C.C.No.13 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 sum,

(i) Crl.A.No.815 of 2013 (K.B.Sampath) is allowed.

(ii) Crl.A.No.835 of 2013(N.K.Ravindran) is dismissed

(iii) Crl.A.No.480 of 2014(S.T.Andrew Thamba) is dismissed.

31.07.2023

Index:yes/no
speaking order/non speaking order
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To:

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

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

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

<u>DR.G.JAYACHANDRAN,J.</u>

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delivery Common judgment made in
Crl.A.Nos.815, 835 of 2013 and 480 of 2014

31.07.2023