IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.09.2023	Pronounced on : 10.10.2023

CORAM

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Criminal Appeal Nos.659, 681, 685, 741 & 855 of 2018

[Crl.A.No.659 of 2018 against C.C.No.6 of 2012]

1. B.Prethik
   S/o.P.C.Bojappan,
   Mg.Partner, Sri Mahaganapathy Motors,
   No.192, Bajana Koil Street,
   Thurinjapuram Village & Post,
   Tiruvannamalai Taluk & District.
   Pin-606 805.
2. P.C.Bojappan
   S/o.P.Chinnapattu,
   Partner, Sri Mahaganapathy Motors,
   No.192, Bajana Koil Street,
   Thurinjapuram Village & Post,
   Tiruvannamalai Taluk & District.
   Pin-606 805.
3. R.Prakash
   S/o.Ramasamy Udayar,
   Partner, Sri Mahaganapathy Motors,
   No.13, Oosambadi Village,
   Thurinjapuram Post, Tiruvannamalai Taluk & Dist.

... Appellant/Accused Nos.2 to 4

/versus/

State rep.by
The Inspector of Police,
SPE/CBI/ACB/Chennai. ... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374(2) of Cr.P.C., praying to set aside the conviction and sentences passed by the lower Court in C.C.No.6 of 2012 dated 23.10.2018 by the Court of XI Addl. & Special Judge for CBI cases relating to Banks and Financial Institutions at Chennai and allow this appeal with costs.

For Appellants : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor (C.B.I).

[Crl.A.No.681 of 2018 against C.C.No.6 of 2012]

M.R.Kannan
S/o.Ranganathan
211 Bajanai Koil Street,
Mangalam, Tiruvannamalai.
Pin – 606 752.

... Appellant/Accused No.5

/versus/

Inspector of Police,
Central Crime Branch
CBI/ACB/Chennai.
(R.C.No.22/A/2010). ... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374(2) of Cr.P.C., pleased to set aside the judgment dated 23.10.2018 passed in C.C.No.6 of 2012 on the file of learned XI Addl. Special Sessions Court, Chennai (CBI cases relating to Banking & Financial Institutions).

For Appellant : Mr.S.Pushpakaran

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor (C.B.I).

[Crl.A.No.685 of 2018 against C.C.No.6 of 2012]

M.Anandhan
S/o. Late Mannan Goundar
Vedanthavadi Village and Post,
Kilpennathur Taluk, Tiruvannamalai District.
Pin: 606 752. ... Appellant/Accused No.7

/versus/

The Inspector of Police,
Central Bureau of Investigation,
CBI/ACB/ Chennai.
RC.No.22/A/2010. ... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374(2) of Cr.P.C., pleased to set aside the judgement dated 23.10.2018 passed in C.C.No.6 of 2012 on the file of XI Additional Special Sessions Court, Chennai (CBI cases relating to Banks and Financial Institutions).

For Appellant : Mr.S.Pushpakaran

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor (C.B.I).

[Crl.A.No.741 of 2018 against C.C.No.6 of 2012]

1. V.Kannan
   S/o.Veeran
   No.45, 2nd Main Road, VGP Layout,
   Palavakkam, Chennai-41. ... Appellant/Accused No.1

/versus/

The State rep. By
The Inspector of Police,
Central Bureau of Investigation
ACB/ Chennai.
(RC.No.22/A/A2010)

... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374(2) of Cr.P.C., praying to set aside the judgment passed in C.C.No.6 of 2012 dated 23.10.2018 on the file of the XI Additional Special Session Court, Chennai (Bank and finance Industrial related CBI case).

For Appellants : Mr.K.Selvamani

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor (C.B.I).

[Crl.A.No.855 of 2018 against C.C.No.6 of 2012]

1.G.Shanmugam
S/o.Govindasamy,
Inam Kariyandhal Village,
Tiruvannamalai Taluk & Dist.
2.S.Venkatachalam
S/o.Sundaraj
Manimangalam Village & Post,
Tiruvannamalai Taluk & Dist.

... Appellant/Accused Nos.8 & 9

/versus/

State Rep by:
The Inspector of Police,
SPE/CBI/ACB, Chennai.

... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374(2) of Cr.P.C., praying to set aside the conviction and sentences passed by the lower Court in C.C.No.6 of 2012 dated 23.10.2018 by the Court of XI Additional & Special Judge for CBI cases relating to Banks and Financial Institutions at Chennai.

For Appellant : Mr.T.Sivananthan

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor (C.B.I)

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COMMON JUDGMENT

On 21.05.2010, based on the complaint received from the AGM, Union Bank of India, Regional Office, Salem, the Superintendent of Police, CBI at Chennai registered a case in Crime No.RC MA1 2010 A 0022 against 10 named accused and others for offences under Section 120B r/w 420, 409, 467, 468 r/w 471 IPC and Sections 13(2) r/w 13(1)(d) of PC Act.

2. The gist of the complaint was that during the period between 12.02.2008 and 14.12.2008, Shri V.Kannan while serving as Branch Manager, Union Bank of India, Thiruvannamalai along with Shri R.Vijayan, an agent for tractor dealers and various other firms connived with each other and entered into a criminal conspiracy with an intent to cheat the Union Bank of India, Thiruvannamalai Branch in the matter of sanctioning agricultural

and crop loans etc. In pursuance of the conspiracy, Shri V.Kannan sanctioned and disbursed crop loans, pipe loans, etc., to an extent of Rs.101.38 lacs to the borrowers who were canvassed and brought by the agent and the dealers firm without adequate primary security and by accepting fake and fabricated documents. Thereby they caused a wrongful loss to a tune of Rs.109.22 lacs to the bank including interest as on 31.03.2010.

3. On completion of investigation, the Investigation Officer filed 8 separate final reports for each set of conspiracy and conspirators. The accused are Bank Manager, Trader/suppliers, facilitators and borrowers. These 8 final reports were taken cognizance by the Trial Court and assigned C.C.No.4 of 2012 to C.C.No.11 of 2012.

4. In C.C.No.6 of 2012, the final report filed on 15.11.2011 against 9 persons. This case relates to loan for one Tractor and 2 Power Tillers supplied by M/s.Sri Mahaganapathi Motors by its partners B.Pratheek (A2), P.C.Bojappan (A3) and R.Prakash (A4). As per the final report, V.Kannan (A1), the Branch Manager, Union Bank of India, Tiruvannamalai Branch, in connivance with the partners of M/s.Sre Mahaganapathi Motors and its servants, sanctioned loan to one M.Anandan (A7) for purchase of Sonalika

Tractor for Rs.4,62,000/- (Rupees Four lakhs sixty two Thousand only) with implements for Rs.1,35,000/- totalling Rs.5,97,000/-. Based on a quotation given by Prateek (A2), the loan was sanctioned on 25.03.2008 for a sum of Rs.5,97,000/-. The loan was based on the opinion given by the Panel Advocate A.S.Shabuddin. Though the dealer supplied a Tractor to the borrower Anandan (A7), the loan amount was not repaid by the borrower and therefore, it has caused wrongful loss to the Union Bank of India. Vinoth @ Saravanan (A6), M.R.Kannan(A5)-document writer were roped in this case as accused for tampering the Encumbrance Certificate.

5. As far as C.Shanmugam (A8), borrower of Rs.2,50,000/- for the purchase of Power Tiller and implements alleged to have obtained loan by submitting Revenue certificates like adangal, valuation certificate etc., alleged to have been issued by VAO. Without processing the application properly and complying the requested norms and procedure, A1 had sanctioned the loan without even conducting pre and post inspection in connivance with A2, A3 and A4, the partners of M/s.Sre Mahaganapathi Motors. The margin money directly deposited in the account of M/s.Sre Mahaganapathi Motors, but Power Tiller was not delivered or purchased by G.Shanmugam (A8). Instead with the connivance of A2, A3 and A4,

G.Shanmugam (A8) obtained loan from private financial institution M/s.Kotak Mahindra for the purchase of a Sonalika Tractor using the loan amount advanced for the purchase of Power Tiller as margin money to buy Tractor.

6. Similarly, S.Venkatachalam (A9) pursuant to the conspiracy, the loan amount obtained for purchase of Power Tiller, misused and the borrower did not purchase the Power Tiller. However, documents, such as adangal, valuation certificate were forged and prepared in the name of VAO, take quotation from M/s.Sre Mahaganapathi Motors obtained as if the borrower S.Venkatachalam (A9) intend to purchase Power Tiller from M/s.Sre Mahaganapathi Motors using these documents A1 dishonestly disbursed the loan, thereby, the pecuniary advantage obtained by A2, A3 and A4 and also the borrowers.

7. Based on the final report, the Trial Court framed 7 charges for conspiracy and substantive offence under Sections 409 IPC, 420, 467, 468 & 471 IPC Sections 13(2) r/w 13(1)(d) of PC Act.

8. To prove the charges, the prosecution examined 14 witnesses and marked 65 exhibits. On the side of the defence, 6 documents were marked and one document was marked as Court document. The Trial Court found

the accused guilty and convicted and sentenced them as under :-

Name of the accused	***Charges***	***Punishment***
A1	U/s.120(B) r/w 409 IPC, 420, 467, 468 & 471 IPC and Section 13(2) r/w 13(1)(d) of P.C Act	To undergo 4 years R.I and fine of Rs.10,000/-, in default to undergo 1 year S.I.
	U/s.420 IPC	To undergo 4 years R.I., and fine of Rs.10,000/-, in default to undergo 1 year S.I
	U/s.471 r/w 468 IPC	To undergo 4 years R.I., and fine of Rs.10,000/-, in default to undergo 1 year S.I
	U/s.13(2) r/w 13(1) (d) of P.C. Act	To undergo 4 years R.I., and fine of Rs.10,000/-, in default to undergo one year S.I
	U/s 409 IPC	To undergo 4 years R.I and fine of Rs.10,000/- in default to undergo one year S.I
A2 to A4	U/s.120(B) r/w 409 IPC, 420 IPC and Section 13(2) r/w 13(1)(d) of P.C.Act	To undergo 4 years R.I each and fine of Rs.10,000/- each, in default to undergo one year S.I each.
	U/s.420 IPC	To undergo 4 years R.I each, and fine of Rs.10,000/- each, in default to undergo one year S.I each.
A5	U/s.120(B) r/w 409 IPC, 420, 467, 468 & 471 r/w 468 IPC and Section 13(2) r/w 13(1)(d) of P.C.Act	To undergo 4 years R.I and fine of Rs.10,000/-, in default to undergo one year S.I.
	U/S.420 IPC	To undergo 4 years R.I and fine of Rs.10,000/-, in default to undergo one year S.I
	U/S 467 IPC	To undergo 4 years R.I and fine of Rs.10,000/-, in default to undergo one year S.I

Name of the accused	***Charges***	***Punishment***
	U/S 468 IPC	To undergo 4 years R.I and fine of Rs.10,000/-, in default to undergo one year S.I
	U/S 471 R/W 468 IPC	To undergo 4 years R.I and fine of Rs.10,000/-, in default to undergo one year S.I
A7	U/s.120(B) r/w 409 IPC, 420, 467, 468 & 471 r/w 468 IPC and Section 13(2) r/w 13(1)(d) of P.C.Act	To undergo 4 years R.I and fine of Rs.10,000/-, in default to undergo one year S.I.
	U/S.420 IPC	To undergo 4 years R.I and fine of Rs.10,000/-, in default to undergo one year S.I.
	U/S 467 IPC	To undergo 4 years R.I and fine of Rs.10,000/-, in default to undergo one year S.I.
	U/S 468 IPC	To undergo 4 years R.I and fine of Rs.10,000/-, in default to undergo one year S.I.
	U/S 471 R/W 468 IPC	To undergo 4 years R.I and fine of Rs.10,000/-, in default to undergo one year S.I.
A8 & A9	U/s.120(B) r/w 409 IPC, 420 IPC and Section 13(2) r/w 13(1)(d) of P.C.Act	To undergo each 1 year R.I and fine of Rs.1,000/- each, in default 3 months S.I each.
	U/s. 420 IPC	To undergo each 1 year R.I and fine of Rs.1,000/- each, in default 3 months S.I each.

9. Crl.A.No.659 of 2018 is preferred by A2 to A4, the partners of M/s.Sre Mahaganapathi Motors, Crl.A.No.681 of 2018 is filed by

M.R.Kannan (A5), Crl.A.No.685 of 2018 is filed by Anandan (A7), Crl.A.No.741 of 2018 is filed by V.Kannan (A1) and Crl.A.No.855 of 2018 is filed by G.Shanmugam (A8) and Venkatachalam (A9).

10. The sum and substance of the prosecution case as spoken by its witnesses is that V.Kannan (A1), Manager of Union Bank of India, Tiruvannamalai Branch has entertained the loan applications of A7, A8 and A9 and processed through A2 to A4, the Partners of M/s.Sre Mahaganapathi Motors. The documents of the farmers were collected through the agents of M/s.Sre Mahaganapathi Motors and Revenue certificates such as adangal, valuation certificate, extracts of FMB sketch were obtained from the Village Administrative Officer of the respective villages. The Encumbrance Certificate from the Sub Registrar concerned and Patta from the Tahsildar concerned were submitted to the Bank along with legal opinion in respect of the following 3 incidents:-

1. Tractor loan to Anandan for a sum of Rs.4,90,000/-
2. Power Tiller loan to Shanmugam for a sum of Rs.2,10,000/-
3. Power Tiller loan to Venkatachalam for a sum of Rs.2,10,000/-.

11. As far as Anandan (A7), the document of title deed has already been mortgaged with Indian Overseas Bank, Vedandhavadi Branch through a registered Memorandum of deposit of title deed. Suppressing the said fact, photo copy of the document furnished to Union Bank of India through the partners of M/s.Sre Mahaganapathi Motors. Vinoth @ Saravanan (A6), the salesman of the Company, M.R.Kannan (A5), the document writer and the borrower Anandan (A7) had tampered the Encumbrance Certificate given in respect of the loan application. The Tractor was purchased by furnishing fabricated document. The second loan, based on the very same document was arranged by Bojappan (A3) and his Associates. The Encumbrance Certificate mutilated by A2 and replaced by a fabricated sheet. The act of fabrication done by Vinoth @ Saravanan (A6), M.R.Kannan (A5) at the instance of R.Prakash (A4).

12. The Power Tiller loan sanctioned to Shanmugam (A8) was released without following the procedure established by the Banking Rules. The loan amount was disbursed by V.Kannan (A1) without ensuring the supply of Shrachi Power Tiller. M/s.Sre Mahaganapathi Motors, though a registered agent of M/s.Bengal Tools Limited for supply of Shrachi Power Tiller, as per the Commercial Tax Assessment Returns, there was no sale or

purchase of Power Tiller during the period. Bojappan (A3) had forcibly sold a Tractor arranging finance through M/s.Kotak Mahindra Finance Limited. To pay the margin money to M/s.Kotak Mahindra Finance Limited, which financed Shanmugam to purchase tractor, the auto rickshaw of Siva, S/o.Shanmugam and the loan amount sanctioned for purchase of Power Tiller were utilised.

13. In case of Venkatachalam (A9), the loan was sanctioned for purchase of Power Tiller in spite of the fact that Venkatachalam (A9) has no minimum extent of 3 acres of land. The money was utilized by Venkatachalam for other purpose and he did not purchase Power Tiller.

14. PW1-R.S.Raghavan is the competent Authority to remove A1, a public servant. The sanction to prosecute A1 is marked as Ex.P60. PW1-Raghavan, Regional Head, Union Bank of India, Salem had deposed about the action taken by him on the instructions of General Manager in respect of irregularities in the advance portfolio of Union Bank of India, Tiruvannamalai Branch. The team constituted by him went into the details of loan account and on verification found that there is gross irregularity in sanctioning of loan. Therefore, the Head Office instructed him to give complaint to the police, accordingly, the complaint (Ex.P1) came to the

lodged. This witness explaining the procedure to be adopted while sanctioning the loan, had demonstrated how in this case without supply of Tractor and Power Tillers, bills were processed and loan sanctioned based on the forged and fabricated documents.

15. PW2-B.Amaranathan, Chief Manager, Regional Office, Salem while corroborating the evidence of PW1, had deposed that there was advice from the Regional office not to entertain further Tractor proposal without the Regional Office knowledge, for which V.Kannan (A1) wrote a letter (Ex.P6) requested to permit to sanction atleast 3 Tractor loan per month so that, the farmers in that area will be benefited. As on 05.09.2008, within 3 months period, A1 had disbursed 19 Tractor loans , despite the instruction not to go ahead with Tractor loan, A1 proceeded violating the Regional Office instructions.

16. PW3-Kathiresan, Chief Manager (Credit), Regional Office, Salem explained about the procedure for granting Tractor loan and demonstrated how in the case of Tractor loan sanctioned to V.M.Anand and 2 others are in violation of Banking norms. G.Shanmugam (A8) one of the loanee for purchase of Power Tiller, had land measuring only 2.54 acres. Though he is not eligible for Power Tiller loan, A1 had sanctioned loan to G.Shanmugam

in gross violation of the Banking Rules. Without cash receipt for the purchase of Power Tillers, loans were disbursed. No post sanction inspection conducted. Likewise, Venkatachalam (A9) though holding only 2.40 acres of land, was sanctioned Power Tiller loan by A1 based on valuation report and adangal, which were found to be fabricated documents.

17. PW4-Vaidya, Regional Manager of Union Bank of India had explained the instructions issued by the Management of Union Bank of India and NABARD. Violation in release of Power Tiller loan, without pre sanction and post sanction inspection spoken by this witness.

18. PW5-T.Saravanan, who conducted internal investigation about the irregularity committed by A1 and G.Kasinathan, had deposed about the content of inspection report marked as Ex.P18. According to this witness regarding Tractor/Power Tiller loans, middlemen were employed and loans were granted based on fabricated Revenue records. The vehicles were not registered at Regional Transport Office as per the conditions.

19. PW7-Azhagarasu, who is the RTO, had explained the procedure to register Tractor and Power Tillers. According to his evidence, Tractors ought to be registered with the Regional Transport Authority.

20. PW8-Ragavendran, the District Registrar of Tiruvannamalai had deposed that the title document of Anandan has already been encumbered by way of mortgage deed and in Ex.P23 Encumbrance Certificate at sheet no.2 Mortgage Deed bearing no.376/2005 dated 18.04.2005 by Anandan in favour of Indian Overseas Bank, Vedandavadi, for a sum of Rs.50,000/- noted as an encumbrance.

21. PW9-K.Manoharan, Commercial Tax Officer, Tiruvannamalai Town had spoken about the Sale Tax return by M/s.Sre Mahaganapathi Motors. Ex.P24 is the document regarding Sale Tax return of M/s.Sre Mahaganapathi Motors indicating that it had an annual turn over of Rs.5,51,58,586/- during the financial year 2008-2009.

22. PW10-Moorthy, a mechanic under A3 was examined to show that M/s.Sre Mahaganapathi Motors was a dealer for Sonalika Tractors. This witness is unable to say the number of Tractors sold by M/s.Sre Mahaganapathi Motors during the said point of time.

23. PW12-N.Ravi, the Director in-charge of Central Forensic Science Lab, who had compared the admitted signatures of S.Sundaramoorthy, R.Prakash, M.R.Kannan, which tallied with the disputed documents found in the loan files.

24. PW13-T.Mohan, Branch Manager, Union Bank of India, Tiruvannamalai from 19.11.2009 to 03.12.2011, who succeeded A1 in the Branch, had deposed about the loan account of M.Anandan, Shanmugam and Venkatachalam. He had deposed that the title documents deposited were not registered in the Sub Registrar Office in respect of these three loans and such omission to register the deposit of title deed will render the loan unsecured.

25. PW14-C.Ponnalagan is the IO, who took up the investigation of this case, conducted search of the suspected premises, recorded the statements of witnesses. He has deposed that during his investigation, he visited the villages with a team of officers and conducted surprise check and the proceedings of his field visit is marked as Ex.P65. The scrutiny of Ex.P65 shows that it is the proceedings of the team, which is in a printed format, signed by the borrower, VAO, Agricultural Officer, Bank officer and IO. In this case, the borrower admit the transaction is fake and no Power Tiller purchased from the loan money.

26. The appellants fall under three categories. A1 is the Bank official, representing the Bank, a public servant. He falls under one category. A2 to A4 - the partners of M/s.Sre Mahaganapathi Motors and A5 & A6, who are the agents of M/s.Sre Mahaganapathi Motors fall under the 2nd category

representing the supplier. The farmers, who borrowed loan A7 to A9 fall under the 3rd category representing borrowers/beneficiaries.

27. The counsel appearing for A1 contended that A1, being a Bank Manager, in order to meet out the interest of the farmers, had extensively canvassed about the benefit of having a Tractor/Power Tiller mechanised tool for tilling and sanctioned loan only to eligible farmers, after getting legal opinion and valuation certificate for the property offered as collateral security. The allegation of fabrication of document has no basis and even if there is any document not genuine, it cannot attribute any knowledge *mens rea* to A1, A1 had gone by the opinion of the Expert viz., the Panel Lawyer.

28. The learned counsel appearing for M.R.Kannan (A5) contended that the allegation of the prosecution that A5 assisted in fabrication of Encumbrance Certificate to enable Anandan (A7) to suppress the fact of his previous mortgage is incorrect and not proved by prosecution. The prosecution relied Exs.P21 & P22, which is the Encumbrance Certificate in the name of Anandan and the application for getting Encumbrance Certificate. It is contended by the learned counsel that the Handwriting Expert opinion marked as Ex.P35 incriminate A5 only in respect of Ex.P22, which is the application for Encumbrance Certificate. The fabrication of

public document, which attracts offence under Section 463, 467, 468 r/w 471 IPC will not be applicable to A5, even if there is element of forging the signature of Anandan in the application form. Further, it is contended that the finding of the Trial Court that the loan to Anandan (A7) for purchasing Tractor was sanctioned based on forged Encumbrance Certificate is also not correct. The loan was sanctioned based on the hypothecation of the tractor as primary security and the land document was only a collateral security.

29. The learned counsels appearing for the supplier and their representatives submitted that though there is ample evidence to show the Tractor and Power Tillers were sold, the Trial Court has wrongly presumed that money sanctioned for purchase of Power Tiller used as a margin money to purchase Tractors through private financier. The prosecution has spinned a false story, which has not been supported by any oral or documentary evidence. The proceedings relied by PW14-Ponnalagan marked as Ex.P65 is an inadmissible document, since it has been obtained by Police official during the course of investigation. Further, it is also contended that the Tractor and Power Tillers to A7, A8 & A9 were sold by M/s.Sre Mahaganapathi Motors, a registered Firm. Without impleading the Firm as an accused, only the partners being arrayed as accused. Therefore, following

the dictum of Hon'ble Supreme Court in ***Aneeta Hada Vs. Godfather Travels and Tours Private Limited*** reported in ***(2012) 3 SCC (Crl.) 241***, the partners of M/s.Sre Mahaganapathi Motors arrayed as A2 to A4 have to be acquitted, since the prosecution against them is legally not valid.

30. As far as the borrowers are concerned, it is contended by their counsels that there was no meeting of mind to do any dishonest act between them and the Bank official or the suppliers. The Power Tillers need not be registered with the Regional Transport Authority as per the Motor Vehicles Act. As far as the purchase of Tractor and Power Tiller, it is based on the documents. It is not the case of the prosecution that Anandan had not purchased the Tractor, but the allegation against Anandan (A7) is that he furnished document as collateral security, which has already been encumbered with Indian Overseas Bank for a loan of Rs.50,000/-. Similarly, though it is contended that Shanmugam(A8) had utilised the loan amount sanctioned for purchase of Power Tiller to buy Tractor from the private finance institution, there is no evidence to that effect. Merely based on the inadmissible document viz., Ex.P65, the Trial Court had convicted the borrowers, who have repaid the loan and proved through Ex.C1.

31. Per contra, the learned Special Public Prosecutor submitted that the loan condition primarily insists upon the registration of the vehicle and insurance of the vehicle. Though under Motor Vehicles Act, the registration of Power Tiller exclusively used for agricultural purpose is only optional, but when the loan condition mandates that the vehicle should be registered for the purpose of securing the loan by hypothecation of the vehicle and displaying the said fact by writing on the vehicle, if violated, it is a clear misconduct and breach of trust. In this case, A1 had dishonestly omitted to get the vehicle registered and insured. Since there was no vehicle purchased, A1 omit to mention the Engine number and Chasis number of this vehicle in the purchase document as well as loan document. This is yet another proof to show the dishonest intention to cheat, the meeting of mind to do an illegal act, criminal breach of trust and misconduct by a public servant to dishonestly obtain pecuniary advantage for himself or for any other persons. Regarding the suppliers (A2 to A5), who form part of the second group, the learned Special Public Prosecutor submitted that no evidence available to show the two loans sanctioned to Shanmugam (A8) & Venkatachalam (A9) were utilised for purchase Power Tiller. The invoices and the other loan document like hypothecation deed does not refer any specific identification

of the vehicle by indicating Engine number and Chasis number.

32. As far as tractor loan to Anandan (A7), the certified copy of the title deed instead of original and mutilated Encumbrance Certificate to hide the encumbrance/Mortgage with IOB, knowingly received by A1 to help the borrower (A7) and the tractor dealer (A2 to A5). The repayment of the loan amount belatedly, after initiating criminal action cannot be a ground to exonerate these appellants from penal action.

33. The judgment of the Hon'ble Supreme Court in ***Aneeta Hada***'s case will only apply in case of Company, a juristic body and will not apply to partnership firm, which is not a legal entity by itself. The dictum laid by Hon'ble Supreme Court in ***Aneeta Hada's*** case is in respect of offence by Company and not in respect of offence by the partners of a unregistered partnership firm.

34. As far as the contention raised by the counsel appearing for A5 regarding the opinion of the Handwriting Expert incriminating A5 for forging the application form Ex.P22 and the finding against him for conspiracy, the learned Special Public Prosecutor (CBI) submitted that as per the Banking Rule for purchase of Tractor, the borrower must have at least 5 acres of land and the said land should be given as collateral security, whereas

Anandan (A7) had only 4.37 acres of land. By giving a false declaration and forged Encumbrance Certificate, the loan to Anandan (A7) for purchase of Tractor sanctioned in connivance with the dealer of M/s.Sre Mahaganapathi Motors and the Bank Manager. In the Encumbrance Certificate (Ex.P21), it is shown that the property of Anandan(A7) has Nil encumbrance, whereas through PW8-Ragavendran the prosecution has proved that the Encumbrance Certificate-Ex.P21 is not a genuine document and it was not issued by SRO, Mangalam. Handwriting Expert, in his opinion has stated that both in Exs.P21 & P22, the signatures tallied with the signatures of A5.

35. Heard the learned counsels for the appellants and the learned Special Public Prosecutor (CBI) appearing for the respondent. Perused the entire material available on record.

36. As far as A5 is concerned, his role in the alleged conspiracy is related to filling the application for furnishing Encumbrance Certificate-Ex.P22 and the Encumbrance Certificate-Ex.P21. The case of the prosecution is that in both these documents, A5 has forged the signature of Anandan. Further, the case of prosecution is that the Encumbrance Certificate - Ex.P21 is a fabricated document and not issued by SRO, Mangalam. To prove this, the prosecution has examined PW8-Ragavendran

and PW14-Ponnalagan. As far as Ex.P21 is concerned, the Handwriting Expert has not given any specific opinion, whereas PW8 had deposed that this Encumbrance Certificate was not issued by SRO, Mangalam, if it is so, it is not explained how the application for Encumbrance Certificate-Ex.P22 find place in the loan file. As far as A5 is concerned, the allegation is that he acted dishonestly to facilitate Anandan (A7) to avail loan by fabricating Encumbrance Certificate. However, the loan was not issued solely on the Encumbrance Certificate, but on the title document. The violation of Banking Rule for sanctioning Tractor loan for a person holding less than 5 acres of land at the most will attract departmental action and no criminality can be attributed unless and until there is evidence to show that the loan was availed with dishonest intention to cheat the Bank. In this case, as far as the loan sanctioned to Anandan (A7) is concerned, the prosecution has failed to prove dishonest intention to induce the Bank with an intention to cheat.

37. In this case, the prosecution admits that Anandan (A7) had purchased a Tractor from the loan advanced. The RC book of the Tractor form part of the loan file and Tractor bearing Registration No.TN 25 K 3643. The only allegation against him is that he had given a property, which has already been encumbered and he produced a fabricated Encumbrance

Certificate to hide the encumbrance. The totality of the prosecution evidence indicates that the Tractor is the primary security for the loan and landed property is a collateral security. As far as the case of A7 is concerned, he has purchased the Tractor, got it registered and duly insured with New India Assurance Company. The vehicle is hypothecated to the Bank by way of a deed of hypothecation, in addition, he has also executed a On Demand Promissory note. There is no bar to create a second mortgage of a property and in this case, there is no intention of cheating the Bank by creating second mortgage of the landed property. The accusation of the prosecution in respect of the sale of Tractor to Anandan (A7) does not have any tracing of illegality or dishonesty.

38. In respect of the loan to Shanmugam (A8) & Venkatachalam (A9), they have availed loan for purchase of Power Tiller. PW3-Kathiresan, who is familiar with the procedure for advancing loan had deposed about the loan transactions of the 3 persons involved in C.C.No.6 of 2012. In respect of Tractor/Power Tillers supplied by M/s.Sre Mahaganapathi Motors, he has found fault in the processing of the loan applications. The blank in the forms, absence of pre-sanction inspection report, shortage of land rendering the borrower ineligible, valuation certificate by VAO instead of Deputy

Tahsildar, absence of cash receipt for the purchase of Power Tiller and implements are some of the omission, which have led to wrongful loss to the Bank.

39. The borrowers (A8 & A9) however, had furnished the photographs of the Power Tiller during the course of arguments, since these documents were not produced at the time of trial, entertaining these documents shown by the appellants nearly after 15 years of the occurrence will be mockery. The loan availed by them to buy Power Tiller found not utilised. No proof for purchase of Power Tiller produced by these appellants. Proforma invoice is only a quotation for the price of the goods and not a proof for sale of goods. In any event, it is to be taken note that the borrowers may not know the condition of minimum land holding to purchase mechanised equipment for their agricultural purpose. In this case, it is also stated that they have repaid the loan, though belatedly.

40. On appreciation of evidence, this court finds as far as one incident i.e., the loan sanctioned to Anandan (A7), the prosecution not able to prove the dishonest intention to cheat. Forgery of document against A5 also not proved. *Mens rea for* the two accused (A5 & A7) to commit crime not proved beyond doubt. As against other accused (A1, A2 to A4, A8 & A9)

the prosecution has proved the charges beyond doubt.

41. Taking all these facts into consideration, this Court is of the view that M.R.Kannan (A5) and Anandan (A7) are entitled for acquittal extending the benefit of doubt. The conviction of other accused is confirmed with modified sentence as under:-

Name of the accused	***Charges***	***Punishment***
A1	U/s.120(B) r/w 409 IPC, 420, 467, 468 & 471 IPC and Section 13(2) r/w 13(1)(d) of P.C Act	To undergo 2 years S.I and fine of Rs.10,000/-, in default to undergo 1 year S.I.
	U/s.13(2) r/w 13(1) (d) of P.C. Act	To undergo 2 years S.I., and fine of Rs.10,000/-, in default to undergo 1 year S.I
	U/s 409 IPC	To undergo 2 years S.I and fine of Rs.10,000/- in default to undergo 1 year S.I
	U/s 420 IPC	To undergo 2 years S.I and fine of Rs.10,000/- in default to undergo 1 year S.I
	U/S 471 r/w 468 IPC	To undergo 2 years S.I and fine of Rs.10,000/- in default to undergo 3 1 year S.I
A2 to A4	U/s.120(B) r/w 409 IPC, 420 IPC and Section 13(2) r/w 13(1)(d) of P.C.Act	To undergo 2 years S.I each and fine of Rs.10,000/- each, in default to undergo one year S.I each.
	U/S 420 IPC	To undergo 2 years S.I and fine of Rs.10,000/- in default to undergo one year S.I each.
A8 & A9	U/s.120(B) r/w 409 IPC, 420	To undergo each 1 year S.I and

Name of the accused	***Charges***	***Punishment***
	IPC and Section 13(2) r/w 13(1)(d) of P.C.Act	fine of Rs.1,000/- each, in default 3 months S.I each.
	U/S 420 IPC	To undergo one year S.I and fine of Rs.10,000/- in default to undergo 3 months S.I each.

42. The period of sentence shall run concurrently. The period of imprisonment already undergone shall be set off under Section 428 Cr.P.C

43. As far as A1, the period of substantive sentence shall also run concurrently with C.C.No.4 of 2012 as modified in Crl.A.No.740 of 2018.

44. Accordingly, these Criminal Appeals are partly allowed. The judgment of conviction passed by the trial Court in C.C.No.6 of 2012 by XI Additional Special Judge, (CBI cases), is hereby confirmed. The Trial Court is directed to secure the custody of the accused to undergo the remaining period of imprisonment.

10.10.2023

kmi
To:-
1.The XI Additional Special Judge for CBI Cases,
Chennai.
2.The Inspector of Police,
CBI, ACB, Chennai.
3.The Special Public Prosecutor,
High Court, Madras.

Dr.G.JAYACHANDRAN, J

kmi

Criminal Appeal Nos. 659, 681, 685,
741 & 855 of 2018

10.10.2023