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

Crl.A.Nos.684 and 854 of 2018

Crl.A.No.684 of 2018:

R.Vijayan@ Vijayakumar ..Appellant/Accused No.3

/versus/

State rep.by
The Inspector of Police,
CBI/ACB, Chennai,
(R.C.No.22/A/2010) .. Respondent/Complainant

Criminal Appeal has been filed under Section 374(2) of Cr.P.C., to call for the records in C.C.No.11 of 2012 on the file of learned XI Additional Special Session Court, Judge, (Banking & Financial Institution Cases for CBI), Chennai by its order dated 23.10.2018 and set aside the same and allow the Criminal Appeal.

For Appellant :Mr.R.Bhagawal Krishna
For Respondent :Mr.K.Srinivasan, Spl.P.P.(CBI)

Crl.A.No.854 of 2018:

Mrs.R.Vasantha ..Appellant/Accused No.6

/versus/

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

Criminal Appeal has been filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence passed by the lower Court in C.C.No.11 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 and allow this Appeal with costs.

For Appellant :Mr.T.Sivananthan

For Respondent :Mr.K.Srinivasan, Spl.P.P.(CBI)

COMMON JUDGMENT

On 21.05.2010, based on the complaint received from the Assistant General Manager, Union Bank of India, Regional Office, Salem, the Superintendent of Police, Anti Corruption Bureau, CBI at Chennai registered a case in Crime No.RC MA1 2010 A 0022 against 10 named accused and others for offences under Sections 120B r/w 420, 409, 467, 468 r/w 471 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

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, Shri R.Vijayan, an agent for tractor dealers and various firms with the connivance of each other 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 the bank Managers, traders/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. As far as C.C.No.11 of 2012, the Final Report filed against eight persons. A-1[Kannan], A-2 [G.Kasinathan] are the bank managers, public servants. A-3 [Vijayan @ Vijayakumar] and A-4 [S.Ramkumar] private individuals working as salesman-cum-agent and spare parts in-charge in their Sri Ramajayam Tractors. A-5[C.Ramanujam], A-6[R.Vasantha], A-7 [Sundaresan] and A-8 [S.Jayapal] are the private individuals who availed crop loan from the Union Bank of India. The investigation had disclosed that V.Kannan[A-1] and G.Kasinathan[A-2], while working as Branch Managers in Union Bank of India, Tiruvannamalai Branch, between 12.02.2008 and 21.12.2008 and from 15.12.2008 to 29.06.2009 respectively, had sanctioned and disbursed various agricultural loans to five farmers as crop loan, based on false and fabricated revenue certificate like, copies of adangal, valuation certificates, etc. These borrowers are not eligible for the crop loan by flouting the norms of the bank, funds of the bank has been siphoned by entering into a criminal conspiracy hatched by these accused persons. As a result, the bank has incurred wrongful loss of Rs.12,42,894/- and the corresponding wrongful

gain to themselves. Without conducting pre-sanction verification, the loan amount was disbursed and after disbursement, A1 and A2 have ensured the end use of the loan amount and not conducted post-sanction verification to ensure the borrowers had raised crop utilising the finance extended by the bank. Five specific instances for sanctioning the crop loans based on the fabricated documents specified in the final report and those instances are as below:-

Instance No.1: Shri C. Ramanujam availed á crop loan of Rs.50,000/- (Loan Account No.601/03). In this case, the Adangal and valuation certificate are forged by Shri Vijayan, who is none other than the son of the borrower. The Encumbrance Certificate is also forged. The borrower admitted that he received the cash but, not raised any crops in his old age without support of his both the sons who had abondaned the parents. The Branch Manager has not verified the crops raised by the borrower. Shri V. Kannan has sanctioned and disbursed the loan without ensuring the creation of security. Only an amount of Rs.11,511/- was remitted into this account on 25.03.2020 and thereafter, there is no remittance and the outstanding balance is Rs.55,244/- as on 15.05.2011,

Instance No.2: Smt.Vasantha, wife of Shri C.Ramanujam had applied for a crop loan for Rs.50,000/- for raising sugarcane (Loan Account No.601/21). Chitta, Adangal and other records purported to have been issued by the VAO, Puduppatu Village have been forged by Shri R. Vijayan, son of the borrow Shri V. Kannan had processed and sanctioned the loan amount. The bank has incurred a loss of Rs.62,970/- as on 15.05.2011. The loan was guaranteed by Shri C. Ramanujam. But the signature of Shri C. Ramanujam has been forget by Shri R. Vijayan alias Vijayakumar.

Instance No.3: Shri M.Sundaresan was sanctioned Rs.2,00,000/-, as crop loan by Shri V. Kannan (Loan Account No: 602/05). The present outstanding of the said loan is Rs.1,14,425/- as on 15.05.2011. Again, Shri G. Kasinathan had sanctioned a crop loan of Rs.50,000/- (Loan Account No: 601/75) to the same borrower with the same land records with forged Adangal. The present outstanding of this loan is Rs.53,607/- as on 15.05.2011.

Instance No.4: Shri S. Jayabal has applied for a Crop loan of Rs.49,000/- and the same was sanctioned to Shri S. Jayabal by Shri G. Kasinathan (Loan Account No.601/206). The adangal, valuation certificates etc., are forged by Shri R. Vijayan including the signature of the borrower. Shri S. Jayabal has given a report to the Branch Manager, Union Bank of India denying the applying of the crop loan. Smt J. Mercy has also denied having signed as a guarantor of the loan and the photograph of Smt J. Mercy affixed on the Deed of Guarantee is also not of her. Out of the loan amount, an amount of Rs.39,000/- was given to Shri S. Jayabal, the borrower, by Shri R. Vijayakumar. The outstanding is this account is Rs.48,707/- as on 15.05.2011.

Instance No.5: A crop loan was applied by Shri R. Vijayakumar in the name of Shri M. Sundaresan (Account No: 601/75) for Rs.50,000/- which was processed and and sanctioned by Shri G. Kasinathan. The loan was actually availed by Shri R. Vijayan without the knowledge of the borrower Shri M.Sundaresan. The outstanding in the said account is Rs.53607/= as on 15.05.2011.

5. The sum and substance of the charges is that, the accused 1 to 8 have conspired to cheat the Union Bank of India, Tiruvannamalai Branch, by using fabricated documents as genuine to avail loan and in pursuance to the said criminal conspiracy, A5 [C.Ramanujam] dishonestly and fraudulently applied for agricultural loan bearing Account No.601/03 to an extent of 50,000/-. A6 [Vasantha] fraudulently and dishonestly applied for agricultural loan bearing Account No.601/21 and given to an extent of Rs.50,000/-. A7 [M.Sundaresan] dishonestly and fraudulently applied for agricultural loan bearing Account No.602/05 to an extent of Rs.2,00,000/-. A8 [S.Jayabal] fraudulently and

dishonestly applied for agricultural loan bearing Account No.601/206 for loan of Rs.49,000/-. For securing these loans, forged and fabricated land revenue documents by copies of adangal, valuation certificate, extract of FM sketch, Encumbrance certificate in the name of A5 to A7 were given to the Union Bank of India and got the loan sanctioned and released four agricultural loans. A1 and A2 were the Branch Managers. At the time with active connivance of A3 and A4, they had dishonestly and fraudulently sanctioned and released the agricultural loan in the name of A5 to A7 by way of accepting the forged and fabricated revenue records and facilitated FM sketch, EC, valuation certificate and adangal for availing the agricultural loan, thereby committed offences.

1st Charge: A1 to A8 under Sections 120-B r/w 409 IPC, 420, 467, 468 and 471 of IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988;

2nd Charge: A1 to A8 under Section 420 of IPC;

3rd Charge: A3 to A8 under Section 467 of IPC;

4th Charge: A2 to A8 under Sections 468 of IPC;

5th Charge: A1 to A8 under Section 471 r/w 468 of IPC;

6th Charge: A1 and A2 under Section 13(2) r/w 13(1)(d) of PC Act, 1988;

7th Charge: A1 and A2 under Section 409 of IPC

6. To prove the charges, the prosecution has examined 12 witnesses, marked 51 exhibits and 5 Court documents. In defence, one witness and 6 exhibits were marked.

7. The trial Court, on appreciation of evidence, held that A3 [R.Vijayan @ Vijayakumar] has fabricated the valuation certificate [Ex.P13] and using the forged adangal and valuation certificate, crop loan for A6]Vasantha] has been advanced. The said Vijayakumar is son of Vasantha (A6). Regarding charge against A1 and A2 in respect of fabrication of documents, the trial Court has found that there is no evidence to implicate A1 and A2 for the said charge. For availing loan to A5, A7 and A8, though it is charged that they have produced fabricated documents to avail loan, there is sufficient evidence to prove, who fabricated the documents, even the incriminating opinion of the hand writing expert against A4 is not corroborated with any other evidence, since Ex.P14 and Ex.P15 valuation certificates of VAO have not been tested scientifically. The trial Court also disbelieved the case of the prosecution in respect of fabrication of Ex.P14 and Ex.P15. Therefore, finally held that proving the income certificate in the name of 6^{th} accused, who is forged by A3, the prosecution has not proved the said charge

against the other accused.

8. As a result, as far as first charge of conspiracy is concerned, A3 and A6 were found guilty for the offence under Sections 120B r/w 409, 420, 467, 468, 471 of IPC. A1, A2, A4, A5, A7 and A8 were acquitted for the first charge. In respect of the 2nd charge of cheating, A3 and A6 alone found guilty and rest of the accused A1,A2, A3,A5,A7 and A8 were acquitted. In respect of the third charge for the offence under Section 467 of IPC, A3 and A6 were found guilty and the other accused A4,A5,A7 and A8 were acquitted. In respect of the fourth charge for the offence under Section 468 of IPC, A3 and A6 were found guilty and the other accused A2,A4,A5,A7 and A8 were acquitted. In respect of fifth charge for the offence under Section 471 r/w 468 of IPC, A3 and A6 were found guilty and the other accused A1,A2,A4,A5,A7 and A8 were acquitted. In respect of the sixth charge for the offence under Section 13(2) r/w 13(1)(d) of PC Act, A1 and A2 were acquitted. In respect of the 7th charge for the offence under Section 409 of IPC, A1 and A2 were acquitted. A3 and A6 are son and mother. The fabrication of document by A3 to avail loan in the name of his mother(A6) having been proved, the trial Court imposed the following sentence:

Name and Rank of the accused	Conviction under Section	Sentence imposed by the trial Court
A3 R.Vijayan @ Vijayakumar	Under Sections 120-B r/w 409, 420, 467, 468 and 471 of IPC	To undergo 4 years RI and to pay a fine of Rs.10,000/- in default to undergo 1 year SI
	Under Section 420 of IPC	To undergo 4 years RI and to pay a fine of Rs.10,000/- in default to undergo 1 year SI
	Under Section 467 of IPC	To undergo 4 years RI and to pay a fine of Rs.10,000/- in default to undergo 1 year SI
	Under Section 468 of IPC	To undergo 4 years RI and to pay a fine of Rs.10,000/- in default to undergo 1 year SI
	Under Section 471 r/w 468 of IPC	To undergo 4 years RI and to pay a fine of Rs.10,000/- in default to undergo 1 year SI
A6-Smt.R. Vasantha	Under Sections 120-B r/w 409, 420, 467, 468 and 471 of IPC	To undergo 1 year RI and to pay a fine of Rs.10,000/- in default to undergo 3 months SI
	Under Section 420 of IPC	To undergo 1 year RI and to pay a fine of Rs.10,000/- in default to undergo 3 months SI
	Under Section 467 of IPC	To undergo 1 year RI and to pay a fine of Rs.10,000/- in default to undergo 3 months SI
	Under Section 468 of IPC	To undergo 1 year RI and to pay a fine of Rs.10,000/- in default to undergo 3 months SI
	Under Section 471 r/w 468 of IPC	To undergo 1 year RI and to pay a fine of Rs.10,000/- in default to undergo 3 months SI

The period of sentence was ordered to run concurrently. The period of sentence already undergone by the accused was set off. As far as the 3rd accused is concerned, the period of sentence was ordered to run concurrently with the period of substantive sentence imposed in C.C.Nos.4,5, and 9 of 2012.

9. Being aggrieved by the conviction and sentence, A3 Vijayan @ Vijayakumar has preferred the appeal in Crl.A.No.684 of 2018 and A6 Vasantha has preferred the appeal in Crl.A.No.854 of 2018.

10. According to the appellants, the trial Court failed to appreciate the evidence properly on the allegation of forgery against A3 not proved in the manner known to law. The evidence of PW-10[N.Ravi], the hand writing expert and PW-7[Vinoth] are not reliable and sufficient to prove that A3 forged the document. The self contradiction of PW-7[Vinoth] has not been properly appreciated by the trial Court. The witnesses from registration department admitting that the title document produced by A6 for availing loan is genuine and original. The document in Ex.P13 not proved beyond doubt that they are fabricated the documents. Merely based on the handwriting expert opinion, it is dangerous to conclude that the documents were forged by A3. The signatures and seal found in the disputed documents not sent for forensic examination. The seals were not seized and tested the genuineness of the documents. When the bank officials, A1 and A2 were sanctioned the loan, they were acquitted for

want of proof. The borrowers cannot be held criminally liable for the loan availed, when the borrower has bona fidely submitted her title document as security for availing the loan. It is also contended that recording of evidence in all the cases had caused prejudice to the accused. Availing crop loan making proper application and submitting documents for collateral security is not illegal act just because A3 and A6 are son and mother. They cannot be mulcted with charge of conspiracy, when there is no evidence to show that there was meeting of mind between them to commit the illegal act.

11. Per contra, the learned Special Public Prosecutor for CBI submitted that Ex.P13 series is the loan file of R.Vasantha. She availed loan of Rs.50,000/-. Her application was considered and sanctioned on 23.10.2008 by Kannan, the Branch Manager. In the said file, the application of Vasantha is marked as Ex.P12. The process note was prepared by Kannan based on the adangal issued by VAO, Alaputhur Village. PW-7 [Vinoth], who worked along with A3 had identified the signatures and writings of A3 found in the adangal and valuation certificate which are marked as Ex.P21, Ex.P22, Ex.P23. The hand writing expert, who has examined the document has opined that the writings of Vijayan tallies with the writings found in these documents. The hand

writing expert [PW-10] has opined in his report [Ex.P29] that Vijayakumar is responsible for the writings in the encumbrance certificate issued in the name of Vasantha, W/o Ramanujam. Therefore, he contended that the forgery of document used for availing loan was well proved and therefore, the conviction against these appellants to be confirmed.

12. Heard the learned counsel and perused records.

13. According to the prosecution, the borrowers arrayed as A5 to A8 had conspired with the Bank Managers and the others to avail crop loan using fabricated documents. The trial Court itself has found that the charge of fabrication document and conspiracy is not found against the other accused A3 and A6. The prosecution has narrated five instances in this case alleging fabrication of documents and impersonation. However, failed to convince the trial Court in respect of four loan transactions, particularly, one of the loan accounts in the name of M.Sundaresan (Account No.602/05) alleged to have been availed by A3 [Vijayakumar] and the said loan was processed by A2 G.Kasinathn. This charge could not be established by the prosecution. The incriminating evidence for convicting A3 and A6 is the ocular evidence of PW-

7, who had identified the writings in the revenue documents given in support of loan application in the name of R.Vasantha. He said that the writings is that of A3. However, in the cross examination, PW-7 admits that he and A3 were not working together and he has not familiar with him. While so, it is evident that he saw A3 writings, the documents appears to be unnatural. If this evidence is eliminated yet another incriminating material the opinion of the hand writing expert, the opinion of the hand writing expert in the revenue document attributing to the writing of A3 is not a conclusive piece of evidence, since these documents apparently issued by the revenue officials and the seal and signature found in the documents are form part of the file [Ex.P13]. As pointed out by the learned counsel appearing for the appellants, there is no witness to speak about the genuineness of the seal or the VAO, who has signed the document. The only prosecution witness in this connection is PW-6 V.Shanmugam. He was VAO for Velluganangal, Porkunam Village. He has not said anything about adangal or income certificate given by Vasantha for availing loan. This witness only speaks about the adangal and income certificate given in the name of Sundaresan, S/o Mannu Udayar. The said Sundaresan is A7. The trial Court has acquitted him for want of proof. Vasantha has produced the title deed of her property for availing loan of Rs.50,000/-. He has executed the demand promissory note and deed of guarantee. She has applied for crop loan of Rs.50,000/- and the same has been sanctioned by A1 on 23.10.2008. Ex.C1 contains the certificate issued by the Branch Manager, Union Bank of India, Tiruvannamalai. Ex.C2 is the statement of account in the name of Ramanujam.C and Vasantha.R. Along with written arguments, the learned counsel submitted that the photocopy of the statement of loan account in the name of R.Vasantha Rs.50,000/- was transferred in her account from this statement of account. It is found that Rs.50,000/- which has been transferred in the account of R.Vasanthaon 23.10.2008 was withdrawn immediately and she had been repaying the loan from 2009 and settled the entire dues under OTS scheme on 30.03.2012. The contention of the learned counsel that as an agriculturist by mortgaging her property document, Vasantha availed loan and due to failure of monsoon, she could not repay the loan in time. However, after launching the prosecution, pending trial, she had repaid the money. Her son A3, Vijayakumar, had no criminal intention or dishonest intention to cheat the bank or no evidence to show A3 and A6 had shared criminal intention to cheat the bank. The said submission of the learned counsel in the light of the material available probabilise the defence of the accused that there was no meeting of mind to commit any illegal act or dishonestly to deceive the bank. The charge of forgery has also not been substantiated by the prosecution by evidence of PW-7 and PW-10. When the documents are alleged to be in the hand writing of A3, but signed by somebody else and affixed the signature of VAO, the opinion of the hand writing expert which has been piece of evidence is not adequate without corroboration.

14. For the said reasons, **these Criminal Appeals are allowed**. The judgment of conviction and sentence passed by XI Additional and Special Judge for CBI Cases relating to Banks and Financial Institutions at Chennai dated 23.10.2018 is hereby set aside. Fine amount, if any paid by the accused shall be refunded to them. Bail bond, if any executed by the accused shall stand cancelled. The appellants are released forthwith if their presence is not required in connection with any other case.

10.10.2023

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

1.XI Additional Special Court (CBI Cases Relating to Banks and Financial Institutions), Chennai.

2.The Inspector of Police, CBI/ACB/Chennai.
3.The Special Public Prosecutor for CBI, High Court, Madras.

Dr.G.JAYACHANDRAN, J.

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common judgment made in
Crl.A.Nos.684 and 854 of 2018

10.10.2023