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.695, 743 & 752 of 2018

[Crl.A.No.695 of 2018 against C.C.No.7 of 2012]

R.Arunachalam @ Annamalai
Prop. M/s.Sivakumar Agro Service,
No.1713, Muthalaiamman Nagar,
Vengikkal Pudur, Thiruvannamalai-606 604.

... Appellant/Accused No.2

/versus/

The Inspector of Police,
CBI ACB Chennai.
RC 22/A/2010

... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374(2) of Cr.P.C., praying to set aside the judgment in C.C.No.7 of 2012 on the file of XI Addl. Special Court for CBI cases (Bank and Financial Institutions), Chennai dated 23.10.2018.

For Appellant : Mr.S.Xavier Felix
For Respondent : Mr.K.Srinivasan
Special Public Prosecutor (C.B.I).

[Crl.A.No.743 of 2018 against C.C.No.7 of 2012]

V.Kannan
S/o.Veeran
No.45 2nd Main Road,
3rd Cross, I phase,
VGP Layout, Palavakkam, Chennai-41.
... Appellant/Accused No.1

/versus/

The State rep. by
The Inspector of Police,
Central Bureau of Investigation,
ACB/Chennai.
(R.C.No.22/A/A2010). ... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374(2) of Cr.P.C., pleased to set aside the judgment passed in C.C.No.7 of 2012 dated 23.10.2018 on the file of learned XI Addl. Special Session Court, Chennai (Banks and finance industrial related CBI case).

For Appellant : Mr.K.Selvamani

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

[Crl.A.No.752 of 2018 against C.C.No.7 of 2012]

P.Dhavamani
S/o. Ponnusamy,
Melpalanandal Village & Post,
Tiruvannamalai Taluk & District. ... Appellant/Accused No.3

/versus/

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 and sentence imposed on the accused A-3 by the learned 11th Additional Special Judge for CBI cases (Bank and Financial Institutions cases), Chennai in C.C.No.7 of 2012 dated 23.10.2018.

For Appellant : Mr.S.Vediappan

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, 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.7 of 2012 is concern, the background facts are based on the complaint given by R.S.Raghavan, AGM, Union Bank of India, Regional Office, Salem, the First Information Report registered in RC.No.22/A/2010 dated 21.05.2010. On completion of investigation, the Deputy Superintendent of Police/ACB, Chennai C.Ponnalagan filed final

report on 15.11.2011 against V.Kannan, the then Branch Manager, Union Bank of India, Tiruvannamalai Branch and two others for the alleged offences under Sections 120B r/w 409, 467, 468 r/w 471 and 477A IPC and Section 13(2) r/w 13(1) (c) & (d) of PC Act. 8 other FIR named accused were shown in Column No.2 as accused not sent for trial.

5. The sum and substance of the final report is to the effect that V.Kannan (A1), while working as Branch Manager, Tiruvannamalai branch in Union Bank of India along with R.Arunachalam @ Annamalai, Proprietor of M/s.Shiv Kumar Agro Service and P.Dhavamani, a farmer of Melpalanandal village and sanctioned loan of Rs.1,70,000/- (Rupees one lakh and seventy Thousand only) for purchase of Power Tiller. For sanctioning the loan, false invoice was drawn by R.Arunachalam @ Annamalai (A2), the proprietor of M/s.Shiv Kumar Agro Service, Tiruvannamalai. Along with the false invoice, forged and fabricated land Revenue documents like adangal, valuation certificate, extract of FMB sketch, Encumbrance Certificates issued in the name of P.Dhavamani (A3) was enclosed. A1, without making any pre sanction inspection and post sanction inspection based on fabricated invoice and forged Revenue records sanctioned the loan without real sale of Power Tiller by A2 to A3. The

borrower (A3) had misappropriated the loan amount and not paid the loan due. Thus, Union Bank of India, Tiruvannamalai Branch has incurred loss to the tune of Rs.2,10,731/-. The proportionate wrongful gain to the accused persons.

6. The Trial Court on perusing the documents collected during the investigation, framed charges against the accused persons as below:-

Accused	Charges
A1	U/s.120(B) r/w 409 IPC, 420, 467, 468 r/w 471 IPC and Section 13(2) r/w 13(1)(d) of P.C Act, 420, 471 R/W 468, 409 IPC and Section 13(2) r/w 13(1) (d) of PC Act.
A2	U/s.120(B) r/w 409 IPC, 420, 467, 468 r/w 471 IPC and Section 13(2) r/w 13(1)(d) of P.C Act, 420, 467, 471 R/W 468 IPC
A3	U/s.120(B) r/w 409 IPC, 420, 467, 468 r/w 471 IPC and Section 13(2) r/w 13(1)(d) of P.C Act, 420, 467, 468, 471 R/W 468 IPC

7. To prove the charges, the prosecution has examined 14 witnesses and marked 50 exhibits. In defence, 5 exhibits were marked. As a Court document, Statement of Account of No due certificate of P.Dhavamani was marked as Ex.C1.

8. The Trial Court held that A1 the Bank Manager, who is a public servant, failed to take care of the financial interest of the Bank and had breached the trust by sanctioning loan without ascertaining the sale of Power Tiller by the dealer (A2), thus also committed offence of misconduct by a

public servant. The prosecution has proved that without purchase of Power Tiller, A3 has enjoyed the loan and without supply of Power Tiller, the loan amount being misappropriated through the dealer (A2), thereby, all A1 to A3 have cheated the bank pursuant to consipiracy. Therefore, the Trial Court found the accused guilty of conspiracy and cheating. Sentenced them as below:-

Name of the accused	***Charges***	***Punishment***
A1	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 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.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	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 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

Name of the accused	Charges	Punishment
		fine of Rs.10,000/-, in default to undergo one year S.I.
A3	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 one year R.I and fine of Rs.1,000/-, in default to undergo 3 months S.I.
	U/S.420 IPC	To undergo one year R.I and fine of Rs.1,000/-, in default to undergo 3 months S.I

9. Regarding the forgery and using the forged document as genuine, the Trial Court held that the prosecution failed to prove the charges under Section 467, 468, 471 r/w 468 IPC as against A1 to A3 and therefore, acquitted them.

10. Aggrieved by the conviction and sentence V.Kannan (A1) has preferred Criminal Appeal No.743 of 2018, wherein it is contended that based on the invoice and legal opinion, loan was sanctioned to P.Dhavamani (A3). It is incorrect to say that the Bank Manager failed to conduct pre and post sanction inspection. The prosecution has not proved that A3 had no intention to purchase Power Tiller or he did not purchase any Power Tiller from A2. Merely because the Power Tiller was not registered in the RTA Office and Insurance not obtained, the Trial Court has presumed that Power

Tiller was not purchased from out of the loan sanctioned. For the said purpose, the proceedings recorded by the Investigation Officer during the investigation relied. The statement of an accused to the Investigation Officer in the course of the investigation is inadmissible in law. Contrary to the law of evidence, the statement to police is relied by the trial court to convict the accused.

11. The learned counsel appearing for A1 also submitted that the FIR came to be registered on 21.05.2010 in respect of the loan sanctioned to P.Dhavamani (A3) on his application dated 06.10.2008. The loan was sanctioned on the same day. The money was transferred to the account of M/s.Shiv Kumar Agro Service maintained at Corporation Bank, Tiruvannamalai Branch. While sanctioning the loan, the hypothecation letter obtained from the borrower and title deed of his property taken as collateral security. Therefore, it is incorrect to hold that A-1 had a dishonest intention to cheat the bank or sanctioned loan to A-3 illegally.

12. Solely based on the complaint of R.S.Raghavan, the Trial Court erred in holding that the loan sanctioned for a Power Tiller was not supplied. It failed to appreciate that PW-2 Raghavan has not collected material to prove power tiller not supplied. He had not submitted documents which he

claim to have collected. The prosecution witnesses admit that registration of Power Tiller at RTO office is not a mandatory requirement under the Motor Vehicles Act. The Trial Court failed to appreciate the fact that the loan application along with promissory note and hypothecation deed is in a booklet form. However, the Investigation Officer has segregated the booklet and filed only selected documents before the Court. The Trial Court failed to take note of the fact that the property of the borrower after getting the legal opinion being taken as a collateral security and the loan amount iswell secured. Further, the borrower had discharged the loan pending trial and No dues certificate issued by the Union Bank of India is marked as Ex.C1. Therefore, he submitted that it is a misconception on the part of the Trial Court to hold that A1 has caused loss to the Bank to the tune of Rs.2,10,731/-.

13. The learned counsel appearing for the dealer-Arunachalam (A2), who is the appellant in Crl.A.No.695 of 2018 contended that the Trial Court failed to appreciate that the prosecution has failed to marshal evidence to bring home the guilty of the appellant, who is charged for not supplying the Power Tiller to A3 in spite of receiving the sale consideration. The invoice and statement of accounts would prove that the Power Tiller was sold to A3

and he has taken delivery of it. Later, A-3 had repaid the entire loan amount. The beneficiary (A3) of the loan came to know that the performance and the quality of the Power Tiller was not up to his expectation and therefore, wanted to cancel the order and foreclose the loan. Since it is only a proforma invoice, Engine number and Chassis number not provided. Only at the time of the delivery of the Power Tiller, the Engine number and Chassis number of the Power Tiller sold, can be mentioned. However, the Trial Court referring the proforma invoice, had presumed that with dishonest intention, A2 has given the proforma invoice and got the money from the Bank through A3.

14. The learned counsel appearing for the borrower P.Dhavamani (A3) referring Ex.C1, contended that the conviction by the Trial Court without considering Exs.D1 to D5 and C1 is bad in law. There is no forgery or fabrication of document for availing the loan and the Trial Court has rightly held that the prosecution has failed to prove the charge of forgery.

15. Per contra, the learned Special Public Prosecutor submitted that it is a case of dishonest disbursement of Power Tiller loan without proper scrutiny of documents and physical inspection. Fake invoice and documents were produced for disbursement of loan to A3 Rs.1,70,000/- sanctioned for

purchase of Power Tiller was misappropriated without purchasing Power Tiller. There is no piece of evidence in the loan file of A3 to show that Power Tiller was sold to A3 from out of the loan amount sanctioned. A3 by producing proforma invoice without any detail in connivance with A1 & A2 withdrew the loan amount of Rs.1,70,000/- and misappropriated the same. Later, the loan amount was not paid by A3 and only after initiating the criminal prosecution, A3 came forward to repay the loan under One Time Settlement Scheme. Therefore, the Spl. PP submitted that , the belated repayment of loan, after initiating prosecution cannot be a ground for acquittal.

16. Relying upon the evidence of PW3-D.Kathiresan, who had spoken about the overt act of each of the accused persons and the loan document in respect of Power Tiller loan sanctioned to P.Dhavamani (A3), the learned Special Public Prosecutor (CBI) submitted that without any details and process note, the loan application of P.Dhavamani (A3) considered positively by A1 and sanctioned Rs.1,70,000/- based on the proforma invoice issued by A2. Ex.P12 series, which is the loan file show that the invoice for the Power Tiller not obtained by A1. A2- the supplier had not furnished the invoice for Power Tiller with the Engine number and Chassis number. The

valuation report for the property given as collateral security ought to have been issued by Deputy Tahsildar, whereas the borrower has obtained the valuation certificate from VAO and the same has been accepted by A1 contrary to the Banking Rule.

17. The learned Special Public Prosecutor (CBI) further submitted that though the Motor Vehicles Act might have made registering the Power Tiller a optional. However, as per the Bank Regulations, it is mandatory to register the Power Tiller purchased through loan and hypothecated to bank. The power till must also duly be insured. In this case, A1 had not taken care to Register the Power Tiller and insure the vehicle. Knowingly, he had omitted to do so, since there was no Power Tiller purchased by A3 from A2.

18. The learned Special Public Prosecutor (CBI) referring the proforma invoice/quotation issued by A2 dated 06.10.2008 in the name of P.Dhavamani (A3) submitted that it is only a quotation and not sale invoice. There is no bill or receipt for thesale of Power Tiller by M/s.Shiv Kumar Agro Service to P.Dhavamani (A3). The contention of A2 that only after sanction of loan, invoice will be raised will no way help the appellants/accused, since based on the proforma invoice dated 06.10.2008, loan was sanctioned on the same day by A1 and encashed by A2 through A3.

Thereafter, no document to show that the Power Tiller was delivered to A3 by A2. Nothing prevented A2 to furnish the details of the sale of Power Tiller to A3. He could have produced his purchase details from the manufacturer and delivery detail to the buyer (A3). The date of sale and delivery, which is exclusively within the knowledge of A3 not being disclosed by him and therefore, the Trial Court judgment has to sustain.

19. Heard the Learned Counsels representing the appellants. Records perused. The submission made by the Learned Special Public Prosecutor appearing for the respondent/C.B.I taken into consideration.

20. The specific charge against these accused is that the loan of Rs.1,70,000/- sanctioned to A3 for purchasing the Power Tiller based on the proforma invoice given by A2-the dealer of Power Tiller, was in fact not really utilised for the purchase of the Power Tiller. As far as A1, the charge against him is that he as the Bank Manger, entrusted with the property of the Bank and having domain over it, failed to ensure the sale of Power Tiller after sanctioning and disbursing the loan amount.

21. To substantiate the allegation, the prosecution has examined as many as 14 witnesses and marked 65 exhibits. In defence, 5 documents filed

and also Ex.C1 is relied. The 5 defence documents does not indicate that there was real sale of Power Tiller by A2 to A3. The defence documents pertaining to the performance of A1 and the disciplinary proceedings initiated against A1. These documents does not provide any light to the fact whether after issuance of the proforma invoice/quotation for the Power Tiller, which has prompted A1 to sanction loan to A3, the power tiller was really sold and delivered to A3.

22. Being a motor vehicle, the sale of Power Tiller is a fact, which could be inferred by proving the existence of a Power Tiller and sale of the Power Tiller by invoice and due registration of the motor vehicle in the RTO office concern. The registration of Power Tiller if used for agricultural purpose only, the registration with RTA is optional under the Motor Vehicles Act. However, when the Power Tiller is purchased on a loan and the Bank Rule mandates the Manager, who disbursed the loan to ensure the registration of the Power Tiller with the RTA, that mandatory provision cannot be ignored. In this case, A1 has grossly violated the mandates imposed on him by the Bank. He has not only failed to get the Power Tiller registered, he has not even taken care to get sale invoice from the dealer with the details of Engine number and Chasis number of the Power Tiller.

23. While dishonesty in availing the loan is proved, the repayment of the loan amount in the year 2012 under the One Time Settlement scheme as found in Ex.D1 could only be a ground to mitigate the punishment. Likewise, from the defence document, this Court finds that in the domestic enquiry, the major penalty of dismissal imposed on A-1 later modified into a major penalty of reduction in rank from MMGS-III to JMGS-I. So, it is clear that the department has also found A1 guilty of misconduct, which warrants major penalty.

24. In the said circumstances, this Court finds no error in the judgment of the Trial Court which found A1 to A3 guilty of conspiracy and cheating. However, taking note of the fact that the money has been later settled under OTS (One Time Settlement) scheme, the term of sentence is modified as below:-

Name of the accused	***Charges***	***Punishment as modified***
A1	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 and fine of Rs.10,000/-, in default to undergo one year S.I.
	U/s.420 IPC	To undergo 2 years S.I., and fine of Rs.10,000/-, in default to undergo one year S.I

Name of the accused	***Charges***	***Punishment as modified***
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A2	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 One year S.I and fine of Rs.10,000/-, in default to undergo 3 months S.I.
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A3	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 one year S.I and fine of Rs.1,000/-, in default to undergo 3 months S.I.
	U/S.420 IPC	To undergo one year S.I and fine of Rs.1,000/-, in default to undergo 3 months S.I

25. The period of substantive sentence shall run concurrently. The period of imprisonment already undergone shall be set off. For A-1, the period of sentence imposed in C.C.No.7 of 2012 shall run concurrently along with C.C.No.4 of 2012.

26. Accordingly, these Criminal Appeals are partly allowed. The judgment of conviction passed by the trial Court in C.C.No.7 of 2012 by XI

Dr.G.JAYACHANDRAN, J

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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

Index :Yes/No.
Speaking order/non speaking order

Neutral Citation Case: Yes/No.
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.

Criminal Appeal Nos. 695, 743 &
752 of 2018