IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2024

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.126 of 2012

Nirmala Sundararaman ... Appellant/Accused-1

Vs.

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

PRAYER:The Criminal Appeal is filed under Section 374(2) of Cr.P.C., to set aside the judgment dated 27.01.2012 made in C.C.No.30 of 2005 by the XI Additional City Civil and Sessions Judge, (CBI Cases relating to Banks and Financial Institutions), Chennai.

For Appellant : Mr.A.Nagarajan for
Mr.K.R.Ramesh Kumar

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor for CBI Cases

JUDGMENT

The present Criminal Appeal has been filed by the appellant/A1 in C.C.No.30 of 2005, challenging the judgment of conviction and sentence dated 27.01.2012 rendered by XI Additional City Civil and Sessions Judge, (CBI Cases relating to Banks and Financial Institutions), Chennai.

2. Three accused are involved in this case. Nirmala Sundararaman who is arrayed as A1 before the trial Court is the appellant herein and A2, B.Natarajan and A3-Sundaramal were found not guilty of the offences punishable under Sections 120(b) read with 420 IPC and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and were acquitted under Section 248(1) Cr.P.C. A1 was acquitted for the offences punishable under Section 120(b) read with 420 IPC and found guilty for the offence punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, the sentence imposed upon the appellant/A1 is as under:-

Under Section	Sentence
13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988	One year simple imprisonment and a fine of Rs.5000/-, in default, to undergo three months simple imprisonment.

3. **The brief facts of the prosecution case:-**

3.1. The appellant viz.,Nirmala Sundaraman(A1), was working as the Branch Manager in Triplicane Branch, Chennai, during 1988-1989 and B.Natarajan(A2) was working as Regional Manager, Indian Bank during the relevant period are the public servants under Section 2(c) of Prevention of Corruption Act, 1988.

3.2. A3, Sundarambal was the Proprietrix of M/s. Sudha International Film and had approached the Branch Manager (A1), Triplicane Branch, Chennai, and had submitted an application on 05.12.1988 for sanctioning overdraft of Rs.4 lakhs by mortgaging the title deeds for the purpose of producing Tamil Feature Film. As A3 viz.,Sundarambal was not having any account with the Indian Bank, Triplicane Branch, Chennai, an account was opened on 12.12.1988 without any proper introduction. A1 recommended for sanction of loan and forwarded the proposal to the Regional Manager with an endorsement that "party is in the film industry for the past 20 years". A1 did not conduct any pre-sanction verification before recommending the loan. When the papers were under process by the Regional Office/Zonal Office, A1, by abusing her personal official position as public servant, had allowed A3 to withdraw a sum of Rs.50,000/- on

15.12.1988. The said proposal was rejected by the Regional Office and on the persuasive efforts by A1, this was mooted out for consideration and the Regional Office had recommended the loan and forwarded the proposal to the Zonal Office, but failed to inform about the earlier rejection and finally, the Zonal Office declined the proposal on 26.02.1989. The total outstanding on the account of A3-Sundarambal on 11.03.1989 was Rs.4 lakhs and in the meanwhile on 08.03.1989, A1 had informed the Regional Office that she had allowed A3 to withdraw a sum of Rs.1 lakh in anticipation of the sanction and again requested for sanction of proposal deliberately omitting an amount of Rs.3 lakhs, which she had allowed.

3.3 Again, the Regional Office had recommended the Zonal Office to sanction the loan since the party had brought the sale deed of immovable property worth Rs.8 lakhs, but the Zonal Office had declined to interfere since the sanctioning of advances to Cinema Industry is a speculative one. The overdraft granted to A3 went bad and bank had initiated steps to file a suit and A2 initially agreed for civil suit but later made a false endorsement as if recommendation was sent to the Zonal Office and it was subsequently declined and unduly delayed in the Zonal Office. Meanwhile, they have authorised the branch to release the limit in view of deposit collection. The endorsements available were done with dishonest and mischievous intention in order to mislead the Zonal Office and further A2 had directed A1 to obtain a revival letter from the guarantor before the demand promissory note expires.

3.4. The allegation against A1 is that by the above said act she along with A2 Public Servant and A3 Private Individual conspired and cheated the Indian Bank to the tune of Rs.4 lakhs for obtaining wrongful pecuniary advantage and loss to the bank. The respondent, after completion of the investigation, had filed the final report against the three accused under Sections 120(b) read with 420 IPC and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988.

3.5. On issuance of summons, the accused had appeared before the trial Court and the memo of appearance was filed through their counsel. In due compliance of Section 207 Cr.P.C., copies were furnished to the accused.

3.6. After hearing both sides, charges were framed against A1 to A3 for the offences punishable under Sections 120(b) read with 420 IPC and under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. The accused denied the charges and sought to be tried.

3.7. On the side of the prosecution, P.Ws.1 to P.W.16 were examined and Exs.P1 to P33 were marked and on the side of the defence D.W.1 and D.W.2 were examined and Exs.D1 to D25 were marked.

3.8. Based on the incriminating evidence against the accused, when the accused questioned under Section 313 Cr.P.C., the accused pleaded not guilty.

3.9. The trial Court, after hearing the arguments of prosecution as well as the defence, finding that there was no evidence either direct or circumstantial to show that there was conspiracy between A1, A2 and A3 and also finding that A2 had declined the proposal as early as on 27.12.1988 and in respect of A3, finding that she had not made any misrepresentation for availing the loan, had acquitted A2 and A3 of all charges and had found the appellant/A1 alone guilty for the offence under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, and sentenced her to undergo imprisonment as stated above. Assailing the judgment of conviction and sentence imposed by the trial Court, the present Criminal Appeal has been filed by A1.

4. Mr.A.Nagarajan, learned counsel for Mr.K.R.Ramesh Kumar, learned counsel appearing for the appellant/A1, while assailing the

impugned judgment of conviction and sentence, would contend as follows:

(i) The trial Court having found that there was no evidence to substantiate the conspiracy between A1, A2 and A3 and having acquitted A2 and A3, ought to have acquitted the appellant/A1 also;

(ii) Taking into consideration the entire evidence on record, there is absolutely no materials against the appellant/A1 for making out offence under Section 13(1)(d) of the Prevention of Corruption Act.

(iii) The evidence of the bank officials P.Ws.1 to P.W.4 and P.Ws.6 to P.W.8 and Ex.P5-loan application supported by the deposit of original title deed of immovable property situated at No.16, Ramasamy Naicken Street, Alwarpet, Chennai-60018, which was valued at Rs.8 lakhs during the relevant period and that the amount, which allowed to be withdrawn, was only Rs.4 lakhs would prove that the interest of the bank is very much secured and that the bank has not suffered any loss.

(iv) The trial Court had failed to take into consideration the evidence of bank officials viz.,P.Ws.1 to P.W.4 and P.Ws.6 to P.W.8, which would show that the appellant had acted within the parameters, and prevailing bank rules and practice regarding grant of loans during the relevant point of time and the appellant had not suppressed the fact of grant of loan to the higher officials and the trial court having held A2 who had played a similar role as not guilty ought to have acquitted the appellant/A1.

(v) Admittedly, it is the evidence of P.Ws.15 and P.W.16, Investigating Officers that the interest of the bank was protected by 200% and they have also admitted that the accused had not violated any circulars or manual of the bank, more particularly; the loan of Rs.4 lakhs allowed to be withdrawn by A3 was only 50% of the security offered.

(vi) The trial court had failed to take into consideration the long delay in according sanction that the case was registered on 31.05.1991 and the sanction was accorded much belatedly on 02.11.2005 i.e.,after 14½ years and the evidence of P.W.1 would show that there was non application of mind.

(vii) The trial Court had also not considered the fact that the bank has not suffered any wrongful loss and Exs.P21, P22, P24 and P25 established the settlement of loan with interest and the Debts Recovery Tribunal had also directed the bank to return the documents given as collateral security to A3 and thereby, the learned counsel for the appellant would seek to allow the appeal.

5.1. Per contra, Mr.K.Srinivasan, learned Special Public Prosecutor for CBI cases, would submit that the appellant was working as Branch Manager, Indian Bank, Triplicane Branch, Chennai, during the period between 17.03.1988 and 19.08.1990. A2 viz.,B.Natarajan was working as Regional Manager, Indian Bank, Chennai during the relevant period and A3 viz.,Sundarambal was the Proprietrix of M/s Sudha International Film and on 05.12.1988, A3 had approached A1 and submitted her loan application for overdraft facility of Rs.4 lakhs by mortgaging title deeds for the property situated at No.16, Ramasamy Naicken Street, Alwarpet, Chennai-60018, which was worth about Rs.8 lakhs for the purpose of producing Tamil Feature Film. The appellant/A1 on 06.12.1988 without conducting any pre-sanction verification, had sent the proposal of A3 to the Regional Office for approval and that on 12.12.1988, she had allowed A3 to open an account without proper introduction and on 15.12.1988, A1 had allowed A3 to withdraw a sum of Rs.50,000/- and subsequently another sum of Rs.50,000/- overdraft pending sanction from the Regional Office. While so, on 24.12.1988, the proposal was declined by A2 from Regional office and thereafter, A1 had sent recommendation of the original proposal to the Regional office based on the original title deeds and the same was forwarded to Zonal office by the Regional Office on 13.02.1989 and the said proposal recommended by A2 was once again declined by the Zonal Office on 28.02.1989 and on 08.03.1989, Regional office had sent a recommendation again to the Zonal office for sanction of the said overdraft and even before the approval and sanction of the loan, A1 had allowed A3 to withdraw the balance sum of Rs.3 lakhs and thereby, A1 and A2 by abusing their official position as public servants made A3 to obtain wrongful pecuniary advantage for herself and caused loss to the Indian Bank.

5.2. Learned Special Public Prosecutor would further submit that A2 and A3 were acquitted and no appeal has been preferred by CBI as against their acquittal. He would further submit that the bank had filed T.A.No.484 of 1997 before the Debts Recovery Tribunal, Chennai, against A3 viz., borrower and two others and the defendants had repaid Rs.27 lakhs including interest as full and final settlement of the entire dues and the property had also been realised and No Due Certificate has also been issued vide Ex.D22.

6. Heard Mr.A.Nagarajan, learned counsel for Mr.K.R.Ramesh Kumar, learned counsel appearing for the appellant/A1 and Mr.K.Srinivasan, learned Special Public Prosecutor for CBI Cases appearing for the respondent.

7. This Court gave its careful and anxious consideration to the rival contentions putforth by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgment of conviction including the relevant provisions of law.

8. What has to be seen is (i) whether the impugned judgment of conviction and sentence imposed on the appellant/A1 is in accordance with law and (ii) whether it is based on proper appreciation and analysis of evidence and whether the trial Court is right in convicting the accused.

9. In this case, the appellant/A1 along with A2 and A3 were charged for the offences punishable under Sections 120(B) read with 420 IPC and under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act,

1988. The trial Court finding that charges against A2 and A3 were not proved and that there was no direct or circumstantial evidence to show that there was conspiracy between A2 and A3, had acquitted them. However, the trial Court found that the prosecution has proved the guilt of A1 for misconduct and convicted her for the offence punishable under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced her to undergo simple imprisonment for one year.

10. The first and foremost contention raised by the learned counsel for the appellant/A1 is that though a case was registered against A1 to A3 on 31.05.1991, the sanction was accorded to prosecute them only after 14½ years from the date of registration of the First Information Report i.e.,on 02.11.2005 and the delay is not explained properly. P.W.1 had been nominated as Disciplinary Authority for Scale-III, IV and V officers of Indian Bank through Ex.P2-letter dated 01.08.2001 and thereby, on 02.11.2005, he had accorded sanction to prosecute the appellant/A1 through Ex.P3. P.W.1 in his cross examination deposed that at the time of sanction he was not aware that Indian Bank had initiated DRT recovery proceedings and he was also not aware whether A3 had given property at Alwarpet as

security and he was aware that at the relevant point of time, for the loan amount of Rs.4 lakhs, the property given as collateral security was sufficient.

11. It is the case of the appellant that there is no material to show that she had committed the offence of criminal misconduct by corrupt or illegal means or that she had obtained for herself or for any other person any valuable thing or pecuniary advantage; or that she had abused her position as a public servant for obtaining any valuable thing or pecuniary advantage. In the case on hand the appellant/A1 had allowed A3 to withdraw a sum of Rs.4 lakhs towards overdraft taking into consideration the value of the property offered as security is double the sanctioned amount and that A1 had not suppressed the overdraft loan granted to A3 and it was then and there intimated to the superiors viz., Zonal Office and Regional Office and absolutely, there is no violation of any circular or rules of bank by A1.

12. The next contention raised by the learned counsel for the appellant is that the trial Court had failed to take into consideration the evidence of the Bank Officials viz.,P.Ws.1 to P.W.4 and P.W.6 to P.W.8, who have deposed that loan application(Ex.P5) was based on collateral security offered, which

was more than 200% of the loan amount. It is the case of the appellant that A3 had opened an account and had sought for overdraft facility during Navarathri period based on title deeds worth about Rs.8 lakhs as security for the same, she had also taken into account the credentials of the customer and based on the title deeds, had granted overdraft facilities. It is also the case of the appellant that A3 was allowed to withdraw the amount based on oral instructions of the senior officers and it was the banking practice prevailing at the relevant time and relied on the evidence of P.W.11, Valuer, who had inspected and valued the property. PW11 had valued the property to be more than Rs.8 lakhs. Further, it is also the case of the appellant that there was absolutely no criminal intent and that she had not obtained any pecuniary gain on for herself or others and that she had not suppressed the release of fund and she had also informed the same to her higher officials and that there was absolutely no violation of any circular or rules of bank.

13. Analysis of evidence, more particularly the evidence of the Bank Officials would show that in the banking practice, if a party, who sought loan, had brought any deposit or title deed for immovable property as security it would also be considered as one of the ground for sanctioning

loan. In this regard, it is relevant to go through the evidence of the prosecution witnesses.

(i) P.W.1, General Manager, though had accorded sanction to prosecute A1, had deposed that the value of the property given as security was more than the amount of the loan and marked the loan application as Ex.P5.

(ii) P.W.2, who was the Assistant Branch Manager in A1's branch, while marking Exs.P4 to P12, had deposed that A1 had sanctioned the proposal of overdraft facilities(Ex.P11) for a sum of Rs.4 lakhs on title deeds to A3 and Ex.P5-loan application was processed by the then loan officer and that the loan had been given against deposit of title deeds and there was scrutiny of credit worthiness of the assets given on deposit of title deeds.

(iii) P.W.3, though declined the proposal of loan, he deposed that there was no specific prohibition for extending the loan facilities to the cinema industry and the loan amount sanctioned by Triplicane branch was based on collateral security and if there was any default, the bank can proceed against the property offered as collateral security and thereby, the loan amount was fully secured.He had further deposed that the loanee / A3 had canvassed for fixed deposits and she was considered be a valuabe customer and that there was no rule prohibiting loans to Cinema Industry. He had also admitted to have recommended the loan since it was fully secured.

(iv) P.W.4, the officer in Zonal Office Credit Department had though recommended and processed the file to the Deputy Chief Officer in turn to the Zonal Manager (P.W.6) had declined the proposal and communicated the same to Regional Officer through Ex.P18 on 28.02.1989 and deposed that if there was any default in repayment, the bank can very well attach the property and realise the loan amount.

(v) P.W.6, Zonal Manager, though declined the proposal on 26.02.1989 vide Ex.P17-note, in his cross-examination he had deposed that the security offered for the loan proposal was 200% more than the loan and that powers of grant of loan worth Rs 8 Lakhs was within the powers of the regional Office.

(vi) P.W.7, Deputy Chief Officer in Zonal Office, though had recommended for rejection of the proposal, in his cross-examination, had deposed that A2 was in the cadre of Assistant General Manager and had got powers to sanction loans upto Rs.20 lakhs and he had not mentioned in his note that under what circular/guidelines the proposal has been declined by his office and if any oral instruction was given by the superiors for sanctioning that can be ratified subsequently.

(vii) P.W.8, while he was working as Deputy Chief Manager in the Regional Office, on 13.02.1988 under Ex.P17 had annexed the proposal and forwarded to the Zonal Office to consider for overdraft loan of Rs.4 lakhs based on title deeds worth about 8 lakhs. He had further deposed that if any request is made by the Branch Manager, it will be ratified later and that based on the note-Ex.P21, he had also written a letter-Ex.P22 to the Zonal Office recommending sanction. In Ex.P21-letter, he had noted that the Regional Manager had instructed to write to Zonal Manager pointing out that he had promised to consider the proposal during Navarathri celebrations and that was sent on 08.03.1989 and as per banking practice if the higher officials informed through phone or in person to release the loan, part amount will be released and ratification will be later sought for. He has also admitted that he was not aware as to whether there is any prohibition to sanction advances to the cinema industry and that if a proposal is declined, the reprocessing of the same proposal is a routine banking practice and he has also admitted that in Ex.P17 he had recommended for sanction of overdraft/title deeds of Rs.4 lakhs and he has also signed in the same.

(viii) P.W.15, Inspector of Police, CBI/ACB/Chennai, had deposed that the witnesses examined by him did not state that giving financial assistance to the film industry is prohibited and that the value of the property offered as collateral security is valued at Rs.8 lakhs at the time of availing loan and that the quantum of the facility given by the bank was Rs.4 lakhs and the banks security was protected by 200%.

(ix) PW16, the Investigating Officer, had itself deposed that he was not in a position to say that which circular or manual of instructions was violated by the appellant/A1. From the evidence it is seen that though P.W.2, P.W.3, P.W.6 and P.W.7 had declined or rejected the proposal, all of them had accepted that the security offered by A3 for the loan amount sanctioned by A1 was more than the amount of loan and if there is any default, the bank can proceed against the property offered as collateral security and thereby, the loan amount was fully secured. If a loan proposal is declined, the reprocessing of the same proposal is a routine banking practice. In the case on hand, the process of same proposal done by A1 is not against the banking rules. Though the Zonal Office had declined the proposal, P.W.7 had accepted that he had not mentioned in his note that under what circular/guidelines the said proposal has been declined by his office. It is also revealed from evidence that as per banking practice if the higher officials informed through phone or in person to release the loan, part amount will be released and ratification will be sought for later.

14. Moreover from the above evidence of prosecution witnesses, it is also clear that the interest of the bank is protected by obtaining security more than or double the value of the loan amount and A3, in her defence, had marked Ex.D1, which is relating to powers of sanctioning of advances/facilities by M.D., E.D., GM. As per Ex.D1, the powers of the Regional Manager are as follows:

	Nature of Advance/Facility	**ZCC**	**DGM/ZM**	***AGM***	***RM/CM***
		(Fresh/	**Additional/**	**Increase/**	**Renewal)**
*2.	Out of 1(a) term loans without refinance not to exceed	30	20	5	2.5
b.	To any one non-corporate borrower /any one individual/firm/group of firms	75	50	20	15

15. In his defence, A2 public servant had marked Exs.D21 to Ex.D25. Ex.D21 is the Order made in T.A.No.484 of 1997 dated 12.11.10 by the Debts Recovery Tribunal-I, Chennai) directing the bank to release the documents deposited as Collateral Security ; Ex.D22 is the No Due Certificate issued by the Indian Bank, Ethiraj Salai, Chennai; Ex.D24 is the letter dated 22.1.2011 from Indian Bank, Ethiraj Salai Branch, Chennai) and Ex.D25 is the copy of order in T.A.No.484/1997 dated 12.11.2010 by the District Judge, Debts Recovery Tribunal-I, Chennai.

16. On perusal of the above documents, it is seen that the interest of the bank has been secured and the trial Court had not believed the conspiracy angle and also found that A3 had not obtained overdraft facility with an intention to cheat the banker and the prosecution has not proved charge Nos.1, 2 and 4 and thereby, the trial Court had found A1 to A3 not guilty under Section 120(B) read with 420 IPC.

17. It is an admitted case that A1 had sanctioned overdraft loan based on collateral security by mortgage by deposit of title deeds worth twice the

value of the loan availed and the same had been settled with interest, which has been proved through Exs.D21 to Ex.D25 and there is no loss caused to the Indian Bank, Triplicane Branch. Further there is absolutely no substantive evidence or material on record to show that the appellant being a public servant had committed the offence of criminal misconduct by corrupt or illegal means and by abusing her position as public servant had obtained for herself or for any other person any valuable thing or pecuniary advantage. Much less there is no evidence to show that she had acted with any criminal intent. When the evidence of Bank officials and the Investigating Officers had supported the said factum of settlement and that the bank is also protected by obtaining title deeds worth about 8 lakhs and the proposal of loan made by A3 was only for Rs.4 lakhs and A1 had also intimated the said fact to the Zonal Office as well as Regional office properly and there being no evidence of criminal intent, this Court is of the view that the prosecution has not proved the alleged charge against A1 for offence under Sec 13(1)(d) of the Prevention of Corruption Act by cogent evidence and the trial Court, without properly analysing the documents and appreciating the evidence adduced by bank officials and also the Investigating Officers, had erred in convicting the appellant/A1. The finding arrived at by the trial court is without any legal evidence on record. In view of the above discussions, the judgment of conviction and sentence made by the trial against against the accused has to be set aside.

18. In the result, the conviction and sentence imposed on the appellant/A1 in C.C.No.30 of 2005 dated 27.01.2012 on the file of XI Additional City Civil and Sessions Court (CBI cases relating to Banks and Financial Institutions), Chennai, for the offence under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act,1988, is set aside and the Criminal Appeal stands allowed. The appellant is acquitted from the charges levelled against her. The bail bond, if any, executed by her during trial, shall stand cancelled and the fine amount, if any, paid by the accused, shall be refunded to her.

04.01.2024

Index:Yes/No

Internet:Yes/No

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To

1. The Additional City Civil and Sessions Judge,
(CBI Cases relating to Banks and Financial Institutions),
Chennai.

2. The Inspector of Police,
SPE/CBI/ACB/Chennai.

3.The Public Prosecutor,
High Court, Madras.

A.D.JAGADISH CHANDIRA,J.

raa

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04.01.2024