IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **27.03.2024**

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.749 of 2015

1. B.R.Jayanthi
2. C.Punyavathi
3. B.R.Kashinath (Died)

   (Appeal against the third appellant stands abated
   as per the order passed by this Court on 31.10.2023)
4. B.R.Badrinath ... Appellants

Vs.

The State represented by,
The Inspector of Police,
Central Bureau Investigation,
CBI/ACB, Chennai. ... Respondent

PRAYER : Criminal Appeal filed under Section 374 of Criminal Procedure Code, pleased to set aside the judgment dated 30.11.2015 passed by the XI Additional Special Court for CBI Cases at Chennai in C.C.No.23 of 2003, and allow this Criminal Appeal.

For Appellant 4 : Mr.S.Vijayakumar, Senior Advocate for M/s.G.Krishnakumar
For Appellants 1 & 2 : Mr.R.John Sathyan, Senior Advocate for M/s.G.Krishnakumar
For Respondent : Mr.K.Srinivasan Special Public Prosecutor for CBI

JUDGMENT

This Criminal Appeal has been filed by the appellants herein, who are arrayed as Accused 3 to 6, against the judgment of conviction and sentence dated 30.11.2015, imposed by the XI Additional Special Court for CBI Cases, Chennai, in C.C.No.23 of 2003, for the offence under Sections 120B r/w 420, 468, 471 IPC r/w Section 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988.

2. The case of the prosecution as per the final report is that the first and second appellants/A3 & A4 respectively are the partners of M/s.Madhura International Private Limited and in the year 1990, they had approached Indian Bank, Overseas Branch, Chennai, for a cash credit limit of Rs.95,40,000/- and Foreign Bills Purchase of Rs.128.95 lakhs and offered a property at Panathadi Village, Kerala to an extent of 120 acres to the value of Rs.1,50,00,000/- belonging to one Venkataramana Udupa as collateral security to secure the loan

amount. Based on the document, the Zonal Manager, Indian Bank, on 28.02.1990, had sanctioned about Rs.50 lakhs towards Packing Credit/Hypothecation, Rs.65 lakhs towards Foreign Bills Negotiation and Rs.25 lakhs towards Sublimit : Foreign Bills Purchase.

3. Whileso, the Bank had disbursed a sum of Rs.50,20,500/- as EPC Disbursement and an amount of Rs.10,99,608/- vide TOD, thereby, the total amount disbursed is about Rs.61,20,108/-. Thereafter, the accused had repaid a sum of Rs.16,10,119/-. Thereafter, the loan amount became NPA and the Bank proceeded to recover the dues and during such time, it was found that the property offered as collateral security was not 120 acres but only 12 acres and it came to light that the appellants/accused, along with Bank Officials (A1 & A2) and Bank Valuer (A7), had entered into a conspiracy and by furnishing a fabricated document as collateral security, had cheated the Bank. Therefore, the Bank has sustained a loss of Rs.1,31,49,549/- and the accused had obtained a wrongful gain for themselves and caused a wrongful loss to the Indian Bank, Overseas Branch to the tune of Rs.1,31,49,549/- and thereby, the accused have committed the offence under Sections 120B r/w 420, 468, 471 IPC r/w Section 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988.

4. Final Report was filed before the learned Principle Special Judge for Cases, Chennai and the same was taken up for trial in C.C.No.23 of 2003. On appearance of the accused, charges were framed against them for the offence under Sections 120B r/w 420, 468, 471 IPC and Section 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988. During the trial, the second accused (Public Servant), who was the Bank Official and A7/Approved Bank Valuer passed away and the trial was conducted in respect of A1 and A3 to A6. The prosecution had examined PW1 to PW22 and marked Ex.P1 to Ex.108 to prove the charges levelled against the accused.

5. After completion of evidence on the prosecution side, when the accused were questioned under Section 313 Cr.P.C., they had denied the charges and on their side, they had examined DW1 and DW2 and marked Ex.D1. Further, the trial Court had examined CW1 and marked Ex.C1.

6. The defence taken by accused 3 to 6 through Ex.D1 was that they had approached the Broker for a document as collateral security and the broker had cheated them by providing a fabricated document.

7. The trial Court, after hearing the arguments of both sides, had acquitted the first accused from all the charges and found accused 3 to 6 guilty and convicted them. The conviction and sentence imposed against each of the appellant is as follows:-

Accused	**Under Section**	***Sentence***
A3 to A6	Sections 120B r/w 420, 468, 471 IPC and Section 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988	Four years rigorous imprisonment and a fine of Rs.7,50,000/-, in default to undergo twelve months simple imprisonment.
	420 IPC	Four years rigorous imprisonment and a fine of Rs.7,50,000/-, in default to undergo twelve months simple imprisonment.
	468 IPC	Four years rigorous imprisonment and a fine of Rs.7,50,000/-, in default to undergo twelve months simple imprisonment.
	471 IPC	Four years rigorous imprisonment and a fine of Rs.7,50,000/- ,in default to undergo twelve months simple imprisonment.
The Sentences shall run concurrently		

The total fine amount imposed by the trial Court against all the appellants/A3 to A6 is about Rs.1,20,00,000/-. Further, the trial Court had directed the appellants to pay a sum Rs.1,13,75,000/- out of the total fine amount to the Bank as compensation.

8. Against the acquittal of A1, no appeal has been filed and the present Appeal has been filed by the appellants/accused 3 to 6 assailing the judgment of conviction and sentence passed by the trial Court. During the pendency of this Criminal Appeal, the third appellant/A5, Kashinath has passed away, thereby, this Court, by an order dated 31.10.2023, has recorded that the charges against him got abated.

9. The submissions of Mr.S.Vijayakumar and Mr.R.John Sathyan, learned Senior Advocates representing Mr.G.Krishnakumar, learned counsel for the appellants are as follows :-

9.1. The appellants are senior citizens and are relatives and they hail from a respectable family. The first and second appellants, who are ladies, had started a business in the name of M/s.Madhura International for exporting leather garments in the year 1989 and late B.R.Kashinath, third appellant herein, was the Chief Executive Officer of the Firm. During the course of business, for the extension of their business, they had approached the Indian Bank, Overseas Branch, Chennai for availing loan and had offered the document of a property belonging to one Venkataramana Udupa from Kerala as collateral security. The document was arranged through a broker and the appellants had believed it to be a genuine one. Thereafter, the Bank had sanctioned amounts of Rs.50 lakhs, Rs.65 lakhs and Rs.25 lakhs under the heads of Packing Credit/Hypothecation, Foreign Bills Negotiation and Sublimit : Foreign Bills Purchase respectively on 28.02.1990, however, the Bank had disbursed only a sum of Rs.61,20,108/-. Thereafter, the business was going on smoothly and the appellants had also repaid a sum of Rs.16,10,119/-, which was almost 25% of the loan amount availed.

9.2. Whileso, due to some problems in the business, the appellants were unable to repay the loan amount within time and during such time, they came to know that the document given as collateral security was a fabricated one. The appellants had no intention to cheat the Bank, whereas, only on the belief that the document furnished by the Broker towards collateral security was genuine, they obtained a loan and there was no conspiracy at all. Whileso, on account of non-payment of loans, the Bank had preferred a complaint and a criminal case came to be registered during 1998. Due to the criminal case, the appellants were unable to run the business which resulted in mounting losses and ultimately the business came to a standstill.

9.3. During the pendency of the trial, the second accused/A2, Bank

Official passed away, thereby, the charge against A2 got abated. Thereafter, some of the witnesses were recalled and examined by the prosecution and the trial Court, finding that there was no evidence against the first accused/Bank Official, for the offence of criminal conspiracy and misconduct and other IPC offences, had acquitted him and the respondent had not filed any appeal against the order of acquittal of A1, whereas, based on the evidence which was recorded subsequently after the death of A2, the trial Court had found the appellants guilty for the offences under 120B IPC r/w Section 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988 and Sections 420, 468 & 471 IPC

9.4. When there is no finding of guilt against A1 and A2 regarding the offence under Section 120B and Section 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988, the conviction against the appellants for the offence under the Prevention of Corruption Act, 1988 and Section 120B IPC cannot be sustained. Thereby, the present appeal has to be allowed in respect of the offence under the Prevention of Corruption Act, 1988, and the conviction for the offences under Section 120B and Section 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988, has to be set aside, however, in respect of other offences under the Indian Penal Code, the appellants do not want to contest the appeal on merits and they are confining their appeal with regard to the question of sentence and fine alone.

9.5. The total fine amount imposed by the trial Court against all the appellants/accused is Rs.1,20,00,000/-. This Court, while granting suspension of sentence, had directed the appellants to deposit a sum of Rs.66,25,000/- before the trial Court, out of which, Rs.60 lakhs was directed to be paid to the Bank as compensation and an amount of Rs.6,25,000/- remains in the deposit of the trial Court.

9.6. The third appellant/A5, Kashinath, who was the Chief Executive Officer of M/s.Madhura International Partnership Firm, was managing the Firm and he was the one, who had obtained the fabricated document as collateral security through a broker. The first and second appellants being housewives were not aware of the loan transactions. Pending appeal, the third appellant/A5, Kashinath has passed away. So far the appellants have already suffered imprisonment for 84 days .

9.7. As stated above, the first and second appellants are ladies aged above 60 years and the fourth appellant is also aged about 76 years. The appellants, who are senior citizens in the dusk of their lives, do not want to contest the case on merits and they only seek the mercy of this Court.

9.8. The appellants had deposited a sum of Rs.66.25 lakhs before the trial Court as directed by this Court while granting the order of suspension, out of which, a sum of Rs.60 lakhs was already appropriated to the Bank and thereby, a sum of Rs.6.25 lakhs remains in the deposit of the trial Court. Now the appellants are ready to pay a further sum of Rs.40lakhs towards full and final settlement and they have no objection for the amount lying in deposit of the trial Court also being appropriated to the Bank as compensation. In all, the amount being settled by the appellants comes to a sum of Rs.1,06,25,000/-, which is almost double the loan amount availed by them.

9.9. The Bank had also initiated the proceedings under the Securitisation Act and despite obtaining the decree against the appellants, finding that the appellants have no means, the Bank is unable to execute the decree against them. In such circumstances, sending the appellants to prison may not serve the purpose.

9.10. So far as the appeal is concerned, it was admitted by this Court in the year 2015 and it has been listed after about 9 years. The offence is stated to have been committed in the year 1990 and as such, a compassionate view may be taken on the whole matter, especially, when almost twice the loan amount is repaid by way of fine/compensation. The appellants have also remained in prison for sometime in pursuant to the order of conviction and sentence and they have also filed an Affidavit offering to pay an additional amount of Rs.40 lakhs to the Bank. Further, the second appellant being the legal heir of the deceased third appellant has no objection in the amounts being deposited in Court being paid to the Bank

9.11. The learned Senior Counsel would ultimately contend that while maintaining the conviction of the appellants in respect of the offences under the Indian Penal Code, the sentence of imprisonment may be reduced to the period already undergone by them and the fine may be reduced to Rs.1,06,25,000/- and the appellants may be permitted to pay the balance amount of Rs.40 lakhs as fine and that the appellants have no objection in the amount being appropriated to the Bank.

10. Mr.K.Srinivasan, learned Special Public Prosecutor for CBI submitted that the first and second appellants, who are arrayed as A3 and A4 respectively, had started a partnership firm in the name of M/s.Madhura International and the third appellant, who is the husband of A4 and the brother of A3 and A6, was the Chief Executive Officer of M/s.Madhura International. He further submitted that accused 3 to 5 conspired along with A6, who had signed as Power of Attorney to the collateral security and A7, who was an

Approved Valuer of the Bank, entered into a criminal conspiracy with the Bank officials (A1 & A2) with an intention to cheat the bank, availed loan for a sum of Rs.61,20,108/- from the Indian Bank, Overseas Branch, Chennai, based on the fabricated document and cheated the bank to the tune of Rs.1,31,49,549/- and obtained a wrongful gain for themselves.

11. He further submitted that the respondent had filed the final report against the accused and before framing of charges, A7, the Approved Valuer of the Bank passed away and the trial Court had framed charges against accused 1 to 6. He further submitted that the first and second accused are the public servants/Bank Officials and during the pendency of the trial, the second accused passed away. After full fledged trial, the trial Court found A1, a Bank Official/public servant not guilty for the offences under Section 120 B IPC and Section 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988, and acquitted him, however, based on the evidence, it found the appellants/A3 to A6 guilty for the offences under Section 120 B IPC and Section 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act and sentenced them to undergo imprisonment and pay a fine. He further submitted that no appeal has been preferred by the respondent against the acquittal of A1.

12. Heard the learned Senior Counsel appearing for the appellants and the learned Special Public Prosecutor for CBI and perused the materials available on record.

13. It is contended by the learned Senior counsel for the appellants that on account of the acquittal of A1/Bank official in respect of charges including the offence under Section 120 B IPC and Section 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988, the finding of the trial Court holding that the appellants guilty for the offence under Section 120 B IPC and Section 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988, cannot be sustained. They have also contended that against the acquittal of A1/Bank Official, no appeal has been filed by the respondent. This Court finds that one of the conspirators/Bank officials having been acquitted on the same set of evidence, the charge against the appellant for the offence under Section 120 B IPC and Section 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988 cannot be sustained. Further, in respect of the offence under the Indian Penal Code, the appellants have confined their submissions to the question of sentence and fine alone and they have also offered to pay an amount of Rs.40

lakhs to the bank to settle the dues.

14. This Court had earlier called for information from the Bank regarding the amount disbursed to the Appellants' Firm as loan and the amount repaid by them so far. Thereby, on 25.03.2024, Mr.M.Venkatasubramani, Assistant General Manager, Indian Bank, T.Nagar Branch, Chennai, has appeared before this Court and furnished the details vide letter dated 21.03.2024, which reads as under :-

T NAGAR BRANCH (T014)	7 Prakasam Road
Ph : 044-25156576,25158577528,37736,28130716	T.Nagar
e-mail: tnagar@indianbank.co.in	Chennai-600017

To
The Deputy Superintendent of Police
CBI/ACB
Chennai

Date: 21.05.2024

Sir,

Crl Appeal No.749/2015 before the Hon'ble High Court of Madras
A/C Number -[illegible] A/c Name : M/s Madhura International

With reference to RC 22(A)/1998-CBI/ACB/Chennai (Indian Bank Case) registered against Shri S.Ramakrishnan, Chief Manager, Indian Bank Overseas Branch, Chennai & others and your subsequent mails, we are furnishing below the required information:

1	Total amount disbursed in the account by bank to the borrower	FPC Disbursement	Rs. 50,20,500/-
		TOD	Rs. 10,99,608/-
2	Total amount repaid by the borrower in the account	Rs. 16,[illegible]/-	

The above information is provided as per records available with us as on date.

Yours Faithfully
For INDIAN BANK
Branch Manager / Asst. General Manager
T Nagar Branch

INDIAN BANK CHENNAI T.NAGAR BRANCH

15. From the above letter, it is seen that the total amount disbursed by the bank towards the appellants was Rs.61,20,108/- and the amount repaid by the appellants was Rs.16,10,119/-. The said Assistant General Manager, Indian Bank, has also submitted that despite the Bank obtaining a decree against the appellants under the SARFAESI Act, they are unable to execute the decree.

16. The appellants have already deposited an amount of Rs.66.25 lakhs before the trial Court and out of which, pursuant to the order of this Court,

Rs.60 lakhs had already been directed to be paid to the Bank as compensation. Additionally, the appellants have come out with a proposal and undertaking to pay an amount of Rs.40 lakhs. As stated above, the appellants have prayed for reduction of sentence and fine amount.

17. It is the settled law that for the purpose of deciding just and appropriate sentence, the courts have to delicately balance the aggravating and mitigating factors and circumstances in which a crime has been committed and to balance the two, is the primary duty of the courts. In ***Surender Kumar Garg vs. State of U.P.*** (1993 Supp (3) SCC 359), a case of cheating of financial corporation by obtaining loan in the name of a fake firm, the Hon'ble Apex Court, while directing for adjustment of deposit amount towards the amount advanced by the Corporation, had reduced the sentence to the period the accused had undergone and gave liberty to the Corporation to take steps for the realization of the dues. The relevant portion of the decision is extracted hereunder for ready reference:-

> *"**3.** So far the present appeal is concerned, leave was granted as early as in the year 1985 by this Court, but it has been listed for hearing after about 8 years. The learned counsel, appearing for the appellant, after some arguments*

on merit confined his submissions to the question of sentence only. He pointed out that offences aforesaid had been committed by the appellant, as early as in the year 1973, more than 20 years ago from now and as such a compassionate view should be taken of the whole matter especially when the amount in respect of which the offences are alleged to have been committed is not excessive. He pointed out that the appellant has remained in jail for some time, in pursuance of the order of conviction and sentence and as such he need not be sent to jail again. An affidavit detailing the mitigating circumstances has also been filed by the appellant before us. Taking all facts and circumstances into consideration, by our order dated April 26, 1993 we directed the appellant to first deposit an amount of Rs 40,000 (the loan amount) with the U.P. Small Industries Corporation Ltd. Pursuant to that order Rs 40,000 has been deposited with the U.P. Small Industries Corporation Ltd., on May 4, 1993 and original receipt granted by the Manager of the said Corporation was produced before us. The xerox copy of the said original receipt has been kept on record and the original returned to the learned counsel for the appellant. An affidavit has also been filed on behalf of the appellant stating about the aforesaid deposit.

***4.** In the peculiar facts and circumstances of the case while maintaining the conviction of the appellant, we reduce* *the sentence of imprisonment under different sections mentioned above to the period already undergone by him. The appellant, shall however, pay a fine of Rs 2000 and in default of payment thereof, he shall undergo rigorous imprisonment for a period of one month. The appeal is allowed in part.*

***5.** The deposit of Rs 40,000 made by the appellant with the U.P. Small Industries Corporation Ltd., shall be adjusted towards the amount advanced by the said Corporation to the appellant. The Corporation shall of course be at liberty to take steps for realisation of any further sum, which may be due, against the appellant."*

18. It is seen that the present case is of the year 1998 and it has been taken up for trial in the year 2003 and the trial Court, finding the accused guilty, convicted them as stated above. It is the contention of the learned counsel for the appellants that the first accused, a Bank official/public servant had been acquitted and the charge against the appellants for the offence under 120 B and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act on the same set of evidence cannot be sustained. Further, it is also submitted that the first

and second appellants are ladies and senior citizens and that the business was started and run by the third appellant, who is the brother of the first appellant and husband of the second appellant, and he was the Chief Executive Officer running the business of the Firm and he is the person, who had approached the Bank for loan and furnished the alleged fabricated document. The third appellant had died during the pendency of the appeal. It is also the contention of the appellants' counsel that the appellants are not challenging the appeal in respect of the offences under Sections 420, 468 & 471 of IPC on merits and they are contesting only on the question of sentence and they have also volunteered to deposit Rs.40 lakhs to the Bank as a full and final settlement and seek for reduction of sentence and fine.

19. Further, appellants 1, 2 and 4 also do not have any objection for the amount deposited by the deceased third appellant/A5 and the amounts deposited towards the fine imposed for the offence under Section 120-B and the offence under the Prevention of Corruption Act, to be appropriated to the Bank.

20. Having carefully analysed the evidence on record and also the

findings of the trial Court with regard to the acquittal of A1, Bank official/public servant with regard to all the charges including the offences under Section 120-B r/w Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, this Court comes to the conclusion that the conviction of the appellants/accused 3 to 6 for the offences under Section 120-B r/w section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act cannot be sustained.

21. Taking into consideration the above facts and the submissions made by the learned Senior Counsel for the appellants and considering the undertaking given by the appellants to pay a sum of Rs.40 lakhs and also considering the age of the appellants and that two of them are ladies and they have remained in jail for considerable time, this Court is inclined to allow the appeal in part and reduce the sentence of imprisonment to the period already undergone by them and reduce the fine to Rs.1,06,25,000/- (Rupees One crore six lakhs and twenty five thousand only)

22. In the result, this criminal appeal is allowed in part. The conviction and sentence in respect of the offences under Section 120-B r/w section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act stands set aside. The

conviction for the offences under Sections 420, 468, 471 IPC stands confirmed. However, the sentence of imprisonment and fine imposed by the trial Court is modified and thereby, the sentence of imprisonment imposed by the trial Court against appellants 1, 2 & 4/accused 3, 4 & 6 is reduced to the period already undergone by them and the sentence of fine stands reduced to Rs.1,06,25,000/-. (The appellants have already deposited Rs.66.25 lakhs before the trial Court at the time of suspension of sentence and the balance remains to be paid is Rs.40 lakhs).

23. In view of the above, as per the undertaking of the appellants, the remaining fine amount of Rs.40 lakhs shall be paid to the Indian Bank, T.Nagar Branch, Chennai to the credit of the loan Account No.535891703 Account Name : Madhura International, within a period of four weeks from the date of receipt of a copy of this order. On payment of the same, they shall produce the proof before the trial Court.

24. In the event of failure of the appellants to pay the amount to the Bank as undertaken by them within four weeks from the date of receipt of a copy of this order, they have to undergo simple imprisonment for a period of two years,

despite the fine amount already paid by them.

27.03.2024

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
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To

1. The XI Additional Special Court for CBI Cases,
   Chennai.

2. The Inspector of Police,
   Central Bureau Investigation,
   CBI/ACB, Chennai.

3. The Special Public Prosecutor for CBI,
   High Court of Madras.

A.D.JAGADISH CHANDIRA,J.

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Crl.A.No.749 of 2015

27.03.2024