IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.07.2024
Pronounced on: 25.09.2024

Coram:

THE HONOURABLE Mr. JUSTICE VIVEK KUMAR SINGH

Crl.A.No.747 of 2016

D.Natarajan .. Appellant

Vs.

State rep. by
The Deputy Superintendent of Police,
CBI: BS & FC, Bangalore.
(R.C.No.4(E)/96/BLR) and
R.C.No.1(E)/97/BLR .. Respondent

Prayer: Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, against the judgment made in C.C.No.29 of 1999 passed by the learned Principal Special Judge for CBI Cases (VIII Additional City Civil Court, Chennai) dated 29.09.2016.

For Appellant : D.Natarajan
Party-in-Person

For Respondent : Mr.K.Srinivasan
Spl. Public Prosecutor for CBI

J U D G M E N T

The appellant was convicted for the offence under Section 420 IPC for the charges 7, 8 & 9 and sentenced to undergo R.I. for 2 years and to pay a fine of Rs.25,000/- in default to undergo 6 months S.I. each and the sentences to run concurrently by the learned Principal Special Judge for CBI Cases, VIII Additional City Court, Chennai in C.C.No.29 of 1999 dated 29.09.2016. Aggrieved by the same, the present appeal has been preferred.

2. The brief facts of the case is as follows:

2.1. The appellant approached the Indian Bank, Harbour Branch in March 1990 for a short term loan to the tune of Rs.100 lakhs which has to be invested in M/s.Powmex Steels Ltd., (hereinafter referred to as "firm"). The firm had started a project in which several Banks, Indian Promoters namely, GBK Rao and Hari Babu and NRI have agreed to invest their contributions as per agreement. Since NRI Mohammed Ali was dropped by the Indian promoters, they were unable to provide their contributions fully as assured by them found NRI Vijayarahavan in the place of

Mohammed Ali to contribute under promoters' quota so as to implement the project as per schedule.

2.2. The Indian promoters made Nageswara Rao to approach Indian Bank, Harbour Branch for loan, who was known to the appellant, was also convinced by Nageswara Rao to contribute to the project under promoters' quo and they submitted their loan applications to the Indian Bank for financial assistance to the tune of Rs.110 lakhs and Rs.100 lakhs respectively which has to be invested in the firm under promoters' quota and the said applications were thoroughly scrutinized by the bank officials namely, Senior Manager Credit, Chief Manager Credit & Assistant General Manager, who in turn forwarded the proposal to the Zonal Manager, Madras in favour of the appellant and Nageswara Rao which was further scrutinized by three senior officials at the Zonal Office Credit Division and the same was forwarded to the Credit Division, Head office which was again scrutinized by Desk Officer, who submitted his recommendations to A2 and A4's proposal was recommended in his favour by DW1 and sent both proposals to GM Credit but he had returned it seeking clarifications in respect of the source of repayment from the party. For which, the appellant along with Nageswara Rao gave letters dated 18.04.1990 regarding the source of repayment of loans which were forwarded by the AGM, Harbour Branch to Zonal Office and Head Office under Ex.D2. PW1 submitted his detailed recommendations Ex.P3 and Ex.P7 based on the letters dated 18.04.1990 addressed to A2, who signed it and sent to GM-Credit on 19.04.1990, who in turn favourably forwarded the same to Executive Director which was forwarded to A1/Chairman and Managing Director of Indian Bank, who also had concurred to their recommendations and signed it on 19.04.1990. It is obvious to note that the loan proposals of the appellant and Nageswara Rao for financial assistance submitted on 05.03.1990 was scrutinized thoroughly at the Branch Level, Zonal Level and Head Office Level by the designated 12 competent officials for 46 days and thereafter signed by A1 on 19.04.1990.

2.3. At this point of time, CBI had registered a criminal case against A1 to A4 where 13 officials were totally involved in which 7 were named in the FIR and out of which, 6 were arrested and charge sheet was framed against 3 officials only leaving the rest along with the appellant and Nageswara Rao on the ground of criminal conspiracy without analyzing the fact that if one of the official had not made any recommendation, the entire process would have been stopped. On appreciation of the oral and documentary evidences, the trial Court came to the conclusion that the appellant herein was involved in criminal conspiracy and found him guilty under Section 420 IPC on three counts under charges 7, 8 and 9.

2.4. The trial Court, during trial has examined 32 witnesses namely, PW1 to PW32 and marked Exs.P1 to P264 as exhibits on the side of the prosecution whereas on the side of the defence, witnesses DW1 to DW4 have been examined and exhibits Exs.D1 to D19 were marked and on the side of the Court, C1 was marked. On analysing the oral and documentary evidences, the trial Court found the appellant guilty of the offence under Section 420 IPC and sentenced him as stated earlier.

3. Aggrieved over the same, the appellant has come with the present appeal.

4. Heard the appellant Mr.Natarajan, who appeared as party-in-person and Mr.Srinivasan, learned Special Public Prosecutor appearing on behalf of the respondent/CBI.

5. Submissions of the appellant:

5.1. The appellant submitted that the trial Court had erred in concluding that he had made false statement during submission of his loan application which is not substantiated either by any witness or by any document. The trial Court had wantonly failed to see the contradictions of the evidences let in by the witnesses during chief and cross examination and taken into consideration the chief examination favouring the prosecution.

5.2. In regard to Charge No.7, the trial Court had ignored the appellant's detailed written arguments in para 36 to 43. It is relevant to point out that none of the witnesses have spoken about the representation and letters of the appellant dated 05.03.1990, 28.03.1990 and 30.03.1990 addressed to the AGM, Indian Bank, Harbour Branch, Chennai respectively. The learned Judge has also failed to consider the deposition of PW32 / Investigation Officer stating that he did not make any investigation either to confirm or deny the averments made in Ex.P30 and also erred to take into consideration the deposition of PW12's cross examination which was in favour of the appellant.

5.3. At this juncture, he contended that it is vital to note that the learned Judge has erred in appreciating the fact that the loan amount of Rs.100 lakhs was sanctioned to the appellant and the same was credited to the firm by way of a cheque on 24.04.1990 evidencing that the amount was neither seen nor handled by the appellant and PW32 had substantiated the same in his cross examination by A4 and affirmed that the appellant was not wrongfully gained by this loan transaction. The prosecution has not clearly proved beyond any doubt from all documentary and oral evidences that the appellant is connected in the transaction which has been the subject matter of Charge No.7 which are nothing but the extracted portions of the depositions of chief examination of PW1, PW4, PW5, PW19 in paragraphs 83 to 90 of the judgment and also to note that the ruling cited in paragraphs 91 to 95 of the judgment did not analyse the rulings rather it supports the version of the appellant.

5.4. It is further contended that none of the witnesses has stated that the shares allotted under promoters' quota cannot be offered in their oral and documentary evidence. The accused Nageswara Rao also had acquired loan similarly with that of Bank of Baroda which has been brought to the notice of the AGM, Indian Bank through the Manager of Bank of Baroda vide letter dated 26.09.1994 which fact is evident through the deposition of witnesses namely, PW3, PW4, PW6 and PW27. The learned Judge has not appreciated the fact that the market value of the share is much higher than the face value offered by A4 as security and did not take into account of PW32's cross examination deposition that the bank has recovered the loan amount on the date of transfer of ownership of the shares from A4.

5.5. At this point of time, it is to be noted that the bank instead of transferring the shares to it should have sold the shares and cleared the dues of the appellant's loan amount through power of attorney. The trial Court without any evidence had charged the appellant under Section 420 IPC. There was no proper appreciation of evidence in regard to the second and third charge viz., Exs.P197, 198 which was evidenced through PW32 in his cross examination that the second and third charge of the properties were recorded in the equitable mortgage register of SBI. Thus, he contended that the trial Court without proper analysation of the evidence, has found the appellant guilty of the offence under Section 420 IPC and sentenced him as stated earlier, which is per se illegal and unsustainable in the eye of law and pleaded before this Court to allow the appeal.

6. Per contra, the learned Special Public Prosecutor appearing on behalf of the respondent/CBI submitted that the appellant along with one Nageswara Rao colluded with the bank officials and obtained loan to the tune of Rs.100 lakhs and Rs.110 lakhs respectively without disclosing the lock period of the shares given on security and fraudulently cheated the bank by offering Rs.100 lakhs worth of share to be allotted to him by Powmex firm

which is evident from Exs.P5 to P8, P30 to P41 and caused wrongful loss to the tune of Rs.6,99,63,972/-. Apparently, A1 to A3 by abusing their official position without adhering to the terms and conditions recommended the proposals of the appellant and Nageswara Rao in order to obtain pecuniary advantage, had sanctioned term loan and thereby committed the offence under Sections 120 B r/w.420 IPC and 13(2) r/w.13(1)(d) of PC Act.

7. Furthermore, the learned Special Public Prosecutor submitted that the appellant herein availed a short term loan on 05.03.1990 from Indian Bank to the tune of Rs.100 lakhs for the purpose of investment in Powmex firm towards purchase of promoters' quota shares and the appellant promised to offer the shares of Powmex firm for the face value of Rs.115 lakhs as security and also submitted the false assets and liabilities statement and incorrect information. The appellant was not having any land properties in his name but however submitted the created third charge over the house property which was also already mortgaged with SBI, Thousand Lights Branch, Chennai. A3 deliberately ignored the verification of the details of the movable

and immovable properties as declared in the assets and liabilities statement of the appellant. After completion of investigation, charge sheet was filed and the same was taken on file by the learned Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai in C.C.No.29 of 1999. After concluding the trial and on careful analysation of documents/evidences, the learned Judge convicted and sentenced the appellant herein to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.25,000/- for charges 7, 8 & 9 each under Section 420 IPC.

8. He contended that the appellant deceived the bank by false assets and liabilities statement as he does not own any properties in his name and also he did not produce the board's resolution of Powmex firm confirming his promoters' shares and the shares offered as security by the appellant cannot be a valid security since there was lock-in-period of three years from the date of allotment and the shares are not transferable, which was not mentioned in Ex.P169. It is to be relevant to point out from the evidences and documents namely, Ex.P5 to P8, P30 to P41 proves that the appellant has dishonestly and fraudulently cheated

the bank by offering the shares without disclosing their lock-in-period and caused wrongful of Rs.6,99,63,972/-. He submitted that the trial Court after elaborate discussion had rightly convicted and sentenced the appellant herein and therefore prayed this Court to dismiss the appeal.

9. Considered the rival submissions made by the respective learned counsels and also perused the materials available on record.

10. It is obvious to note that the appellant herein, who had criminal conspiracy with other accused approached the Indian Bank, Harbour Branch, Chennai for a short term loan for the shares to be purchased under promoters' quota in M/s.Powmex Ltd., and caused wrongful loss to the bank by providing invalid security for sanction of the term loan and also furnished false assets and liabilities statement, wherein it was found that the appellant herein did not have any land in his name and also provided incorrect information and thereby committed the offence and was convicted by the trial Court for the offence under Section 420 IPC.

11. Though the appellant argued the appeal on merits, submitted that he is 80 years old now and suffering with serious ailments and do not intend to pursue the appeal on merits and he claim only leniency and indulgence of this Court on sympathetic grounds. He also produced the medical records in support of his submission.

12. This Court perused the medical reports and enquired the appellant. The appellant had submitted that he had not done the act with any intention to cheat the bank but the same was due to lack of knowledge and he had repaid the loan amount. He also submitted that he is in the dusk of his life and suffering from cancer. He further expressed his remorse and request for pardoning him and leniency in the sentence.

13. Taking into consideration the medical report filed by the appellant herein and his age and serious ailments suffered by him,

this Court is of the view that some leniency may be warranted in this case. Accordingly, while confirming the conviction imposed by the trial Court against the appellant for the offence under Section 420 IPC, the sentence of imprisonment imposed on him alone is modified to one of till raising of the Court. However, the fine amount imposed by the trial Court is enhanced by Rs.25,000/-. The medical report filed by the appellant shall form part of the Court records.

14. In view of the modified sentence of imprisonment, the appellant herein, who is present before this Court, has served the sentence. The enhanced fine amount shall be paid by the appellant to the Tamil Nadu Legal Services Authority, Chennai and the compliance shall be reported on or before 04.10.2024.

15. In the result, the Criminal Appeal is allowed in part to the above extent. Consequently, connected Miscellaneous Petition is closed, if any.

25.09.2024

Index :Yes/No
Order :Speaking/Non Speaking
NCC : Yes/No

DP

To

1.The Principal Special Judge for CBI Cases,
VIII Additional City Civil Court, Chennai.

2.The Deputy Superintendent of Police,
CBI: BS & FC, Bangalore.

3.The Public Prosecutor,
High Court, Madras.

VIVEK KUMAR SINGH.J,

DP

Judgment made in
Crl.A.No.747 of 2016

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