BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.03.2024

Pronounced on : 21.03.2024

Coram:

THE HONOURABLE MR. JUSTICE VIVEK KUMAR SINGH

Crl.A.(MD) Nos.446, 449 & 460 of 2021

In Crl.A.(MD) No.446 of 2021:

V.Eswar @ Venkatesh .. Appellant/A9

Vs.

State rep. by
The Deputy Superintendent of Police,
CBI/EOW, Chennai.
RC 11 (E)/2010/CBI/
EOW/ Chennai. .. Respondent/Complainant

In Crl.A.(MD) No.449 of 2021:

Indhira .. Appellant/A10

Vs.

State rep. by
The Deputy Superintendent of Police,
CBI/EOW, Chennai.
RC 11 (E)/2010/CBI/
EOW/ Chennai. .. Respondent/Complainant

In Crl.A.(MD) No.460 of 2021:

K.L.Jayakumar .. Appellant/A12

Vs.

State rep. by
The Deputy Superintendent of Police,
CBI/EOW, Chennai.
RC 11 (E)/2010/CBI/
EOW/ Chennai. .. Respondent/Complainant

Common Prayer: Criminal Appeals filed under Section 374(2) of the Criminal Procedure Code, to call for the records of the learned II Additional District Judge (CBI Cases), Madurai in C.C.No.8 of 2011 and to set aside the judgment and conviction dated 27.09.2021 and acquit the appellants.

For Appellant : Ms.B.Bhuvaneshwari
in Crl.A.Nos.446 & 449 of 2021

For Appellant : Mr.S.Kanagarajan
in Crl.A.No.460 of 2021

For Respondent : Mr.D.Poornachari, Special
Special Public Prosecutor for CBI cases

COMMON JUDGMENT

These Criminal Appeals arise out of the judgment of conviction and sentence dated 27.09.2021 made in C.C.No.8 of 2011 on the file of the II Additional District Court for CBI cases, Madurai.

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

i)There are totally 12 accused in this case. The appellants herein are arrayed as A9, A10 and A12. The accused 1 and 2 are the partnership firms; A3 to A5 are partners of A1's firm and A5 & A7 are partners of A2's firm. A11, who is the Branch Manager, Indian Bank, Tenkasi colluded with the other accused and sanctioned Open Cash Credit (OCC) Facilities to A1 and A2 firms to the tune of Rs.90 lakhs and Rs.40 lakhs respectively, which were disbursed to A1 and A2's firms and the same was siphoned off by A2 to A7 through their relatives and friends. For the said OCC facilities, two immovable properties situated at Tenkasi and Adayar respectively were given as collateral security to the bank by A5 and A8 respectively. For the outstanding dues of A2's firm, Tenkasi property has been auctioned by the Bank to the tune of Rs.37 lakhs. When it was planned to auction the Adayar property, it came to light that the accused persons had criminal conspiracy with A11 and cheated the bank by producing forged death certificate and legal heir certificate of one Mr.S.Paul, who is alive and the original owner of the Adayar property, wherein A8, who is none other than the daughter of Mr.S.Paul had created the forged documents namely, death certificate of his father and legal heir certificate as if she is the only legal heir of Paul by joining hands with A9, A10 & A12 by way of a Memo of Understanding stood as a guarantor and lent her Adayar property. Thus, all the accused with a criminal intention of cheating the Bank conspired together and caused wrongful loss to the Indian Bank, Tenkasi Branch to the tune of Rs.138.54 lakhs as on 13.10.2010. Based on the complaint of the Deputy General Manager, Circle Head, Indian Bank, Tirunelveli dated 30.08.2010, a case has been registered against the accused persons under Sections 120-B r/w.409, 420, 467, 468, 471 of the Indian Penal Code (in short 'IPC') and under Sections 13(2) r/w. 13(1)(e)(d) of the Prevention of Corruption Act, 1988 (for the sake of brevity herein after referred to as 'PC Act').

ii)On the side of the prosecution, P.W.1 to P.W.51 were examined as witnesses and Exhibits P1 to P112 and M.O.1 (series- 2 photos) of immovable property, Tenkasi were marked. On the side of the defence, D.W.1 to D.W.5 were examined as witnesses and documents D1 to D14 were marked as exhibits.

iii)The learned II Additional District Judge after following the procedure, framed necessary charges. The accused pleaded not guilty. On the side of the prosecution, P.W.1 to P.W.51 were examined and Exs.P1 to P112 and M.O.1 (2 photos) were marked. The trial Court placed the incriminating evidence before the accused under Section 313(1)(b) Cr.P.C. and the accused denied the same in toto. On the side of the defence, D.W.1 to D.W.5 were examined and Exs.D1 to D14 were marked.

iv)On analyzing the oral and documentary evidence, the trial Court found that the accused were guilty and had convicted the accused for the offences committed and sentenced them as follows:

Appellants/ Accused	***Case No.***	***Conviction***	***Sentence***
A9/Eashwar @ Venkatesh	C.C. No.8 of 2011	Section 120-B r/w. 420 and 471 r/w. 468 IPC and Section 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988.	To undergo one year rigorous imprisonment and to pay a fine of Rs. 2,00,000/- in default to undergo six months rigorous imprisonment.
A10/Indira	C.C. No.8 of 2011	Section 120-B r/w. 420 and 471 r/w. 468 IPC and Section 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988.	To undergo one year rigorous imprisonment and to pay a fine of Rs. 1,00,000/- in default to undergo six months rigorous imprisonment.
A12/ K.L.Jayakumar	C.C. No.8 of 2011	Section 120-B r/w. 420 and 471 r/w. 468 IPC and Section 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988.	To undergo one year rigorous imprisonment and to pay a fine of Rs. 1,00,000/- in default to undergo six months rigorous imprisonment.

The sentence of imprisonment is ordered to be run concurrently.

3. Aggrieved over the same, the appellants herein have come forward with the present appeals before this Court.

4. Challenging the conviction and sentence passed by the learned II Additional District Judge (CBI Cases), Madurai, the learned counsel for the appellants/accused 9, 10 and 12 raised the following points:

a)The learned counsel for the appellants herein/A9 and A10 in **Crl.A.Nos.446 & 449 of 2021** submitted that the appellants namely, Eashwar @ Venkatesh and Indhira are husband and wife and has been arrayed as accused 9 and 10 in C.C.No.8 of 2011. The appellant/A9 herein is a promoter and Director of E.I. Data Sources Limited, Chennai and also one of the Director in M/s. Nila Exports and Marketing (India) Private Limited. A5 is the childhood friend of A9 and he is running a business of SAS & Company and SA Sahul Hameed Rawather & Sons in Thenkasi and also a partner of Nila Group of Company but A9 is not a partner in any of the companies of A5.

b)In order to develop his business, A5 sought help from A9 for a third party collateral guarantor. In this backdrop, A8 through some mediators, approached A9 to offer her Adyar property on conditions that A9 has to pay a sum of Rs.5 lakhs to her and Rs. 6,50,000/- to A12 to redeem her original documents since she has executed a general power of attorney in favour of A12 for the said amount on 24.10.2005. Thus, they entered a Memorandum of Understanding on 23.08.2006. In view of the said MoU, A8 on receipt of Rs.5 lakhs in cash and on receipt of cheques on 22.03.2007, gave all her original documents and consent letter and thereafter an agreement was entered with the Indian Bank, whereby they came to knew that A8 had given the forged death and legal heir certificates dated 12.04.2002 and 12.06.2003 respectively to the Bank for her collateral security property.

c)She further contended that the loan borrowed by A5 got default and declared as Non Performing Assets (NPA) on 30.06.2008 and possession notice to A8 was sent on 07.07.2008. At this juncture, the Bank, as well as A9 and A10, came to know that the documents pertaining to Adyar property produced were fake. When the Bank initiated proceedings, A8 lodged a complaint dated 20.10.2008 stating that the appellants herein/A9 & A10 approached her and offered to avail loan for developing her school for which she gave her father's documents which have been forged by them.

Furthermore, A8 have contradicted her deposition stating that one mediator Subramanian was introduced by one Kavitha's husband, who was a teacher worked in her Day Care School to avail loan by pledging her father's documents and in addition, she also stated that the subject property was the oral gift for her marriage from her father, which clearly shows the conduct of A8 and even her father itself lodged a complaint against A8, as she is trying to deceive him in order to grab the subject property.

d)In furtherance, she also contended that A8 had executed General Power of Attorney (GPA) with A12 in the year 2005 itself in respect of the subject property, wherein both A9 and A10 have no contacts with them. It is pertinent to note the evidence of mediator Subramanian, who has stated that A8 was in dire need of money and A9 and A10 were only introduced by him in the year 2006 and they are innocents and the ingredients of 120 B of IPC states that mens rea, actus reus and agreement to commit a crime of illegal act does not attract at all or established as against them through proper evidence. The trial Court ought to have taken into account there is no relationship between the accused 9 , 10 & 12 except the cheque issued to A12 by A9 at the instance of A8 and it is only the presumption of the learned trial Judge that a single woman cannot create all such fake documents and concluded that the documents were concocted with the assistance of A9 and A10 without any evidence is unsustainable in the eye of law.

e)She also drew the attention of this Court that none of the panel advocate of the Banking Sector have been examined as witnesses, who are responsible for sanction of loan by the Bank. There is not even a single proof of evidence to substantiate the criminal conspiracy of A9 and A10. It is vague to accept the evidence of P.W.44, who deposed in her 161 statement that accused 5, 8, 9, 10 used to meet frequently in A9 office, which has been admitted by A9 itself as they met in order to arrange guarantor for A5 and P.W.50 / driver of A12, who in his 161 statement deposed that accused 5, 8, 9, 10, 12 met at Nila group of companies, which was already admitted by A9 so as to issue cheque to A12 for redeeming A8's loan.

f)She further stated that A5 to escape from the clutches of law had given a false complaint against A9 and A10, wherein the complaint given by A5 is totally different from the said case. After receiving loan, A5 withdrawn 90% within two days i.e., on 29.03.2009 and 30.03.2009, where all the withdrawals are made by the partners of A1 and A2 and it is to be noted that no cheque was issued in favour of A9 and A10 and no transactions between A5 and A9 which is evidenced from his bank statements. A9 is not at all a beneficiary ought to be considered by the trial Court.

g)Insofar as the allegation against A10 is trivial and without any collaborating evidence. The cheque to the tune of Rs.6,50,000/- was not issued to A10 by A5, which is evident from Ex.P65/bearer cheque, where it was stated that back side of the cheque was signed by A10 which has been denied by her and the same has not substantiated by the prosecution and it was also not proved that she had collected the cash from the bank and hence, the benefit of doubt has to be considered by the trial Court on the accused 9 and 10. During trial, some citations have been pinpointed by the learned counsel for the accused 9 and 10 which were neither considered nor rejected by the Court below.

h)In support of her contentions, the learned counsel relied upon the following decisions:

1)***Lalita Kumari Vs. Government of U.P. & Others*** *reported in* ***AIR 2014 Supreme Court 187***, wherein the Hon'ble Supreme Court has held that registering the case on the basis of source information is up compromising in law without any preliminary enquiry;

2)***LIC of India and another Vs. Rampal Singh Bisen*** *reported in* ***2010 AIR SCW 1900***, wherein it has been held that "mere admission of document in evidence or mere marking of exhibit on a document does not dispense with its proof";

3)***B.H.Narasimha Rao Vs. Government of Andhra Pradesh, rep., by CBI*** *reported in* ***1995 Cri.L.J. 4181 (9) SC,*** wherein it was held that if no proof placed for the charge under Section 120-B IPC against accused other charge lose their roots;

4)***Aravind Balashanker Joshi Vs. State of Gujarat*** *reported in* ***1991 Cri. L.J. 2421***, the Hon'ble High Court of Gujarat has held that on forgery of documents, if no proof for documents forged by accused produced by the prosecution, he cannot be punished under Sections 468, 471 and 420 of IPC;

and also highlighted the decisions of the cases in 5)***Md. Ibrahim and others Vs. State of Bihar and another*** *reported in* ***2010 ACR (51) SC; and 6)Parminder Kaur Vs. State of U.P. and another*** *reported in* ***AIR 2010 SC 840***.

i)Thus, the learned counsel for the appellants A9 and A10 while concluding her arguments submitted that the judgment of the Court below has to be set aside for the reasons stated above and the appeals have to be allowed in respect of the appellants/ A9 and A10, who are innocents and no way connected with the alleged offence committed by the other accused.

j)The learned counsel for the appellant/A12 in **Crl.A.No.460 of 2021** submitted that a case has been registered on the basis of the written complaint given by one Meyyappan, Deputy General Manager, Circle Head, Indian Bank, Circle Office, Tirunelveli against the appellant herein and 11 other named persons as stated above for the offences under Sections 120-B r/w. 409, 420, 467, 468 and 471 of IPC and under Section 13(2) r/w. 13(1)(e)(d) of Prevention of Corruption Act, 1988 for cheating the Tenkasi Branch (Tirunelveli Circle) of Indian Bank to the tune of Rs.139.54 lakhs.

k)The learned counsel submitted that the appellant herein has been arrayed as A12 in this case. He submitted that A8 was introduced by one Sundararaman / L.W.37 to support her financial crisis in the year 2002 for which the appellant lent a sum of Rs. 6,50,000/- by getting all the documents such as death certificate, legal heir certificate, property document and also by execution of general power of attorney in his favour. The borrowed amount was returned to him by A9 and A10 through cheques and he has also handed over all the documents of A8.

l)In the cross examination of Investigating Officer, he revealed that they could not able to find the persons involved in creation of the forged documents namely, Ex.P11 and P12. L.W.37 in his 161 statement stated that when the appellant/A12 rendered financial support to A8 in the year 2005, as security, she handed over the property original documents along with death certificate and legal heir certificate to him and hence, he has no nexus with the alleged forgery of documents. He further submitted that the Investigating Officer in his cross examination has clearly deposed that the appellant's name/A12 was not found in the FIR and he was not arrested and no material witness as against him.

m)In furtherance, he argued that the appellant/A12 was not present at the time of creation of equitable mortgage of Adyar property of A8 with the Bank. Since he has no nexus with the alleged offence, he has not co-operated with the investigation as contended by the Investigating Officer. He further submitted that he is no way connected with A8, A9 and A10 except supported A8 by rendering loan which was repaid to him by A9 through cheque and no other money transactions between the appellant/A12 and the other accused persons. Hence, he pleaded for allowing the appeal.

5. Per contra, the learned Special Public Prosecutor appearing on behalf of the respondent submitted that the accused persons with criminal conspiracy namely, A5, A8 and A9 interrupted the hacking operation and violated the guidelines in a planned manner and diverted the bank officials and adopted fraudulent practices with the association of the Branch Manager of Indian Bank, Tenkasi (A11) and by paralyzing and demoralizing the bank lending system, gained money for their own purpose in the name of development of business of their companies namely, A1 and A2 firms.

5.1. Moreover, he contended that the main allegation is that the accused persons within two days of the sanction of the loan amount disbursed them to individual persons on 29.03.2001 and 30.03.2001, without utilizing the same either for their business or trading purpose as per the Banking rules. A11, who is the Branch Manager of Indian Bank, Tenkasi joined hands with A5 and passed 13 cheques in favour of the friends and relatives of A5. A5 deposed that he settled in Tenkasi and to develop his business, sought help from A9 for which A8's property document has been given as collateral security and loan was sanctioned to him by the Indian Bank. In the meantime, A9 went to South Africa and not returned. A5 gave a complaint before Egmore Police Station against A9 and A10, as they fled away with the sanctioned loan amount. For which the Bank took possession of A5's Tenkasi property under SARFEASI Act. A8, who was in dire need of money, approached one Sundararaman for financial support, who in turn introduced A12. A12 rendered amount to A8 by receiving the documents as security and the said documents were returned to A8 by A12 on payment of the borrowed amount by A9 by way of cheque. Thereafter, the accused 9, 10 and 12 along with the other accused entered into a criminal conspiracy, created forged death and legal heir certificates and offered them as collateral security to the Indian Bank, for the loan amount of Rs.1.30 Crores, which was sanctioned in the accounts of A1 and A2 firms. In the said conspiracy, the role of A9, A10 and A12 are vital and hence, the learned Special Public Prosecutor for CBI cases opposed to allow the appeals filed by the appellants herein.

5.2. In support of his contentions, he relied upon the following decisions:

5.2.1) ***Kashinath Mondal Vs. State of West Bengal*** reported in ***2012 (7) SCC 699***, wherein the Hon'ble Apex Court has held that the irregularities or deficiencies in conducting investigation by prosecution is not always fatal to the prosecution case. If there is sufficient evidence to establish the substratum of the prosecution case, then irregularities which occur due to remissness of the Investigating Agency, which do not affect the substratum of the prosecution case, should not weigh with the Court;

5.2.2) ***The Central Bureau of Investigation Vs. Jagjit Singh*** reported in ***2013 (10) SCC 686***, the Hon'ble Supreme Court has held that the offences when committed in relation with Banking activities including offences under Sections 420 and 471 of IPC have harmful effect on the public and threaten the well being of the society. These offences fall under the category of offences involving moral turpitude committed by public servants while working in that capacity. Prima facie, one may state that the bank as the victim in such cases but, in fact, the society in general, including customers of the Bank is the sufferer;

5.2.3) ***Shafhi Mohammad Vs. State of Himachal Pradesh (SLP Crl.No.2302 of 2017)***, in the said decision, the Hon'ble Supreme Court has held that the requirement of a certificate to make an electronic evidence admissible under Section 65B is not mandatory "wherever interest of justice so justifies". The relevant portion in para 4 of the said judgment stated as follows:-

> *"Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65B(4) of the*

> *Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by Court wherever interest of justice so justifies";*

and

5.2.4) ***Gopakumar B.Nair Vs. Central Bureau of Investigation and another*** *reported in* ***2014 (5) SCC 800***, where the Hon'ble Supreme Court has held that settlement cannot be a ground for quashing the proceedings involving such offences which are certainly more serious; they are not private in nature". In that case, accused was charged under Section 120B IPC r/w. Section 13(2) r/w. Section 13(1)(d) of the PC Act and Sections 420/471 of IPC.

6. Considered the rival submissions made on both sides and perused the materials available on record.

7. The predominant point raised by the learned counsel for the appellants is that the veracity of the documents namely, Exs.P11 and P12 have been done by the panel advocates and legal wing of the bank and the onus is ought to be placed on them for not

bringing out the fact of the forged documents and without their opinion, sanction tickets viz., Exs.P17 & P18 for the loan amount had been sanctioned by the Bank which has not been properly brought to light by the prosecution. The trial Court without considering all these pivotal aspects, have erred in convicting the appellants herein.

8. On reading of the facts of the case reveals that it revolves around the Sections 120B, 420, 468 and 471 of IPC. The learned counsel for the appellants in their submissions drew the attention of this Court to the fact that no complaint was lodged against them specifically by the Bank authorities and only by source information by the other accused, the case has been registered against them which is an abuse of process of law.

9. This Court is of the opinion that the above Sections has to be dealt with so as to arrive at a conclusion in this matter.

10. The first Section of the IPC alleged against the appellants is 120-B. Section 120-B of IPC reads as follows:

120B. Punishment of Criminal

***Conspiracy**:*

(1)Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2)Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

11. At this point of time, it is relevant to highlight the decision of the Hon'ble Supreme Court in the case of ***State of Tamil Nadu through Superintendent of Police, CBI/SIT Vs. Nalini and 25 Others*** reported in ***1999 (5) SCC 253***, wherein the Hon'ble Supreme Court has held that mere association with one of the principal offenders or even knowledge about the conspiracy cannot make a person a conspirator. The ratio laid by the Hon'ble Apex

Court in the aforesaid decision clearly shows that the appellants/accused herein are not conspirators and hence, Section 120-B IPC does not attracts.

12. Preliminary Enquiry:

The vital point to be decided is that the complaint was lodged by the bank authorities against the accused 1 to 8 and not as against the appellants herein/accused. On source information only, the case has been registered against the appellants herein/accused, without conducting preliminary enquiry.

13. In ***Lalita Kumari v. Govt. of U.P. and others, on 12.11.2013, in Writ Petition (Criminal) No.68 of 2008***, in para-111(vi) it is held as follows:

> "111) vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:
>
> a) Matrimonial disputes/ family disputes
> b) Commercial offences
> c) Medical negligence cases
> d) *Corruption cases*

e)Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry."

14. In view of the above, CBI has to conduct preliminary enquiry before registering the case. In the case on hand, no such enquiry was conducted by the prosecution.

15. The second Section of the IPC alleged against the appellants herein is Section 420 and we are at a complete loss to understand as to how the offence could even be alleged against the appellants on the basis of the so-called forgery. Therefore, that Section is out of question. Forgery is defined under Section 463 IPC which reads as under:

*"**463. Forgery** - Whoever makes any false documents or false electronic record or part of a*

> *document or electronic record, with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."*

16. The appellants herein/accused have no nexus with the forged documents namely, Ex.P11 and Ex.P12/original death certificate and Legal Heirship Certificate of M.S.Paul. As per the version of the appellants 9 and 10, A8 have executed a GPA by producing the death and legal heirship certificates along with the subject property documents to A12 in the year 2005 itself, which was said to be provided to the bank in the year 2007 for collateral security and they have no nexus with A8 before 2005. Insofar as the appellant/A12 is concerned, the learned counsel contended that he is not aware of the authenticity of the documents handed over by A8 to him while receiving the loan amount and the same has been repaid to him through cheque, who in turn returned those documents and hence, he is no way connected with the alleged offence of forgery of the documents.

17. It is appropriate to refer the next Section 468 IPC and the same reads as under:

> "***468. Forgery for purpose of cheating*** - *Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

18. Since the appellants/accused 9, 10 and 12 has not involved in the commission of the offence of forgery of the documents of Ex.P11 and Ex.P12 / death certificate and legal heirship certificate respectively, the commission of offence under Section 468 IPC cannot be charged against them. At this juncture, the learned counsel for the appellants contended that the appellants herein have not received the sanctioned amount from the bank and it is only credited to the accounts of A1 and A2 firms which has been disbursed to the partners of the firms within two days, which is evident from the exhibits namely, Exs.P13 to P34.

19. This Court focus on the ratio laid by the Hon'ble Supreme Court in *Ram Pal Singh Bisen's case* as stated supra that, mere admission of document in evidence or mere marking of exhibit on a document does not dispense with its proof. Even admission of respondent of the documents cannot carry the case of appellants any further and much to prejudice of respondent. At most, admission of documents may amount to admission of contents but not its truth. Under the Law of Evidence also, it is necessary that the contents of documents are required to be proved either by primary or by secondary evidence. Documents having not been produced and marked as required under the Evidence Act cannot be relied upon by the Court. Contents of the document cannot be proved by merely filing in a Court.

20. It is therefore submitted by the learned counsel appearing for the appellants herein / accused that once the documents in question (Exs.P11 and P12) are held proved to be not forged by the appellants herein/accused and when the appellants herein/accused were not found guilty of the offence under Section 468 of IPC, they cannot be held guilty for the offences punishable Under Sections

471 and 420 of the I.P.C., unless there is direct and independent evidence regarding the knowledge and reason to believe that the accused and none else has used the forged documents. In the instant case, there is no direct evidence that the appellants herein/accused had knowledge about the documents Exs.P11 and P12, being forged documents and it is also stated in the deposition of the cross examination of the Investigating Officer that they could not identify the forgerer / writer of Exs.P11 & P12 inspite of their efforts, however, it has been presumed by the Court from the circumstances, particularly, that there is a reason to believe that the accused had knowledge about the forged documents Exs.P11 and P12 and that with that knowledge, it has been used as a genuine one. For drawing presumption under Section 114 of IPC, there must be nexus between the facts and circumstances and that too there must be legal presumption. In my view, the learned Judge erred in drawing such presumption as regards the knowledge of forged documents Exs.P11 and P12. There may not be a direct evidence as regards the knowledge and the circumstances relied must have some nexus between the fact and presumption.

21. On the contrary, there is a finding that Exs.P11 and P12 are not forged by the appellants herein/accused and in my view, once the charge for the offence punishable Under Section 468 of the I.P.C. is not proved against the appellants herein/accused, the accused cannot be convicted for the knowledge or reason to believe about the alleged forged documents Exs.P11 and P12 and therefore, conviction Under Section 471 of the I.P.C., is bad and unsustainable. It has been observed by the Hon'ble Supreme Court in the case of ***Hira Lal Panna Lal Mahi v. State of Gujarat, 1969 Cri App R (SC) 204***t, in para 6 of the judgment, which is extracted as under:

> *"We have gone through the reasoning of the High Court in this regard. It has acquitted the appellant of the offence Under Section 471, IPC on the specific finding that on the evidence it is difficult to come to the conclusion that the appellant knew or even had reason to believe that the licence in question, Exhibit 48, bore a forged signature of the officer Mr. Pillania. The High Court also is of the view that the appellant's guilt or otherwise Under Section 420, IPC will have to be considered only with reference to the licence Exhibit 48 given to the witness Rajaji.*

Prima facie, we are inclined to accept the contention of the learned counsel for the appellant that when once the conviction of the appellant Under Section 471, IPC has been set aside, the High Court was not justified in convicting him Under Section 420, IPC. We have also gone through the evidence of Rajaji, Exhibit 47 and his evidence does not establish any false representation having been made by the appellant. On the other hand it is clear that Rajaji must have been well aware that he will not get a valid licence for driving motor vehicles. He has not gone to Pali and he has also failed in the driving test at Ahmedabad. Therefore, there is no question of the appellant having cheated Rajaji so as to be liable Under Section 420, IPC."

22. In view of the above settled legal position, in my view, there is much force and substance in the submissions canvassed by the learned counsel for the appellants/accused. Once the appellants / accused are not guilty of the charge Under Section 468 of the I.P.C., in my view, they cannot be convicted for the offence punishable Under Section 471 of the I.P.C. When appellants/accused

cannot be convicted for the offence punishable Under Section 471 of the I.P.C., in view of the observations made by the Hon'ble Supreme Court in the case of *Hira Lal Panna Lal* stated supra, he cannot be convicted for the offence punishable Under Section 420 of the I.P.C. As stated above, when accused is acquitted of the offence Under Section 468 of the I.P.C., they cannot be convicted for the offence punishable Under Section 471 of the I.P.C., unless there is direct and independent evidence irrespective of circumstantial evidence. Apparently, since the appellants herein/accused cannot be found guilty for the offences under Sections 120-B, 420, 468 and 471 of IPC, ultimately, they cannot be held guilty for the offences under Section 13(2) r/w. 13(1)(d) of PC Act, 1988.

23. For the foregoing discussions and also in the light of the settled principles and the decisions of the Hon'ble Apex Court stated supra, I am of the view that the charges against the appellants/accused 9, 10 & 12 are not proved by the prosecution beyond all reasonable doubts. Therefore, by giving benefit of doubts in favour of the appellants herein / accused 9, 10 & 12, they are acquitted from the charges levelled against them for the offences punishable under Sections 120-B r/w. 420 and 471 r/w. 468 of IPC

and Section 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988. Consequently, the judgment of conviction and sentence passed by the learned II Additional District Judge for CBI Cases, Madurai in C.c.No.8 of 2011, is hereby set aside.

24. In fine, the Criminal Appeals are allowed, setting aside the judgment of conviction and sentence dated 27.09.2021 made in C.C.No.8 of 2011 on the file of the II Additional District Court for CBI cases, Madurai.

*The appellants/accused 9, 10 and 12 are acquitted from the charges levelled against them and they are set free.

*The fine amount already paid by the appellants/accused 9, 10 & 12 are ordered to be refunded to them.

*Bail bond, if any executed by the appellants/accused 9, 10 & 12 shall stand cancelled.

21.03.2024

Internet:Yes/No
NCC : Yes/No
Order : Speaking/Non Speaking
DP

To

1.The II Additional District Court for CBI cases, Madurai.

2.The Deputy Superintendent of Police, CBI/EOW, Chennai.

3.The Special Public Prosecutor (CBI),
Madras High Court.

VIVEK KUMAR SINGH,J.

DP

Crl.A.(MD) Nos.446, 449 & 460 of 2021

21.03.2024