BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.12.2023

DELIVERED ON :19.03.2024

CORAM

THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

CRL.A.(MD)Nos.172 and 315 of 2016

Crl.A.(MD)No.172 of 2016:-

K.Chandrasekaran ... Appellant

vs.

The State
represented by the Inspector of Police,
SPE:CBI:ACB:Chennai,
in RC MA1 2010 A 0036. ... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code to set aside the judgment and conviction dated 17.05.2016 passed by the II Additional District Judge for CBI Cases, Madurai in C.C.No.23 of 2012.

For Appellant :Mr.Rupert J.Barnabas
Senior Counsel
for Mr.G.Karthick Kanna
For Respondent :Mr.M.Karunanithi
Special Public Prosecutor for CBI

Crl.A.(MD)No.315 of 2016:-

Sindhu Kumari @ Sindhu Money ... Appellant

vs.

The State
represented by the Inspector of Police,
SPE/CBI/ACB/Chennai,
(RC MA1 2010 A 0036) ... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code to set aside the judgment and conviction dated 17.05.2016 passed by the II Additional District Judge for CBI Cases, Madurai in C.C.No.23 of 2012.

For Appellant :Mr.M.Jegadeesh Pandian
For Respondent :Mr.M.Karunanithi
Special Public Prosecutor for CBI

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COMMON JUDGMENT

The appellant in Crl.A.(MD)No.172 of 2016 was the Manager of the State Bank of India, Kalkulam Branch, Kanyakumari District. The appellant in Crl.A.(MD)No.315 of 2016 was the customer of the said branch. The CBI registered the case against the above said appellants and the husband of the appellant in Crl.A.(MD)No.315 of 2016 in RC MA1 2010 A 0036.

Brief facts of the case:-

2.The K.Chandrasekaran, A1, namely, the appellant in Crl.A.(MD)No.172 of 2016 was working as a Branch Manager of Kalkulam Branch of SBI. He conspired with the appellant in Crl.A.(MD)No.315 of 2016 and her husband, namely, R.S.Money and diverted the funds of the bank. A1 without following any of the procedures granted loan to A2 and A3 and has misappropriated the funds of the bank by creating the bogus accounts in the name of the fictitious persons and withdrawn the amount in the said accounts on his own.

3.In sum and substance, A1 granted home loan, educational loan and transfer of the funds without any loan application to A2 in order to purchase a factory called Amalesh Cashew Nut Factory in her name and misappropriated the funds by creating fictitious accounts in the name of one Vincent Durai and Sagitha and thereby, they are collectively responsible for the loss of Rs. 18,60,000/- and cheated the bank.

4.The CBI conducted the investigation with the said allegations and filed the final report against the three accused. The learned Special Judge for CBI Cases, Madurai, had taken the case on file in C.C.No.23 of 2012 on the file of the II Additional District Court for CBI Cases, Madurai.

5.After the appearance of the accused, the learned Trial Judge furnished the copies under Section 207 Cr.P.C. After service of the copies, the learned Trial Judge framed necessary charges and questioned the accused. The accused denied the charges and also pleaded not guilty. They stood for trial.

6.To prove the case, the prosecution examined PW-1 to PW-41 and exhibited Ex-P1 to Ex-P116 and marked material object, MO-1 to MO-3. The learned Trial Judge put the questions to accused under Section 313 Cr.P.C., by describing the incriminating materials available against them, for which the accused denied them as false. They did not furnish any explanation and also they did not examine any witnesses on their side and also did not produce any documents.

7.The learned Trial Judge after considering the evidence acquitted the A3 from the all the charges and convicted A1 and A2 for the following charges and imposed the following sentences:

Sl.No.	***Rank of the accused***	***Under Sections***	***Punishment***
1	A1	120-B r/w 409, 420, 467, 468 r/w 471, 477-A of IPC and Section 13(2) r/w 13(1)(c) & (d) of the Prevention of Corruption Act, 1988	10 years rigorous imprisonment and fine of Rs.5,000/-, in default, to undergo three month simple imprisonment.
2	A1	409 of IPC	7 years rigorous imprisonment and fine of Rs.5,000/-, in default, to undergo three months simple imprisonment.
3	A1	420 of IPC	10 years rigorous imprisonment and fine of Rs.5,000/-, in default, to undergo three months simple imprisonment.
4	A1	467 of IPC	10 years rigorous imprisonment and fine of Rs.5,000/-, in default, to undergo three months simple imprisonment.
5	A1	468 r/w 471 of IPC	7 years rigorous imprisonment and fine of Rs.5,000/-, in default, to undergo three months simple imprisonment.

6	A1	477-A of IPC	7 years rigorous imprisonment and fine of Rs.5,000/-, in default, to undergo three months simple imprisonment.
7	A1	13(2) r/w 13(1)(c) & (d) of the Prevention of Corruption Act, 1988.	3 years rigorous imprisonment and fine of Rs.5,000/-, in default, to undergo three months simple imprisonment.
8	A2	120-B r/w 409, 420, 467, 468 r/w 471, 477-A of IPC and Section 1392) r/w 13(1)(c) & (d) of the Prevention of Corruption Act, 1988.	5 years rigorous imprisonment and fine of Rs.3,00,000/-, in default, to undergo three months simple imprisonment.
9	A2	420 of IPC	5 years rigorous imprisonment and fine of Rs.10,00,000/-, in default, to undergo three months simple imprisonment.

8.Submission on the part of the A1/Bank Manager/Appellant in Crl.A.(MD).No.172 of 2016:

8.1.The finding of the learned Trial Judge that A2 (Sindhu Kumari) did not apply for loan for Rs.13 lakhs to purchase Amalesh Cashew Nut Factory before the SBI, Kalkulam Branch, is not correct. She had submitted the application for loan. A1 sanctioned loan and the loan amount was disbursed by way of Demand

Drafts. The said fact was overlooked by the learned Trial Judge. The learned Trial Judge failed to consider that the amount was transferred from the accounts of Toufiq Rahman and Dr.Salaluddin to A2's account to purchase Amalesh Cashew Nut Factory. The same was not transferred from some other account, namely, suspense account, system suspense account, trickle feed account or State Government account.

8.2.The prosecution failed to prove that A1 siphoned off Rs.21,73,864/- from the aforesaid suspense accounts into the fictitious accounts in the names of the Vincent Durai and Sagitha. The said Vincent Durai Account No. 01190015107 was changed as Account No.11206366063 under Ex-P84 and the said change of the account number does not amount to opening of the fictitious account. Hence, the presumption of the Trial Court that he opened the fictitious account and withdrawn the amount is against the records.

8.3.The learned Trial Judge failed to consider that the educational loan granted to A2's child to pursue her study in foreign country without obtaining the security and prior to the sanctioning granted by the higher officials is not correct. The amount was granted within the limit of powers of A1 and he granted loan and subsequently for the said amount, the property documents were mortgaged. Hence, the conviction and the finding that he did not obtain the mortgage is not correct.

8.4.Similarly, for housing loan also, proper document was submitted. The granting of the loan and obtaining the document subsequently is not a grave misconduct, as held by the learned Trial Judge. The said two loans are with sufficient securities and hence, there is no loss to the bank. The same was not properly considered by the learned Trial Judge.

8.5.The learned Trial Judge failed to consider that the granting of the loan to purchase the Amalesh Cashew Nut Factory in the name of A2 is not through the loan amount. It is the amount diverted from the account of the Toufiq Rahman and Dr.Salaluddin and hence, the charge that he transferred the amount in the name of the vendor of A2, namely, Manoje, PW-34 is not correct. The Demand Drafts were taken from the amount utilised from the accounts of Toufiq Rahman and Dr.Salaluddin and the same was used for taking the Demand Drafts and they did not make any complaint against A1.

8.6.The finding of the learned Trial Judge in acquitting A2 and A3, namely, for the charge of borrowing of the home loan and educational loan and convicting the appellant alone under Section 120B IPC is not maintainable. Without any segregable portion of the evidence, the finding of the learned Trial Judge under Section 120B is not correct. The purchase of Amalesh Cashew Nut Factory is concerned, the learned Trial Judge overlooked all the evidence and erroneously came to the conclusion that A1 granted loan without loan application and debited a sum of Rs.3,00,000/- on 27.11.2008 and on 05.11.2008, released a sum of Rs.10 lakhs from the trickle feed account for which, there is no entry into in the corresponding trickle feed account and hence, the finding of the learned Trial Judge that the amount was transferred from the trickle feed account on two occasions is not proved beyond reasonable doubt.

8.7.He stated that the finding of the learned Trial Judge is erroneous. The learned Trial Judge without any proof has held as proved that the A1 opened the account in the name of Vincent Durai and Sagitha and he used the ATM card of the said fictitious accounts when the said Vincent Durai has not made any complaint. In the said circumstances, the initiation of prosecution for the opening of the fictitious account in the name of the Vincent Durai is not legally sustainable. Similarly, the Sagitha also has not made any complaint.

8.8.Further, the learned Trial Judge failed to consider that the prosecution did not produce any evidence to prove the transfer of the account from the suspense account, trickle feed amount, State Government account to the said Vincent Durai and Sagitha fictitious accounts. Hence, the prosecution has not proved the same. The learned Trial Judge failed to consider that there is no whisper about the transfer of the amount from the said account to any of the fictitious accounts and the transfer of the amount to A2's account. Hence, the conviction is to be set aside.

8.9.The allegation that A1 on 21.08.2008 transferred a sum of Rs. 1,58,153/- from the trickle feed account to the Vincent Durai is false on the ground that the said amount was transferred from the Mary Stella Thangam account to trickle feed account and the same was not properly considered by the Trial Court and the statement of accounts of the trickle feed account for three years, namely Ex.P.83 has not been properly considered by the trial Court.

8.10.In sum and substance, the learned Senior Counsel stated that the learned Trial Judge in a mechanical manner framed the charges and without sufficient evidence to prove the charges, convicted the appellant and imposed the sentence against law and hence, he seeks for allowing this appeal.

9.**Submission of the Appellant in Crl.A.(MD).No.315 of 2016:**

9.1.The learned Trial Judge having acquitted the appellant for the charges of educational loan and the housing loan and the learned Trial Judge finding guilty and convicting the appellant only for the charge of purchase of Amalesh Cashew Nut Factory and to purchase the same, A1 transferred the amount of Rs. 13 lakhs to A2 account and A2 took the Demand Drafts for the value of Rs.10 lakhs and transferred the Rs.3,00,000/- to PW-34 is not sustainable. The learned Trial Judge found that without any application for loan, the said amount was credited to the account of PW-34. The learned Trial Judge failed to consider that it is the case of the prosecution that the amount was transferred from the trickle feed account and the State Government account. The said corresponding debit entry was not found and the prosecution never produced any document to prove the same. However, Ex-P83, the entire file of the trickle feed account was produced. There is no corresponding entry in Ex-P83 for a sum of Rs.3,00,000/- on 27.11.2008 and Rs.10 lakhs on 05.12.2008.

9.2.The learned Trial Judge without any corresponding corroborative evidence to consider, relied upon Ex-P75 and failed to consider that there is no corroboration between the Ex-P75 and Ex-P83. The learned Trial Judge failed to see that on the date of the occurrence, the first appellant's bank had the facility of core banking system. As per the above system, any amount if debited without proper maintenance, the same would reflect across various branches. According to the learned Counsel that if amount is transferred from the trickle feed account, definitely, there would be a debit voucher and the detail of the debit voucher would be entered in a register by the Senior Messenger. In this case, the said Senior Messenger was not examined and also no such document was produced by the prosecution. In the said circumstances, the allegation that the amount was transferred from the trickle feed account to the account of the A2 and the account of the PW-3 and P.W.4 has not been proved beyond reasonable doubt and hence, he seeks for the allowing the appeal on the said score.

10.The submission of the learned Special Public Prosecutor:

10.1.The A1/appellant in Crl.A.(MD).No.172 of 2016 Manager of the Kalkulam Branch, SBI, flouted all norms of the Bank procedure and granted loans in favour of the A2 and thereby, committed the charged offence. He culled out materials from documents and material portion of the prosecution evidence and also the 313 Cr.P.C., answering of the accused and made elaborate arguments and seeks for dismissal of this appeal.

10.2.The learned Special Public Prosecutor further submitted that P.W.22, 33, 34 clearly deposed about the participation of A1 and A2 in the above crime and charge of conspiracy is clearly established. He further relied on Ex.P.77 and 111 and other various exhibits to presume the conspiracy to swindle bank money.

10.3.The Special Public Prosecutor submitted that the crooked mind of the accused officer A1 in misusing his power in diverting the amount kept in the "*trickle feed account*" into A2's account and other various fictitious accounts and illegally utilized the amount for himself and the "A2's use" in unquestionable way needs imposition of the rigorous punishment.

10.4.The Special Public Prosecutor also submitted that even though there is some adverse finding against the prosecution relating to the involvement of the A2 and A3 in educational loan and the housing loan, the same is not a ground to sustain the conviction under the scheme of diversion of the fund to purchase the Amalesh cashewnut factory in favour of A2. He also submitted that even without filing the appeal, the prosecution can argue for the conviction by making the submission over the wrong finding in respect of the educational loan and housing loan ie., he submitted that the Principle applicable under 41 Rule 31 of C.P.C., to sustain the decree by questioning the legality of the adverse finding is applicable in this case also. For the said principle of law, he relied the judgment of the Hon'ble Division Bench of the Kerala High Court reported in ***1991 Crl L J 23***.

10.5.The learned Special Public Prosecutor also made reliance on the answer given by the both appellants during 313 Cr.P.C., questioning. He specifically relied A1's admission of all the fraudulent transactions and also corroborated admission of A2 in receipt of the all the fradulent loan transactions and he seeks for the confirmation of the convition and sentence of imprisonment.

10.6.The learned Special Public Prosecutor also reiterated the elaborate discussion made by the learned trial Judge in convicting the A1 and A2 for the alleged charged offence.

10.7.The learned Special Public Prosecutor also submitted that the principle of parity is not applicable in this case. He submitted that the acquittal of the A3 is not a ground to disbelieve the prosecution case and he submitted the availability of abundant evidence to sustain the conviction against A1 and A2.

11.This Court has considered the rival submissions put forth on either side and perused the materials available on record and the precedents relied upon by them.

12.Now the question is whether the prosecution proved the case beyond reasonable doubt to convict the appellant in Crl.A.(MD).No.172 of 2016 for the offence under Sections 120-B r/w 409, 420, 467, 468 r/w 471, 477-A of IPC and Section 13(2)(d) r/w 13(1) (c) & (D) of the prevention of Corruption Act, 1988?

12.1.Now the question is whether the prosecution proved the case beyond reasonable doubt to convict the appellant in Crl.A.(MD).No.315 of 2016 for the offence under Sections 120-B r/w 409, 420, 467, 468 r/w 471, 477-A of IPC and Section 13(2) r/w 13(1) (c) & (D) of the prevention of Corruption Act, 1988?

13.General discussion on merits:

13.1.A1 is K.Chandrasekaran and he was working as a Branch Manager of Kalkulam Branch, SBI. A2 is Sindhu Kumari. A3 is the husband of the Sindhu Kumari. A3 was working in a foreign country and he was not always available in India. A2 had romantic and sexual relationship with A1. So, A1 granted housing loan to A2 and A3 and educational loan for A2's child and transferred the amount of Rs.13,00,000/- of the SBI amount to the vendor of the PW-2, namely, PW-34 and arranged the purchase of the Amalesh Cashew Nut Factory of the PW-34 in the name of the A2 and he was a attesting witness in the sale deed.

13.2.A1 was in romantic relationship with A2 and due to the said relationship, he granted housing loan and educational loan and transferred the amount to purchase the Amalesh Cashew Nut Factory in the name of A2 without any loan application and the security for the said loan transactions.

13.3.Apart from that, A1 created fictitious accounts in the name of Vincent Durai and Sagitha, namely, PW24 and PW30 and tranferred the amounts from the various suspense accounts into the said fictitious accounts and he used to, withdraw the amount through the ATM card. The said ATM card was in the custody of A1. With the said allegations, the prosecution examined PW-1 to PW-41 and marked Ex-P1 to Ex-P116 and MO1 to MO3. The learned Trial Judge acquitted accused No.3 from all the charges and convicted A2 as against as the allegation of transfer of the amount from various suspense accounts to her accounts and converting the same into Demand Drafts worth about Rs. 10,00,000/- and directly transferred of the amount from the account of A2 to the vendor, namely, PW-34 and for the said transaction alone, the learned Trial Judge convicted A2, namely, Sindhu Kumari.

13.4.The learned Trial Judge convicted A1 for all the charges, namely, he granted loan without obtaining the security for the housing loan and the educational loan to A2 and A3. The learned Trial Judge has held that A1 transferred the amount of Rs.13 laksh to purchase Amalesh Cashew Nut Factory belonging to PW-34 in the name of A2 by paying the amount of Rs.13 laksh by way of demand drafts for a sum of Rs.10 lakhs and direct transfer of Rs.3 laksh to the PW-34's account and hence, the learned Trial Judge convicted the accused as stated above.

13.5.The learned Trial Judge also found that A1 created fictitious accounts in the name of Vincent Durai, PW-24 and PW-30, Sagitha. He transferred the amount from the various suspense accounts and the same was withdrawn by him from the said accounts using the ATM card of the said fictitious accounts. The prosecution, examined, PW-30, Sagitha and PW-24, Vincent Durai and number of bank officials to prove that he granted housing loan to A2 and A3 without obtaining mortgage deed and granted the educational loan to A2 and A3s' daughter to pursue her study in the foreign country. Without obtaining any security for the same and without even loan application, he transferred the amount of Rs.13 lakhs to A2 to purchase the Amalesh Cashew Nut Factory and he forged the signature of Sagitha and Vincent Durai and withdrawn the amount from the said fictitious accounts. He committed the offences of Sections 467, 468, 477, 477A, 420 and 409 IPC.

13.6.A1 committed the said offence of cheating and forgery of the documents and falsification of records. He committed the misconduct as stated in Section 13(2) and 13(1)(c) and (d) of the Prevention of Corruption Act, 1988. Apart from that, through the misconduct, A2 obtained wrongful gain of transferred amount of Rs.13 lakhs in her name to purchase Amalesh Cashew Nut Factory and hence, the learned Trial Judge correctly convicted the appellants, A1 and A2 for the Sections 120B r/w 409, 420, 467 and 468 IPC r/w 471 and 477-A IPC and Sections 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act and correctly imposed the fine of Rs.13 lakhs to A2 under Section 420 IPC with default sentence of three months simple imprisonment and other sentences as stated above and the learned Counsel's submission that the prosecution never proved any corresponding debit entry in the register for the transfer of the amount from the suspense account cannot be accepted, when there is a clear mentioning of the transfer in Ex-83, 84, 85, 88 and 90. Further, in Ex-P60, 70, 75 and 76 and evidence of PW-34, it is clear that transfer was made. Hence, the submission of the learned Counsel for the appellants is not acceptable. Even though the learned Trial Judge acquitted A2 and A3 under educational loan and home loan charge on the ground that they had specifically executed the mortgage deed, they are not relevant to deal with A1.

13.7.A1 flouted all the legal formalities to grant loan. Before granting the loan, it is fundamental to obtain the security for the said loan. A1 granted the loan without obtaining the said mortgage deed from A2 and A3. The learned Trial Judge had taken a judicious view against A2 and A3 on the ground that they furnished the security for the said account and the said loan has become a recoverable loan. Further, the learned Trial Judge considered that there is no defect in the title. The learned Trial Judge also considered the evidence of PW-30 that A1 operated her account and withdrawn the amount. P.W.30 also disputed the signature of the withdrawal slips. To prove the same, the prosecution relied the Handwriting Expert opinion and the Handwriting Expert also affirmatively stated that the signature of PW-30 was not found and whereas the signature of A1 matched.

13.8.Similarly, PW-24 deposed before the Court and stated that he never opened the account and the signature of the PW-24 did not match. The same matched with the signature of A1. The same was proved through the examination of the handwriting expert and the relevant documents also marked. Further, number of the bank officials, who had acquaintance with the handwriting of A1 also deposed before the Court and affirmed the handwriting of A1. In the said circumstances, the prosecution clearly proved the charges levelled against the appellant. A1 is entrusted with the public money. He is duty bound to disburse the same in a legitimate way by following the legal procedure. A1 without following any of the procedure, granted loan without obtaining documents, transferred the money to A2 to purchase Amalesh Cashew Nut Factory from Ex-P34 and also withdrew the amount in the fictitious accounts and therefore, they not only committed criminal breach of trust and also committed the offences under Sections 420, 467, 468 IPC r/w 471 IPC. Hence, the learned Special Public Prosecutor rightly relied paragraph Nos.19 to 22 of the Honourable Supreme Court Judgement in the case of ***N.V.Subbarao Vs. State*** reported in ***2013 2 SCC 162***. The prosecution proved the above ingredients beyond reasonable doubt. There is no merit in the contentions of the learned Counsel for the appellants and hence, this Court confirms the conviction and sentence passed against A1 and A2.

14. <u>Housing loan</u>

A1 Chandrasekar is the appellant in Crl.A.(MD).No.172 of 2016 and the manager of SBI Kalkulam Branch. A2 Sindhu Kumari is the appellant in Crl.A.

(MD).No.315 of 2016. A3 R.S.Mony is husband of the said Sindhukumari. A1 granted housing loan of Rs.15,00,000/- against the banking norms and procedure. A2 and A3 submitted the housing loan application on 02.08.2007 without any field verification ie., Pre Sanction Visit, Processing, Post Sanctioning Visit by the field officer of the bank namely P.W.22. A1 created the sanction report under Ex.P.46. P.W.22 field Officer deposed that he never submitted any report to grant housing loan to A2. He specifically denied the signature found in Ex.P46 and also he identified the signature of A1 in Ex.P46. A1 Chandrasekar debited the said amount Rs.10,00,000/- of the loan amount from the Trickle Feed Account No.98571009991. The debit voucher is containing the signature of A1, and A1 has no authority to debit the amount from the Trickle Feed Account without permission of the Superior Officers. A1 granted the loan prior to the sanction by the Superior officers. He granted the loan by way of demand draft Ex.P29 and Ex.P30. It is duty of A1 before granting loan to get the prior instructions report, prior sanction report, from the field officers. The mortgage deed was also marked with over writing. P.W.13 deposed that the valuation report was given only on 06.06.2008. P.W.15 also deposed that the said report was received on 06.06.2008. The same was corroborated by P.W. 14 and legal opinion obtained on 16.04.2008 Ex.P41 and Ex.P42 are the demand draft applications submitted by A1. Rs.5,00,000/- was credited in the account of A2. The sanction was granted for a sum of Rs.10,00,000/- only on 20.03.2008. Hence, from the evidence of P.W.8, P.W.9, P.W.13, P.W.14, P.W.15, P.W.16, P.W. 19, P.W.21, P.W.36 and Ex.P.14, Ex.P4, Ex.P28, Ex.P36, Ex.P41, Ex.P43, Ex.P42, Ex.P24, ExP45, Ex.P47, Ex.P.29, Ex.P30, Ex.P46 and Ex.P82, it is clear that A1 illegally transferred the sum of Rs.10,00,000/- to A2 from Trickle Feed Account and without any pre sanction visit from the field Officer namely P.W.22 and forging the signature of P.W.22 under Ex.P.46 and thereby the bank's fund was illegally diverted to A2's account. The detailed procedure is stated in Ex.P4. None of the procedure was followed by A1 and from the flow of funds by transferring the amount of Rs.10,00,000/- from the Trickle Feed Account into A2's account, much earlier to the grant of sanction of the housing loan from head office, cumulatively proved the charge framed against the appellant/A1 for the offence under Sections 120-B r/w 409, 420, 467, 468 r/w 471, 477-A of IPC and Section 13 (2) r/w 13(1) (c) & (d) of the Prevention of Corruption Act, 1988; and 409, 420, 467, 468 r/w 471 and Section 13(2) r/w 13(1)(c) & (d) of the Prevention of Corruption Act, 1988.

15.<u>Educational Loan</u>

The second allegation against the appellant in this case is that he conspired with A2 to grant a educational loan to A2 / Sindhukumari's daughter. According to the prosecution, without following any procedure the educational loan was granted to pursue the studies of A2's daughter in a foreign country for the course of Commercial Pilot Training. A1 debited the amount of Rs.10,50,000/- from the Trickle Feed Account No. 98571009991 on 15.10.2008 and credited the said amount in the account of A2 and her husband's account in S.B.11206288277 under the said loan. A1 sent a communication to the AGM, SBI misrepresenting as if a sum of Rs.20,00,000/- was granted to the daughter of A2 for pursuing her studies and remitted the amount through the mail transfer to the institution in which the daughter of A2 was studying, in California. The said communication itself shows the misrepresentation that Educational loan was not granted.

15.1.In the said circumstances, the learned trial Judge considered the overall circumstances and held that A1 committed the offence under Sections 20-B r/w 409, 420, 467, 468 r/w 471, 477-A of IPC and Section 13 (2) r/w 13(1) (c) & (d) of the Prevention of Corruption Act, 1988; and 409, 420, 467, 468 r/w 471 and Section 13(2) r/w 13(1)(c) & (d) of the Prevention of Corruption Act, 1988.

This Court perused the records and also made meticulous appreciation of evidence in this regard.

15.2.From the evidence of P.W.1, P.W.22, P.W.26 and Ex.P2, Ex.P11, Ex.P12, Ex.P40 and Ex.P50, the following facts are clear A2 submitted a loan application before the regional office for the educational loan to her daughter and the regional offence returned the same questioning the eligibility. The course for which, the loan was claimed is not the listed course in the norms of the bank, as per Ex.P2. Therefore, the Regional Office returned the application submitted by A2 to grant educational loan of Rs.20,00,000/-.

15.3.A1 as a branch manager had power to grant loan only within the limit of Rs.10,00,000/-. But, he granted a sum of Rs.12,96,937/- to A2's daughter, as if he had power and he also is said to have gotten security from one Yakoob. The loan application with the signature of the daughter of A2 was available. Admittedly, at the time of submission of the loan application her daughter was not in India. The witness also deposed that in the debit slip dated 07.11.2008, A1 forged the signature which was clearly identified by P.W.3, who was the co-employee of A1. He confirmed and identified his signature. There was no dispute that a sum of Rs.2,46,937/- was transferred to the daughter of A2, on the basis of D.D.No.487438. From the amount of Rs.10,00,000/- debited from the Trickle Feed Account and credited in the A2's account, the demand draft was prepared by A1 in the name of the college of A2's daughter and transmitted to the A2's daughter's college, on 15.10.2008. Where as, the loan was sanctioned by A1 only on 29.11.2008. In the said loan, it was found that there was a signature of Yakoob as a guarantor for the granted amount dated 29.11.2008. According to the prosecution, Yakoob did not put his signature and the said signature was forged by A1 for which, Handwriting expert report affirmed that Yakoob's signature was not found in the said guarantee deed. In that event, the loan was sanctioned only on 29.11.2008, but, the amount was disbursed much earlier, by drawing from the Trickle Feed Account without any authorisation and credited in the account of A2 and A3. Further, a sum of Rs.2,47,555/- was also debited from the Trickle Feed Account and the same was remitted to the Institute in foreign country by way of outward remittance.

15.4.From the above discussion, it is clear that the educational loan of Rs.12,97,555/- was granted in favour of A2's daughter for pursuing her studies, which was not recognized by the norms of the bank and also without making the application and permission from concerned higher authority for the said amount ie., Regioanl Office. Therefore, there was a loss to the tune of Rs.12,97,555/-. In the said circumstances,the prosecution clearly proved the charges against A1 for the offence under Section 409, 420, 467, 468, 471 and 477 A of IPC. Apart from that he also made a false representation as if the loan was granted by the regional office. The regional office never granted the above loan. In all aspect, A1 committed the above offences. The learned Trial Judge, correctly appreciated the above facts and this Court finds no merit in the contention of the learned counsel for the appellant, namely, A1, that the prosecution failed to prove the charges, on the ground that no evidence was adduced to show the transfer from Trickle Feed Account, through the demand draft, in the name of A2 and A3's account. Hence, the prosecution proved its case beyond reasonable doubt in respect of the educational loan.

16.Purchase of Amlesh Chesewnut factory:

The third allegation against the appellants is that A2 intended to purchase Amlesh Cashew nut factory of P.W.34. A1 transmitted an amount of Rs. 13,00,000/- from the Government account to Amlesh Chesewnut factories account, in the name of P.W.34 on 27.11.2008 and 05.12.2008, without any loan application or any sanction of loan. In the said sale transaction, A1 acted as attestor to the document. P.W.35 executed the sale deed in favour of A2 and in the said document A1 acted as attesting witness. P.W.35 deposed that on 27.11.2008 and 05.12.2008, the amount was transferred from the Government suspense account to Amlesh cashew nut factory. P.W.8 also deposed that under Ex.P86, the amount was transferred from state account to the Amlesh Cashew nut factories account. In the said transaction, namely, Ex.P17 as already stated that he attested as a witness and he admitted the same in the proceedings under Section 313 Cr.P.C., questioning also and the said amount was not recovered. From Ex.P100, Ex.P16, Ex.P17, Ex.P75, Ex.P86 and the evidence of P.W.8, P.W.35 and the explanation given by A1 during the proceedings under Section 313 of Cr.P.C., it is clear that without obtaining any loan application from A2, A1 released the sum of Rs.10,00,000/- and deducted from the Trickle Feed Account and transferred to the State Government account and thereafter credited in the name of P.W.35's account, namely Amlesh cashew nut factory.

16.1.Similarly, a sum of Rs.3,00,000/- was released from the Trickle Feed Account directly to Amlesh cashew nut factory's Account No.11014049756. From the above transaction, it is clear that there was conspiracy between A1 and

A2 and A1 transferred the amount without any loan application from A2 and purchased the property utilizing many illegal transfer and amount from the Government account without any authority. Hence, this Court concurs with the finding of the learned trial Judge. A1 and A2 are liable to be convicted for the offence under Sections 420, 120(b), 120(b) r/w 420 of IPC and other offences.

17.Fraudulent withdrawal of the amount by A1 in the fictitious account of Vincent Durai:

23.1.A1 also faced the allegation that he created the fictitious accounts in the name of Vincent Durai. From the State Suspense Account/Trickle Feed Account, amount was transferred to the said fictitious account and made unauthorized entries in the account and he himself withdrawn the said amount by using ATM card and withdrawal slips. To prove the same, the prosecution examined Vincent Durai. Vincent Durai specifically deposed that under Ex.P.53, Rs.5,00,000/- was deposited under FDR and the same was withdrawn under Ex.P.54 and he further deposed that the same was not deposited by him and the same was not withdrawn by him. Similarly, he denied the signature in the withdrawal slip dated 31.06.2006 under Ex.P.55. He further stated that his name is “Nangil Vincent” not “Vincent Durai”. Ex.P52, Ex.P54 and Ex.P55 all would reveal that his name is Vincent Durai and hence, from the above facts, it is clear that A1 transferred the amount from suspense account into the said account of Vincent Durai and thereafter he had withdrawn the same. Hence, the prosecution established that he misappropriated the fund of the bank, by manipulation of the documents and committed illegal act of withdrawal without any authority.

18.Fraudulent withdrawal of the amount by A1 in the account of Sagitha:

Similar modus of operandi of transfer of amount from the Trickle Feed Account to the Sagitha account was made by the A1 and he had withdrawn the amount in the name of P.W.30. P.W.30 came into box and deposed that she sustained injury on her leg and hence, she was unable to sit/ride the vehicle and he requested to arrange the loan for purchasing of new vehicle. Therefore, the account was opened and ATM card was handed over to A1. The said ATM card was misused by A1. A1 forged the signature of said Sagitha in the withdrawal slips and the same was clearly deposed by P.W.26, P.W.27, P.W.30 and P.W.37, the Handwriting Expert also clearly deposed that the signature in the withdrawal slips is not the signature of the Sagitha. Similarly, the expert also deposed that the signature in the withdrawal slip relating to Nangil Vincent also is not the signature of the Nangil Vincent.

18.1.From the above facts, it is clear that A1 transferred the amount from suspense account into the said account of Vincent Durai and thereafter he withdrawn the same. Hence, the prosecution established that he misappropriated the fund of the bank, by manipulation of the documents and committed illegal act of withdrawal without any authority.

19.**Discussion over the explanation furnished by the appellant in Crl.A.(MD).No.172 of 2016/A1/Manager of the Bank under Section 313 Cr.P.C.,**

He admitted all the loan transactions. He explained that P.W.22 field officer was on leave and hence, he granted loan without obtaining the field officers pre sanction visit, processing and recommending and post sanction visit, field verification from P.W.22 field officer. He also admitted the meeting of A2 in various material incriminating circumstances. More particularly, he was present in the registration office on the date of the purchase of the Amelsh Cashew nut factory in the name of the A2 and he subscribed his signature as attestor. He also admitted the deposition of his driver P.W.33 that he visited A2's house frequently. He also admitted the transfer of the amount from the Trickle Free account to A2 and various persons' account. He also admitted that the withdrawal of amount from the Vincent Durai and Sagitha. Similarly, A2 also admitted the above transactions. From the above explanation submitted by both, as rightly pointed out by the learned Special Public Prosecutor, the prosecution clearly proved the charged offence against the appellants beyond reasonable doubt.

20.**Principle of Parity:**

one of the argument that was made on behalf of the appellant is that, after acquittal of A3 husband of the A2, the conviction against A1 and A2 is not legally sustainable. The said argument is deserved to be rejected on the following discussions:

20.1.So far as the housing loan is concerned, there was am allegation against the husband of the A2. He was no way connected with the any of the fraudulent transactions made by A1 and A2 relating to the educational loan and purchasing the cashew nut factory. Even in the bank loan, as rightly pointed out by the learned trial judge no sufficient material is available to prove his conspiracy or any other charge. Even in the 313 Cr.P.C., questioning, A2 specifically explained that she alone had made the transaction with the bank. Therefore, the learned trial Judge acquitted A3. In this regard, it is relevant to extract the principle laid down by the Hon'ble Supreme Court in the case of ***Gangadhar Behera Vs. Stage of Orissa*** reported in ***2002 8 SCC 381:***

> *15.Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the Court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end.*

21.In view of that, this Court declines to accept the appellants' plea of parity to acquit the appellants.

22.Therefore, this Court concurs with the finding of the learned trial Judge in convicting the appellants for the charged offence as stated supra. In result, the questions framed in this appeal are answered against the appellants.

23.Conclusion:

There is ample evidence to prove the charge against A1 that he granted housing loan and the educational loan to A2 by transferring the amount from the Trickle Feed Account and credited in A2's account and transferred the same to the account of A2's daughter. Further, without any loan application, to purchase Amlesh Cashewnut factory A1, transferred the amount from the Government Account to the account of P.W.34. Apart from all, he also transferred the amount to Nangil Vincent's account P.W.24 and P.W.30 and made false entry in their account and withdrawal was made by using the payment slips and ATM card and in all ways, he committed the charged offences. The prosecution proved the case from the evidence of the bank officials and also through the specimen of the hand writing of A1 and A1 in his 313 Cr.P.C., proceedings also admitted the entire circumstances and there was no explanation to the number of incriminating circumstances available on record. There is evidence for A2's involvement in the conspiracy with A1 to convert the bank funds illegally to the account of A2 to purchase the Amalesh Cashew Nut Factory and the same is clearly proved through the documentary evidence and also the evidence of the witnesses. She has also not denied the fact about the transfer of the amount from the Government account and transfer to P.W.34's account namely Amalesh Cashew Nut Factory to purchase the land. Further, in the sale deed the attestation of A1 is found. From the above, the conspiracy is clearly proved. Hence, the learned trial Judge correctly convicted her for the charged offence and misappropriation.

24.The Question of Sentence against the A1/Manager in Crl.A.(MD).No.174 of 2016 :

In this case, the prosecution clearly proved the misappropriation of the huge amount of the bank. A1 being a Bank Manager holds a position of trust over the public money and he is engaged in financial transactions or acts in a fiduciary capacity and, therefore, highest degree of integrity and trustworthiness is expected from him. Therefore, honesty and integrity are inbuilt requirements of banking business and absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer so that the confidence of the public/depositors is not eroded. Therefore, it would not be proper to indulge in corrupt practice for his personal ends and against the interest of the bank and the depositors. Hence, these type of cases must be dealt with iron hands without any undue sympathy and their act does not deserve to be dealt with leniently. Judged in that background, the award of sentence of imprisonment against the appellant in Crl.A.(MD).No.172 of 2016 needs no interference. Since A1 misappropriated the huge amount and there is a huge loss to the bank, this Court is not inclined to interfere with the sentence of imprisonment passed by the Court below.

25.The Question of Sentence against the A2/Customer of the bank in Crl.A.(MD).No.315 of 2016 :

In her 313 Cr.P.C., she submitted detailed explanation. In the said explanation, she admitted the receipt of the loan. She also pleaded that she was not aware of the banking procedure. She also stated that she made payment of more than Rs.30,00,000/-. Due to the pendency of the criminal case, she was unable to settle the due. Apart from that, after the conviction by the impugned judgment, she met with an accident and her right hand was amputated and she is aged more than 60 years and is suffering from age old ailments. Hence, her prayer for reduction of sentence of imprisonment is accepted and substantial sentence of imprisonment granted by the learned trial Judge is reduced to "one year".

Summary of Discussions	**Paragraphs Nos.**
Brief facts of the case	2
Counsel submission	4
Submission of the learned counsel for the appellant in Crl.A.(MD).No.172 of 2016	6
Submission of the learned counsel for the appellant in Crl.A.(MD).No.315 of 2016	11
Submission of the Special Public Prosecutor	13
General Discussion on merits	16
Housing Loan	22
Educational Loan	24
Purchase of Amlesh Cashew Nut Factory	28
Fraudulent withdrawal of the amount by A1 in the fictitious account of Vincent Durai	30
Fraudulent withdrawal of the amount by A1 in the account of Sagitha	31
Discussion over the explanation furnished by the appellant in Crl.A.(MD).No.172 of 2016/A1/Manager of the Bank under Section 313 Cr.P.C.,	32
Principle of parity	33
Conclusion	35
The Question of Sentence against the A1/Manager in Crl.A.(MD).No.174 of 2016	36
The Question of Sentence against the A2/Customer of the bank in Crl.A.(MD).No. 315 of 2016	37

26.In the result, all the submissions of the learned counsel for the appellants are deserved to be rejected except the sentence of imprisonment as stated above.

26.1.Accordingly, the appeal filed by A1/Bank Manager in Crl.A.(MD).No.172 of 2016 is dismissed.

26.2.The appeal filed by the A2 in Crl.A.(MD).No.315 of 2016 is partly allowed in the following terms:

26.2.1.The conviction passed by the Court below against the appellant is confirmed.

26.2.2.The sentence of imprisonment granted by the learned trial Judge is reduced to one year with confirmation of the fine amount.

26.3.Bail bond executed by the appellants, shall stand cancelled. The learned trial Judge is directed to secure the appellants to undergo remaining period of the sentence of imprisonment.

Index :Yes / No **19.03.2024**
Internet :Yes / No
NCC :Yes / No
cmr/*sbn*

To

1.The II Additional District Judge for CBI Cases, Madurai.

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

K.K.RAMAKRISHNAN, J.

cmr/*sbn*

CRL.A.(MD)Nos.172 and 315 of 2016

19.03.2024