IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 17.07.2025

PRONOUNCING ORDERS ON : 30.07.2025

Coram:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Criminal Appeal Nos.222, 210 and 195 of 2014

Crl.A.No.222 of 2014

1.P.Srinivasalu Reddy
2.Sundaram Gopu ... Appellant

-Vs-

State By Inspector Of Police
CBI Economic Offices Wing (EOW)
Chennai
(Rc No.2 (e)/2004/cbi/eow/chennai)

.... Respondent

Prayer : Criminal Appeal under Section 374 (2) of Cr.P.C., to set aside the conviction and sentence imposed on them by the learned XI Additional City Civil and Sessions Judge for CBI Cases, Chennai, dated 27.03.2014 in C.C.No.8 of 2005, allow the appeal.

For Appellants : Mr.S.Suresh

For Respondents : Mr.B.Mohan
Special Public Prosecutor

Crl.A.No.210 of 2014

1.M.Gowthaman
2.S.Sreedharan
3.Sadhan Kumar Banerjee ... Appellants

-Vs-

State By Inspector Of Police
CBI Economic Offices Wing (EOW)
Chennai
(Rc No.2 (e)/2004/cbi/eow/chennai) .... Respondents

Prayer : Criminal Appeal under Section 374 (2) of Cr.P.C., to set aside the conviction and sentence imposed on them by the learned XI Additional City Civil and Sessions Judge for CBI Cases, Chennai, dated 27.03.2014 in C.C.No.8 of 2005, allow the appeal.

For Appellants : Mr.V.Karthik, Senior Counsel
assisted by Mr.Haroon Rasheed
M/s.T.S.Gopalan Associates

For Respondents : Mr.B.Mohan
Special Public Prosecutor

Crl.A.No.195 of 2014

Ganesh K ... Appellant

-Vs-

State By Inspector Of Police
CBI Economic Offices Wing (EOW)
Chennai
(Rc No.2 (e)/2004/cbi/eow/chennai) .... Respondents

Prayer : Criminal Appeal under Section 374 of Cr.P.C., against the conviction and sentence passed by the learned Court of XI Additional Special Judge (CBI cases relating to Banks and financial institutions) Chennai – 01 : XI Additional City Civil & Sessions Judge for CBI Cases, Chennai – 600 001 by judgment, dated 27.03.2014, made in C.C.No.8 of 2005, convicting the appellant/accused – 3 herein to undergo 3 year Rigorous Imprisonment under Sections 120(b) r/w 419, 420, 467, 468, 471 of I.P.C and under Sections 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 to undergo 2 year Rigorous Imprisonment under Sections 420 of I.P.C (eight counts) and imposed a fine of Rs.8,000/- (Rupees Eight Thousand only); in default to undergo Simple Imprisonment for 3 months; to undergo 2 year Rigorous Imprisonment under Sections 467 of I.P.C (eight counts) and imposed a fine of Rs.8,000/- (Rupees Eight Thousand only), in default to undergo Simple Imprisonment for 3 months Simple Imprisonment; to undergo 2 year Rigorous Imprisonment under Sections 468 of I.P.C (eight counts) and imposed a fine of Rs.8,000/- (Rupees Eight Thousand only), in default to undergo Simple Imprisonment for 3 months Simple Imprisonment; to undergo 2 year Rigorous Imprisonment under Sections 467 r/w 471 of I.P.C (eight counts) and imposed a fine of Rs.8,000/- (Rupees Eight Thousand only), in default to undergo Simple Imprisonment for 3 months and the sentence to run concurrently.

For Appellant : Mr.K.Shankar

For Respondents : Mr.B.Mohan
Special Public Prosecutor for CBI Cases

COMMON JUDGMENT

A. The appeals :

These appeals are directed against the judgment of the XI Additional City Civil Judge, Chennai (Special Court for CBI cases relating to Banks and Financial Institutions), Chennai dated 27.03.2014 made in C.C.No.8 of 2005.

1.1 In the said case totally seven accused were tried and by the judgment aforementioned, all the seven accused were convicted and sentenced as under:

Accused No.	Offence under Sections	Sentence
A1 and A2	Section 120-B r/w 419, 420, 467, 468, 471 of IPC and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.	Rigorous imprisonment for 7 years and to pay a fine of Rs.9,00,000/- each, in default to undergo simple imprisonment for 2 years.
A3 to A7	120-B read with 467, 468, 471 of IPC and 13(1)(d) of Prevention of Corruption Act, 1988.	Rigorous imprisonment for 3 years and to pay a fine of Rs.1000/- each in default to undergo simple imprisonment for 3 months each.
A1 and A2	Section 420 IPC (Eight Counts)	Rigorous imprisonment for 7 years and to pay a fine of Rs.72,00,000/- each, in default to undergo simple imprisonment for two years each.
A3 to A7	Section 420 IPC (Eight Counts)	Rigorous imprisonment for 3 years and to pay a fine of Rs.8,000/- each, in default to undergo simple imprisonment for 3 months each.
A4 to A6	Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.	Rigorous imprisonment for 3 years and to pay a fine of Rs.1000/- each, in default to undergo simple imprisonment for 3 months each.
A1 and A2	Section 467 IPC (Eight counts)	Rigorous imprisonment for 7 years and to pay a fine of Rs.72,00,000/- each, in default to undergo simple imprisonment for 2 years each.
A3	Section 467 IPC (Eight Counts)	Rigorous imprisonment for 3 years and to pay a fine of Rs.8000/-, in default to undergo simple imprisonment for 3 months.
A1 and A2	Section 468 IPC (Eight Counts)	Rigorous imprisonment for 7 years and to pay a fine of Rs.72,00,000/- each, in default to undergo simple imprisonment for 2 years each.

Accused No.	Offence under Sections	Sentence
A3	*Section 468 IPC (Eight Counts)*	*Rigorous imprisonment for 3 years and to pay a fine of Rs.8000/-, in default to undergo simple imprisonment for 3 months.*
A1 and A2	*Section 471 r/w 467 IPC (Eight Counts)*	*Rigorous imprisonment for 7 years and to pay a fine of Rs.72,00,000/- each, in default to undergo simple imprisonment for 2 years each.*
A3 to A6	*Section 471 r/w 467 IPC (Eight counts)*	*Rigorous imprisonment for 3 years and to pay a fine of Rs.8000/- each, in default to undergo simple imprisonment for 3 months each.*
A2	*Section 419 IPC*	*Rigorous imprisonment for 7 years and to pay a fine of Rs.9,00,000/-, in default to undergo simple imprisonment for 2 years.*

1.2 Aggrieved thereby, the A1 P.Srinivasalu Reddy and A2 Sundaram Gopu preferred Crl.A.No.222 of 2014. Pending the appeal, A1 died and the appeal by him is treated as abated. A3 Ganesh has preferred Crl.A.No.195 of 2014 and A4,A5 and A6 viz M.Gowthaman, S.Sreedharan and Sadhan Kumar Banerjee have preferred Crl.A.No.210 of 2014. No separate appeal has been preferred on behalf of A7 partnership firm.

B. The Case of the Prosecution:

2. On 20.01.2004, a complaint was lodged by the Assistant General Manager, Allahabad Bank, viz., one T.N.Tambe (P.W.2), alleging that M/s.Natural Stones, a partnership firm represented by its partners P.Srinivasulu Reddy and G.Dhanesh

Kumar had approached the International Branch, Chennai and was sanctioned packing credit limit of an extent of Rs.95 Lakhs on 25.03.2003 and Foreign Bill Negotiating Limit of Rs.100 Lakhs on 14.05.2003. They have submitted certain properties as securities apart from the primary securities and hypothecation of stocks being granites. They also submitted bills from time to time for discounting the negotiation. While the amount relating to the first bill was received and part amount was received in respect of the second bill, the other bills returned unpaid. Upon the account showing sickness within a short period of time, the bank conducted investigation and they found that the properties kept for equitable mortgage as collateral securities were not genuine and the documents thereof were forged. Further enquiries relating to the Bills of Lading submitted by the firm also turned out to be forged. Therefore, the complaint was made to take action against the said firm and its partners for cheating the bank and leaving an outstanding of Rs.176.24 Lakhs.

2.1 Upon receipt of the said complaint, a case in R.C.2/E/2004 dated 21.01.2004 was registered for offences under Sections 120B read with Sections 420, 467, 468 and 471 of IPC and was taken up for investigation. After completion of investigation, P.W.34 laid a final report as against the seven accused proposing them to be guilty for the offences under Sections 120B read with 419, 420, 467, 468 and 471 IPC read with Section 13(2) and 13(1)(d) of Prevention of Corruption Act, 1988.

The case was taken on file as C.C.No.8 of 2005. Upon issuance of summons and furnishing of copies, charges were framed on 02.01.2007 and thereafter on 03.10.2013, the charges were amended and the following seven charges were ultimately framed against the accused.

FIRSTLY, that you P.Srinivasalu Reddy (A-1), Managing Partner M/s Natural Stones and S. Gopu (A-2), Partner, M/s Natural Stones, K. Ganesh (A-3), M.Gowthaman, (A-4), Manager (Advances) Allahabad Bank, International Branch., Mount Road, Chennai, A. Sreedharan (A-5), Senior Manager, Allahabad Bank, International Branch, Mount Road, Chennai, S.K. Banerjee (A-6), Chief Manager Allahabad Bank, International Branch, Mount Road, Chennai and M/s Natural Stones (A-7) a partnership firm represented by you A-1 and A-2 have entered into criminal conspiracy during the period 2003, hatched at Chennai with dishonest and fraudulent intention to cheat Allahabad Bank, International Branch, Mount Road, Chennai, and you Al and A2 as partners of the said firm, applied with the connivance of you A3, Packing Credit and Foreign Bill Purchase facilities in favour of M/s. Natural Stones, by way impersonation, submitting false, forgery and fabrication various documents including title deeds, export documents, bank vetification reports, forged export bills etc, and used the said documents as genuine, and availed the facilities without doing any genuine export and as misappropriated the funds of the bank, further for which, you A-4 to A-6 have abused your official powers as public servants by corrupt or illegal means, in obtaining wrongful gain for themselves and sanctioned and released the PC and 2, FBP facility to A7 cor company, without verifying the collateral securities, and with ume the knowledge that the documents submitted to the bank as collateral securities, *zed export documents, bank verification reports, export bills etc, by Al and A2 are 2.0 forged documents, and the acts of you Al to A7 has caused wrongful loss to the tune of Rs.176.24 lakhs to Allahabad Bank, International Branch, Mount Road, ecu Chennai and corresponding wrongful gain for yourselves and thereby you Al to A7 have committed the offence punishable under section 120-B r/w 419, 420, 467, 468, 471 of IPC and Sec. 13(2) r/w. 13(1)(d) of PC Act, 1988, and is within my cognizance.*

SECONDLY that in pursuance of the aforesaid criminal conspiracy and in furtherance thereof, you A-1 and A-2 on behalf of M/s Natural Stones, submitted an application on 07-03-2003 with Allahabad bank, International Branch, Chennai with a proposal for sanctioning of Packing Credit Limit of Rs. 150.00 lakhs and DA Bills discount Limit of Rs. 50 lakhs for exporting to China. Further the application form and the credit information of A-1 and A2, filled by you A-3, knowing fully well that A2s real name is S. Gopu, instead of that, you A-3 filled the application as G. Dhanesh Kumar, further you Al and A2 have dishonestly and fraudulently offered the collateral securities of 1) Land and Building at plot No. 63/3, 65/4 at Natesa Mudalyi Street, Venkatapuram, Ambattur, Chennai - 53 in the name of P.Srinivasalu Reddy (A-1). 2)Land & Building at New Door the name of P. Srinivasalu Reddy (A-1). 2) No. 6 (Old No. 12), Plot No. 81, Venkata Subramanyanagar, 13th Cross Street, Vasaravakkam, Chennai-87 in the name of Shri. P. Srinivasalu Reddy. 3)Vacant land of 1.35 acres in Sy. No. 80/2, Kalikuppam, Koratur village, Ambattur, Chennai - 53 in the name of one G. Dhaneshkumar. 4) Vacant land of Plot Nos. 1, 2, 3, 4, 5, 6 & 7, Gangai Nagar Extn, Kalikupam, Ambattur, Chennai - 53 in the name of Dr. G. Dhaneskumar, by way of submitting forged and fabricated title deeds and other revenue records in support of all the above properties. Further on Manager (Advances) dishonestly prepared credit 22.03.2003, you A-4 as Appraisal Report also the details of the borrower, primary securities and *collateral securities to be offered, projected sales etc. and you A-5, recommended on 25.03.2003 and the final sanction by you A-6 on 28.03.2003 under 1) Packing 1) On Credit - Rs. 69.00 lakhs and FBP limit - Rs. 95.00 lakhs. After sanction of the above limits you Al and A2 have dishonestly and fraudulently availed On 31.03.2003 Packing Credit of Rs. 35,00,000/-, 3) On 08.05.2003 Packing Credit of Rs. 5,00,000/-4) On 14.05.2003 Packing Credit of Rs. 40,00,000/- Further in order and adjust the above packing credit advance you Al and A2 had dishonestly and 29.03.2003 Packing Credit of Rs. 35,00,000/- , 2) fraudulently submitted the following 5 Foreign Bill for negotiation ;-*

Sl. No	Date	Bill No.	Shipping Bill No.	US $	Amount in
1.	28.03.03	C-232176	1,570,724	57,031.6	2,663,244
2.	28.03.03	C-232177	1,570,725	8,725	410,368
3.	31.03.03	P-231302	1,572,322	57,911.7	2,702,255
4.	31.03.03	P-231301	1,572,323	37,740.45	1,776,795
5.	31.03.03	P-231300	1,572,324	32,573.48	1,533,324

The above said bills submitted to the bank are only for reversing the packing credit availed by you Al and A2 with the active connivance of you A4 to A6 and all are forted and fabricated without doing any export as claimed. Further on 08.05.03 you Al and A2 had dishonestly and fraudulently approached A4 to A6 again for additional sanction of Rs. 1.00 crore under FBN(under LC) in the name of A7, and the same was processed, recommended and sanctioned by you A4 to A6 respectively by abusing your official position on 14.05.2003 and on the same day you A-1 and A-2 dishonestly and fraudulently submitted 3 Foreign Bills for Negotiation as under.

Sl. No	Date	Bill No.	Shipping Bill No.	US $	Amount in
1.	14.05.03	N-230022	1,582,623	59,956.05	2,784,522
2.	14.05.03	N-230023	1,582,622	62,511.9	2,904,140

Sl. No	Date	Bill No.	Shipping Bill No.	US $	Amount in
3.	14.05.03	N-230024	1,582,621	34,097.25	1,574,225

The above said bills submitted to the bank are also for reversing the packing credit availed by you Al and A2, with the active connivance of you A4 to A6 and all are forged and fabricated without doing any export as claimed. The acts of you Al to A7 has caused Allahabad Bank, International Branch, Mount Road, Chennai a wrongful loss to the tune of Rs. 176.24 laes and corresponding wrongful gain for yourselves and thereby you A-1 to A-7 committed the offences punishable u/s. 420 IPC (EIGHT COUNTS)and is within my cognizance.

THIRDLY that in pursuance of the aforesaid criminal conspiracy and in furtherance thereof you A-4 to A-6, as referred in the second charge against you all, dishonestly and fraudulently abusing you official position as public servant appraised, recommended and sanctioned of various credit facilities, 1) Packing Credit - Rs. 69.00 lakhs and FBP limit - Rs. 95.00 lakhs, in the account of A7, Mrs Natural stones, knowingly and without verifying the identity of the partners, the Specific Approval List of ECGC etc., by way of accepting forged credit opinion report dated 22-03-2003 of Chief Manager, Indian Overseas Bank, Mount Road Branch, accepted false, fabricated and forged Title Deeds and other Revenue records from Al and A2, in support the properties offered to the bank as collateral securities, for the loans availed in the name of A7, and further permitted A1 to A3 to misappropriate the said credit facilities by way of accepting forged and fabricated export documents etc of A7 company and thereby the bank has caused a loss to the extent of Rs. Rs. 176.24 lacs thereby you A4 to A6 have committed the offence punishable under section Sec 13(2) r/w 13(1)(d) of PC Act. 1988 and is within my cognizance.

FOURTHLY that in pursuance of the aforesaid criminal conspiracy and in furtherance thereof as per the facts refer.ed in the second charge you A-1, A2 *and A-3 by availing various credit facilities in the name of M/s Natural Stones, with Allahabad bank, International Branch, Chennai, dishonestly and fraudulently forged and fabricated various documents such as, Loan applications, Loan Documents, the credit information of A-1 and A2, Title Deeds of properties offered as collateral securities and other supporting documents, Export Bills and other relevant documents in support of the same and thereby you A-1 to A-3 committed the offences punishable u/s. 467 IPC (EIGHT COUNTS)and is within my cognizance.*

FIFTHLY that in pursuance of the aforesaid criminal conspiracy and in furtherance thereof as per the facts referred in the second charge you A-1 A2 and A3 by availing various credit facilities in the name of M/s Natural Stones, with Allahabad bank, International Branch, Chennai, dishonestly and fraudulently feel and fabricated various documents and other valuable securities such as, Loan applications, Loan Documents, the credit information of A-1 and A2, Title Deeds of properties offered the collateral securities other supporting documents, Export Bills and other relevant documents in support of the same and thereby you A-1 to A-3 committed the offences punishable u/s. 468 IPC (EIGHT COUNTS)and is within my cognizance.

SIXTHLY that in pursuance of the aforesaid criminal conspiracy and in fartherance thereof as per the facts referred in the second charge you A-1 A2 and A-3 by availing various credit facilities in the name of M/s Natural Stones, with Allahabad bank, International Branch, Chennai, dishonestly and fraudulently forged and fabricated various documents and other valuable securities such as, Loan applications, Loan Documents, the credit information of A-1 and A2, Title Deeds of properties offered the collateral securities other supporting documents, Export Bills and other relevant documents in support of the same and the same were used as genuine by you Al to A6 knowingly that *they are forged and fabricated and thereby you A-1 to A-6 committed the offences punishable u/s. 471 R/W 467 IPC (EIGHT COUNTS)and is within my cognizance.*

SEVENTHLY that in pursuance of the aforesaid criminal conspiracy and in furtherance thereof as per the facts referred in the second charge you A2, while availing various credit facilities in the name of M/s Natural Stones, with Allahabad batik, International Branch, Chennai, dishonestly and fraudulently impersonated as G.Daneshkumar and forged various documents with the bank and thereby cheated the Bank and thereby you A-2 has committed the offences punishable u/s 419 IPC and is within my cognizance."

C. The Trial & The Judgment:

3. Upon being questioned, the accused denied the charges and stood trial. In order to bring home the charges, the prosecution examined P.Ws.1 to 34 and marked Exs.P1 to P226. Upon being questioned under Section 313 of Cr.P.C. about the incriminating evidences on record, the accused denied the same as false. Thereafter, one S.Pandurangan D.W.1 was examined on behalf of the defence and through him, Exs.D1 to D11 were marked.

3.1 The Trial Court proceeded to hear the learned Special Public Prosecutor and the learned counsel for the accused and concluded that all the accused Nos.1 to 7 conspired and colluded to cheat the bank and availed the credit facility by submitting forged and fabricated documents. The charges were also held to be proved and the Trial Court sentenced the accused as above, as against which the present appeals are filed.

D. The Arguments:

4. Mr.S.Suresh, learned counsel appearing on behalf of the second appellant in Crl.A.No.222 of 2014 would submit that, firstly in this case the Trial Court omitted to consider that they were actually in the business of excavation and export of granites. The inspection report that is submitted on behalf of the bank reveals the same and the report also shows that pieces of granites were available at Karim Nagar yard. Therefore in this case A1 and A2 were actually running the business as partnership firm, which is arrayed as A7. As a matter of fact, when the first Foreign Bill purchase facility was availed, the Letter of Credit by the Foreign Bank was duly submitted and the amount was also collected. The second bill was collected in part and the Bank did not take up the issue with the Foreign Bank, it cannot be stated that the transaction was false. Therefore, the case as projected by the prosecution as if Accused Nos.1, 2 and 7 had an intention to deceive the Bank at the inception is not correct. This is a case where, after the availing of the loan, the account slipped into a Non-Performing Asset (NPA) on account of the slump in the business the loan remained unpaid and therefore, the prosecution has failed to prove that there was dishonest intention at

the very inception of the transaction.

4.1. Secondly, the learned counsel would submit that even though it is alleged that the accused submitted forged documents for availing the facility, the prosecution has failed to prove as to how they forged the signatures and therefore the essential requirement of the offences under Sections 468 and 471 of IPC as laid down by the Hon'ble Supreme Court of India in **Sheela Sebastian -vs- R.Jawaharaj (2018 (7) SCC 581)** is not proved by the prosecution beyond any reasonable doubt. Therefore, when there was no dishonest intention at the inception and the other offences also remaining not proven, this Court can acquit the appellant/A2.

4.2 Mr. Suresh, the learned counsel would alternatively plead that it can be seen that A1 was the main person, who was doing the business, A2 was merely his relative, who was assisting him. Therefore, this Court should consider the matter even with reference to the sentence that is imposed by the Trial Court.

4.3 Mr.Shankar, learned counsel appearing for the third accused (A3) would submit that A3 was working as Special Sub Inspector of Police with Central Industrial Security Force (CISF). He got married to the sister of A2 just a few years before the obtaining of loan in the year 2003. He visited the in-laws' place during his leave period along with his wife and he merely accompanied his in-laws to the bank and other places. When A1 and A2 were submitting the application to the bank, he was only requested to fill up the application form. Except for filling up of the application form, he has nothing to do with the business of A7 firm. That apart, the only evidence that is let in as against A3 is that two cheques were issued to A3. It can be seen from the prosecution evidence itself that the said cheques issued were Ex.P140 and P192. Even on those dates, merely because A3 was present in the in-laws place, considering the urgency, for those bearer cheques A2 directed A3 to get the cash and hand over the cash to him. Accordingly, A3 was merely helping his brother-in-law in his day-to-day activities especially when he was visiting him during his vacation. Except that, the prosecution has not let in any evidence whatsoever to bring any complicity or relationship with the business.

4.4 Learned counsel further submitted that the further allegation against A3 is that he filled up the form mentioning the name of his brother-in-law A2 as Dhanesh Kumar while his actual name is only Gopu. In that regard, the evidence of the relevant witnesses viz., P.Ws.30 and 31 categorically show that Gopu also had an alias name Dhanesh Kumar. PW-30 & 31, being the brother of Gopu and an employee of M/s.Natural Stones have admitted in the cross examination that Gopu was also called as Dhanesh Kumar. A3 was new to the family having married the sister of A2 and he firmly believed that it is the name of his brother-in-law A2, that is, Dhanesh Kumar which is being filled up in the form. Even with respect to the properties, no evidence whatsoever has been let in by the prosecution to show that it was known to A3 that the properties does not belong to A2 Gopu. Further, when the original Dhanesh Kumar was examined as P.W.16, he never spoke anything as to the fact that he already knew A3 or that A3 was acquainted with him. This will be further buttressed with the fact that he himself deposed that he was residing in U.K. for most part of the relevant time and there is absolutely no chance whatsoever for A3 to know that there was one more Dhanesh Kumar who was also existing. Therefore, for want of proof of any dishonest intention A3 is liable to be acquitted and the Trial Court has erred in concluding A3 as guilty.

4.5 Mr.Karthik, learned Senior Counsel appearing on behalf of A4, A5 and A6 who are public servants being the Gowthaman, Manager (Advances), S.Sreedharan (Senior Manager) and S.K.Banerjee (Chief Manager), would submit that the Accused 4,5 and 6 are being prosecuted only on the ground of vague allegations relating to irregularities committed at the time of sanctioning of the facility. In this case, admittedly there is no allegation or evidence against Accused 4,5 and 6 that they received pecuniary benefits from A1, A2 and A7 in any manner whatsoever. There is also no direct evidence that A1, A2 and A7 have conspired with A4-A6. The entire offence is sought to be presumed on account of the Accused 4-6 dealing with the file at the relevant point of time.

4.6 Learned Senior Counsel, drawing the attention of this Court to the relevant witnesses would firstly submit that in this case what was granted to A1, A2 and A7 is only discounting facility. When the accused had approached the Bank on 03.03.2003, on 11.03.2003 A4 and A5 had duly inspected the papers and that is reflected in the Credit Report that is prepared by the accused. It can be seen that all the relevant parameters were duly examined by A4, A5 and A6 and this is the credit facility that is taken over from Indian Overseas Bank, where A1, A2 and A7 were having the facility. Even with the Indian Overseas Bank, A2 had already impersonated as Dhanesh Kumar and the credit facility was sanctioned by the said bank in the said name. Therefore, while the said facility was taken over in the best commercial interests of the bank and especially when the accused had produced the credit worthy report from the said bank, which cannot be found out as forged at the time of accepting the said document, nothing can be attributed to A4, A5 and A6.

4.7 Mr. Karthik, the learned Senior Counsel, would submit that, on the first day when the first bill was presented, it can be seen that A4 has recorded in the file that since the loan application is still pending, the said bills can be accepted only on collection basis. Further, it can be seen from the endorsement that is made by A5 itself that since the processing of the loan application is in the advanced stage and already the documents relating to additional security in the form of immovable property are taken, the bills can be purchased. Ultimately, the decision turned out to be correct, inasmuch that foreign bank honoured the Letter of Credit in respect of both the bills, the first bill was paid in entirety, while for the second bill only reduced amount was paid. Once the foreign bank grants Letter of Credit and it cannot reduce the amount and pay a lesser amount. It was for the bank to have taken up the issue with the said foreign bank. Even before the accused could take that step, they were deputed to other duties/recovery.

4.8 The Learned Senior Counsel would submit that it can be seen that once the first and second bills were realized, no motive can be attributed to A4, A5 and A6. Further, in the instant case, two facilities were granted to A7. Firstly, the packing credit facility and secondly the foreign bill purchase limit, which all relate to export of granites. With respect to export, A7 had produced the due guarantee of Export Credit Guarantee Corporation (ECGC), which is not not even alleged by the prosecution as an incorrect or forged document. The loan application was processed and the credit report is prepared on the basis of the following documents viz.,

(a) The credit worthy report that is furnished by the erstwhile bank

(b) The ECGC Policy that is produced by the exporter

(c) The appraisal report from an independent agency viz., Dan and Bradstreet

(d) The additional security that is furnished in the form of immovable property valued by approved valuers and their title being approved by panel counsel of the bank,

4.9 When on perusal of the credit report, the other credit worthiness including the volume of turnover of A7, their quantum of business, their Income Tax Returns everything has been taken into account by A4, A5 and A6 in processing the application, there is absolutely no misconduct at all, leave alone any criminal misconduct that is committed by A4, A5 and A6.

4.10 Mr. Karthik would submit that with reference to the allegation that is made by the prosecution regarding the confirmation from ECGC regarding the names of the accused being found in the Specific Approval List (SAL), it is nothing but a list where the blacklisted names are maintained by the ECGC. In this case, it can be seen that when pending approval when the list was sought, the name of A7 was not found in the said report. Not even the names of A1 and A3 were found. It was doubted by the ECGC that A1 viz., P.Srinivasalu Reddy can be the same person as a partner of one Indira Stones, which was found in Entry 7 in the said report. Immediately on receipt of the said report, A1 was summoned to the branch and he was made to give a categorical undertaking that he was not the same person who ran the said Indira Stones and only thereupon the further report was submitted to the authorities. It can be seen that if that is the doubt of the ECGC themselves, they themselves did not cancel the policy nor did they take any steps to retract from the original guarantee for the export that is to be made by A7. Therefore, in this case there is no misconduct on the part of A4, A5 and A6 much less criminal misconduct.

4.11 Learned Senior Counsel would further submit that the said policy was duly marked as Ex.D2 while the prosecution failed to mark the same as an exhibit which covered the said period ie, from the year 2002 to 2004. Further, in this case it is to be noted that the ECGC had also duly issued a buyer-wise policy. Then there can be no doubt raised against the said buyer being in the SAL. Thus, the entire case of the prosecution as if name of the buyer was found in the SAL cannot be considered by this Court.

4.12 The entire case of A4, A5 and A6 were brought out in the cross examination of the prosecution witnesses. Firstly from the answers of P.W.8 it can be seen that he has deposed that nothing wrong was found in Ex.P.168. He had further deposed that the bank did not have any doubts regarding the genuineness of the Letters of Credit and the Bank also earned income in those three transactions covering Exs.P.43, P45 and P47. It can be seen from the answer of P.W.27 wherein he has mentioned that in Ex.P54, one Natural Stone Exports name is found and the Proprietor name is G.Chopra and A1 name is not mentioned in the said report

4.13 Further, the learned Senior Counsel would draw the attention of this Court to the answers that were given in the cross examination by the Investigating Officer P.W.33, who categorically stated that during the course of investigation, he did not find A4, A5 and A6 derive any pecuniary advantage. He categorically answered that he did not come across any material to say that there were meetings held between A1,A2 and A4-6. As a matter of fact, it can be seen from the very complaint itself there was no doubt which would point out any complicity of the public servants. The bank, even after realising that the securities were forged, initially directed A4 to A6 only to take steps for recovery of the entire balance amount. As a matter of fact, compromise proceedings were also undertaken, whereby the accused side were summoned and in the presence A4 to A6. Talks were conducted and even one time settlement proposals were mooted and pursuant thereof, P.W.26 and D.W.1 would depose that during August 2003, A1 came before the bank and undertook to clear all the dues. It can be seen that A1 and A2 had completely duped and played fraud on the officials of the bank. It can also be seen that even during the subsequent visits, some other person was made to stand near the property and the subsequent manager was made to believe that the property belongs to A1. Therefore, only after detailed investigation that started from the office of the Sub Registrar, there was occasion to doubt A1, A2 and A7 who have stage managed to produce completely forged and fabricated documents and have attempted to get the facilities from the bank. Absolutely no evidence whatsoever is placed on record by the prosecution to contend that Accused 4 to 6 have committed any offence whatsoever.

4.14 Learned Senior Counsel, by pointing out to the cross examination that is made, whereby P.W.33 himself has admitted that he has no power to investigate the case under the Prevention of Corruption Act and would submit that P.W.33 who conducted the investigation was also incompetent to conduct the investigation under the Act, which caused great prejudice to A4 to A6 in the matter.

4.15 Learned Senior Counsel thereafter would submit that with reference to the credit worthy report that is given by the Indian Overseas Bank, in the cross examination of P.W.8 it is admitted that the letterhead on which the credit worthy report is given is admitted to be genuine. Merely because the Indian Overseas Bank official denied his signature the prosecution believed the same as such and did not take any further steps to verify as to the genuineness of the said signature or as to how the said credit worthy report was forged by A1, A2 and A7 and how they came into possession of the genuine letterhead of the Indian Overseas Bank. When A4 to A6 only acted upon the said letter of the Indian Overseas Bank, the prosecution has picked and chosen only to vilify and prosecute the officials who only did their duty in the best commercial interests of the bank.

4.16 Learned Senior Counsel would submit that on certain occasions, the officials viz., the Credit Manager and Chief Manager etc., have to act swiftly by considering the request of the customer as bonafide. When the action is a bonafide exercise of their day-to-day activities, merely because in retrospect it turned out that A1 and A2 were proved to be fraudsters completely conning the bank and its officials, prosecution cannot be launched against A4 to A6 especially when even after detailed investigation nothing relating to any conspiracy or receiving any pecuniary benefit is alleged against A4, A5 and A6.

4.17 Learned Senior Counsel would further submit that it will be clear from

Ex.P55 that as per the guidelines of the ECGC, if only the facilities that are granted exceed a sum of Rs.50 Lakhs, then they have to mandatorily await for the SAL report and other particulars and for less than Rs.50 Lakhs, the bank is free to proceed further.

4.18 Per contra, Mr. B. Mohan, the learned Special Public Prosecutor would submit that in this case the prosecution has proved each and every one of the charge beyond any reasonable doubt. The witness from the Indian Overseas Bank has been examined to prove that A7, A1 and A2 had submitted a forged credit worthy report. The relevant witnesses viz., the Sub Registrar and also the original Dhanesh Kumar in whose name the properties were standing were examined as P.W.12, P.W.13 and P.W.16. They were examined to prove that the entire set of documents that were furnished by way of equitable mortgage, were forged. The entire Letters of Credit, the foreign bills produced by the A7, A1 and A2, except two bills were found to be forged and the concerned person was examined as P.W.15. The Customs Officers were also examined as P.Ws. 17 and 18. Therefore, the firm from the inception had dishonest intention to cheat the bank and it has availed the loan only by submitting forged documents and fictitious transactions.

4.19 As far as the public servants are concerned, the learned Special Public

Prosecutor would draw the attention of this Court to certain dates. According to him, when on 21.03.2003 these public servants chose to write to the Indian Overseas Bank, the normal course that is adopted is that they would record in the file that the letter was handed over to the accused by hand. That is also not done. It can be seen that on the very next day on 22.03.2003 itself, the credit report was prepared. On 25.03.2003, A5 had approved the same and within three days ie., on 28.05.2003, A6 has sanctioned the same. In the whole process, what is staring at the fact of these public servants is that they had, by a letter dated 25.03.2003 addressed to the ECGC, had asked for the particulars of the Special Approval List (SAL) and therefore that shows that they have to consider whether the names of A7, A1 and A2 are actually there in the SAL report and if so, they should not proceed further. When they had addressed the letter and the reply is awaited and when it can be seen that only on 04.04.2003 vide Ex.P54 the reply is received, even before that date ie., on 28.03.2003 itself the sanction was complete and as a matter of fact, two bills were even taken on purchase basis without accepting it on collection basis.

4.20 Thus, the misconduct on the part of the public servants A4, A5 and A6 is writ large on the fact of it. It can be seen that the entire transactions could not have happened except for the tacit understanding and conspiracy of the accused. The very file which denotes that the credit report being prepared by A4 and the approval that is given by A5 and the ultimate sanction that is given by A6 are all proved categorically by the prosecution by marking the relevant documents and the file notings. To top it all, it can be seen that vide communication in Ex.P.187, which is given on 28.03.2003, solemn declaration is made on behalf of the public servants that they have verified and are satisfied that the exporter / proprietor / guarantor / director is not in the SAL report of the ECGC. Therefore, when they have sought for the list on 25.03.2003, the list was furnished to them only on 04.04.2003, in the meanwhile, they also make a false representation on 28.03.2003 even to the ECGC of India Limited and proceed further with the transaction.

4.21 Thus, this is not only a case where the accused were not acting as per their normal procedures and crossed the lines, but also have shown extraordinary haste and interest in pushing through the entire transaction which would adumbrate that there is a criminal conspiracy between the public servants and the accused 7, 1 and 2. Therefore, the prosecution in this case has proved the offences as against the accused beyond any reasonable doubt and the Trial Court has rightly convicted them.

4.22 Mr. Mohan, the Learned Special Public Prosecutor would submit that as a matter of fact, it can be seen that when on 04.04.2003 the SAL list has been produced and was given to A4, A5 and A6, only then they had asked the very same accused whether they are in the SAL list or not. When the names are visible to the naked eye and when the 7th entry in this case also mentioned P.Srinivasalu Reddy, only when there is a minor alteration in the spelling 'salu' or 'sulu', A4, A5 and A6 are feigning as if they genuinely done their job. As a matter of fact, this ought to have struck them that there is one transaction from the account of A7 ie., an amount has been transferred to the said Indira Stones, which is shown as 7th entry in the SAL list. When the same name as that of A1 is found and the amount that is credited is by way of this facility is siphoned off to the said entity by name Indira Stones, at least that should have alerted a normal person. But, in this case A4, A5 and A6 being not normal persons, having conspired with other accused are feigning that they are thoroughly cheated by the accused, while the fact remains that they are party to the entire episode and they have conspired and committed the offence.

4.23 The learned Special Public Prosecutor would further submit that as far as the credit worthy report of the Indian Overseas Bank is concerned, not only the official was examined as P.W.6, but also the signature was also sent for forensic examination and the expert has also said that it is not the signature of P.W.6 and therefore the prosecution has not left anything unturned and has let in even further scientific evidence to corroborate that offences are committed by the accused. Therefore, he would submit that there is nothing for this Court to interfere in the matter.

4.24 With reference to A3 is concerned, the learned Special Public Prosecutor would submit that, firstly his handwriting has been confirmed by referring the same to the Handwriting Expert and the fact that he only filled up the application form and various other forms have been proved. As a matter of fact, when the report is looked into, numerous writings that is made by A3 would prove his complicity and consequently, it is the contention of the learned Special Public Prosecutor that when two amounts have been paid for him and when he has received the amounts, it is only a feeble suggestion that is made in the cross examination as if he withdrew the cash and handed it over to A2. In any event, it is the fact that the personal knowledge of A3 and he has neither got into the box nor let in evidence to prove the said fact. Therefore, the prosecution has proved about his actual role in the conspiracy by being present in the bank, filling all the application forms and took part in the further steps and participated in every stage, for which pecuniary benefit has also been received by A3.

4.25 As a matter of fact, it is not only the loan application form, even the bio-data is filled by A3, which Ex.P.146. It can be seen that the photograph is there and all the details of the property everything is mentioned in the said form. Therefore, when all the parties are relatives and especially even as per the accused he married the sister of A2 as early as in the year 1995, he would feign even as if he knew nothing. This apart, P.W.32 the Handwriting Expert had compared the specimen signatures, with admitted signatures and has categorically found that the questioned signatures in various documents are attributable to A2 Gopu.

E. The Discussion & Findings as to the Charges:

5. I have considered the submissions made on either side and perused the material records of the case.

5.1 In this case, the allegation of the prosecution is that A7 is the partnership firm, which availed the loan from the bank. A1 and A2 are the partners of the A7 firm. A3 is the brother-in-law of A2, who is said to have aided and helped them in the entire process of making application to the bank and is also said to have received financial benefits out of the same. A4, A5 and A6 are public servants ie., A4 being the Credit Manager, A5 being the Manager (Advances) and A6 being the Chief Manager, are said to have colluded with them and accepted forged documents as securities, flouted the banking norms and procedures and thus abused their official position resulting in loss to the bank and undue pecuniary favour to A1 to A3 and 7.

5.2 Considering the nature of allegations that are made, first this Court considers the allegation against A7, A1 and A2 as they are the principal accused. A1 P.Srinivasalu Reddy has since died. The account opening form of A7 is marked as Ex.P30. The application form that is given by A7 is marked as Ex.P144. The bio-data of A1 and A2 that were annexed along with the application were marked as Exs.P146 and P147. It is clear that a categorical representation is made to the bank that one A2 one G.Dhanesh Kumar along with A1 P.Srinivasalu Reddy are the partners of the firm. However, in the bio-data it is the photograph of A2 Gopu which was affixed and A2 impersonated as G.Dhanesh Kumar. The said fact is proved by examining Dhanesh Kumar as P.W.16. He happened to be a relative of A1 and A2 and residing in the United Kingdom and possessed of properties. Therefore, taking advantage of his absence, A2 represented himself as Dhanesh Kumar and the partnership firm itself was fraudulently constituted.

5.3 The fact that before and after sanction of the packing credit facility and foreign bill purchase facility etc., amounts were sanctioned and paid by the bank is proved vide Exs.P12, 13, 18, 19 and 20 along with the statement of accounts and bills by which the money was withdrawn and siphoned off to various accounts through cheques from Exs.P210 to 216 etc., The fact that they were granted facilities to the tune of Rs.26,63,244/- on 28.03.2003 by purchase of shipping bill No.C-232176, another amount of Rs.4,10,368/- vide purchase bill P-232177 on 28.03.2003, another sum of Rs.27,02,255/- vide purchase bill P-231302, Rs.17,76,795/-, vide purchase bill P-231301, and Rs.15,33,324/- on 31.03.2003 vide purchase bill P-231300 have all been proved by producing the bill purchase vouchers and the statement of accounts reflecting the crediting of the amounts. Similarly, the foreign bill negotiation facility was allowed for Rs.27,84,522/-, Rs.29,04,140 and Rs.15,74,225/- vide bill Nos.N-230022, N-230023 and N-230024 dated 14.05.2003 have also been proved by producing the concerned vouchers and the relevant documents.

5.4 Apart from the other officials, P.W.26 who is the subsequent Manager, who took over even during the grant of loan in May 2003 categorically speaks about the availing of the said facilities and the amounts being paid to A7, A1 and A2. Therefore, the fact that they have made an application and availed the facilities stood proved and subsequently the amounts remained unpaid till date is also proved by the evidence of various witnesses including P.Ws.1,2 and 26 and thus the bank had suffered a huge loss.

5.5 As a collateral security for obtaining the above loan, firstly the property at S.No.801/2, Plot No.8, Gangai Nagar Extension, Ambattur Taluk was submitted.

Ex.P.33 is the Memorandum of Deposit of Title Deeds (MODT) created by A7, A1 and A2. Ex.P21 is the legal opinion that was obtained. P.W.16, the real owner of the property speaks about Exs.P.81 and P82 being the original partition deeds between his father Ganesa Naicker, brother and sisters and thereafter by P.W.16, his mother and the sisters. However, what is produced by A7 through A1 and A2 is Ex.P.83 which was a completely forged document and P.W.30 Sub Registrar, Villivakkam categorically spoke about Ex.P83 being forged by comparing it with the original of the partition deed which was registered in their office.

5.6 A7, A1 and A2 have thereafter offered and deposited the title deeds in respect of S.No.803/2, Korattur Village, Ambattur Taluk. The said property originally belonged to one Dhanalakshmi. Her husband was examined as P.W.14. A7, A1 and A2 have deposited the title deeds in the form of a sale deed as if it is Document No.2226 of 1983 executed by the said Dhanalakshmi in favour of Ganesa Naicker, who is the father of P.W.16 and thereafter another completely forged settlement deed vide Ex.P84 as if Ganesa Naicker executed the same in favour of Dhanesh Kumar. P.W.29, Sub Registrar of Anna Nagar has spoken about the fact that the number that is mentioned in the forged sale deed viz., Doc.No.2226 of 1983 is between third parties in respect of some other transaction. Similarly he has given evidence with reference to the settlement deed as well as the sale deed that were forged and the numbers were fictitiously mentioned in the forged documents, which were deposited.

5.7 The same accused have deposited the title deeds in respect of Plot No.81, Venkata Subramaniam Nagar, 2nd Main Road, Valasaravakkam, Chennai. P.W.11 was examined to prove that one Rajasimman was the owner of the property and he has mortgaged the original title deed with Park Town Benefit Fund Limited, Anna Nagar. The said mortgage deed was marked as Ex.P57. Accused 7, 1 and 2 have produced two completely forged sale deeds ie., original sale deed executed by one Thirugnanasambandamurthy to the owner Rajasimman and they have created further fictitious sale deed as if the said Rajasimman has further sold the property to A1 P.Srinivasalu Reddy. P.W.12, Sub Registrar Virugambakkam was examined to demonstrate that Document No.4728 of 2002 was a different document and both the documents which were submitted by the accused were completely forged.

5.8 A7, A1 and A2 further deposited the title deeds in respect of the property at No.64. Nadesa Mudali Street, Venkatapuram, Ambattur Taluk. In respect thereof, the accused has forged the documents as if a Power of Attorney was executed by one Narayanasamy in favour of Ganesan and the said Ganesan has further executed sale deeds. The Sub-Registrar Ambattur was examined to speak about Exs.P.195, 196, 197 and 198 with reference to the document numbers mentioned in the title deeds forged and submitted by the accused as belonging to the some other transactions between third parties. Thus, the prosecution has proved categorically that in respect of the properties submitted as collateral securities, A7, A1 and A2 have submitted completely forged documents, which included public documents such as Encumbrance Certificates and thereby duped even the panel advocates in respect of all properties and obtained legal opinion. They had even stage managed the inspection that is carried out by the bank officials.

5.9 Further, the allegation is that in order to get the loans, A7, A1 and A2 have also submitted forged Bills of Exchange, Bills of Lading, Commercial Invoices and Foreign Bills. It can be seen that on the very first instance when two bills were purchased by the bank on the representation of the accused, Bill No.6232177 alone was honoured by the foreign bank which was for a very less sum of Rs.4,10,368 and in respect of the second bill of a total value of Rs.22,63,244/- only part of the transactions were correct and the rest of the transactions were false, forged and only the said bill was partially honoured by the foreign bank. Thereafter, one of the bills were dishonoured and the foreign banks have given a reply stating that there are discrepancies in the bills, totally denying the transactions.

5.10 The documents including those Bills of Entry, Bills of Lading, Commercial

Invoices, Packing Lists and Shipping Bills on the respective dates ie., 25.03.2003, 31.03.2003 and 14.05.2003 were all marked as Exs.P8, P10, P15 to P17 etc., viz, the transfer vouchers for purchasing the bills and the amounts were credited to the accused account mentioned supra. P.W.7, the Assistant Manager who dealt with these transactions categorically speaks about the letters being sent from Allahabad Bank to Habib Bank (Ex.P43 and Ex.P49) informing that the bills under Exs.P43, 45 and 47 have been returned as unpaid. The Assistant Manager from the alleged agencies viz., Blue Whale Shipping Services was examined as P.W.15. Through him, a letter that was addressed to the Shipping Services vide Ex.P71 and the reply that is received from Blue Whale Shipping Services stating that Exs.P73 to P80 which are all the transport Bills of Lading bearing various references are all forged, were marked and P.W.15 has categorically spoken about the same.

5.11 The Customs Clearance Officer was examined as P.W.17 and through him, Exs.P93 to 98 were all marked to demonstrate that no such transactions in the form of shipping bills as produced by the accused, actually took place. Another Customs Clearance Officer was examined as P.W.18 and through him, the relevant Exchange Control Copies and Indian Custom EDI System Exports copy of the shipping bills with reference to various transactions that were produced by the accused were marked as Exs.P99 to P108, which prove that none of the transactions as pleaded by A7, A1 and

A2 were actually true. The shipping bills were all demonstrated to be forged. The employee from K-Steam Shipping Agencies Company Pvt Ltd., was examined as P.W.20. Through him, the Terminal Tally Sheet of 3 vessels viz., M.V.Rajiv Gandhi, M.V.Indira and M.V.R.Hobat Gandhi were all marked, which categorically and beyond any reasonable doubt prove that, without any genuine transaction whatsoever the Accused 7, 1 and 2 furnished all forged Bills of Exchanges, Bills of Lading, Shipping Bills and other documents fictitiously representing as if the granites were exported to foreign buyers under these transactions and as if the money will be paid back to the bank and thereby the loan will be repaid.

5.12 A contention is made by the learned counsel appearing on behalf of A2 Sundaram Gopu, who misrepresented himself as Dhanesh Kumar that, even though these aspects have been proved by the prosecution, the prosecution has not positively proved as to who prepared and carried out the forgery such as, signing as third party etc., in respect of the said documents. Even though such an argument can be made, in the instant case many of the documents which are forged in which A2 is a party and has signed the documents and therefore, it cannot be said that the offences under Sections 467, 468 and 471 are not proved for want of further proof as to who actually created such forged stamp papers, documents etc., and who actually had made the signature as other persons. Further, by examing the concerned official from the Indian

Overseas Bank and referring the Credit-Worthy report for examinsation forensic expert and by examining the expert, the fact that the A7, A1 and A2 submitted forged credi-worthy report also stood proved.

5.13 Accordingly, A7 represented by its partners A1 and A2 have categorically made application by impersonating, submitted all forged documents as security, submitted all forged transactions for obtaining the facilities and obtained the amounts, siphoned off the same by depositing it into their own concerns and sister concerns and the cash being taken out and enjoyed by them for their personal use, I conclude that the charges against them in respect of the offences under Section 419, 420, 467, 468 and 471 of IPC is proved beyond reasonable doubt. The conspiracy between A7, A1 and A2 is also thus proved.

5.14 As far as A3 is concerned, there is no dispute over the fact that he is not actually involved in the business. It is stated that he was working as Sub Inspector of Police with CISF. The allegation against him is that he had only filled up the loan application, bio-data etc., whereby knowingly even the name of A2 Gopu is filled up as G.Dhanesh Kumar, while affixing the photograph of his own brother-in-law viz., Gopu. The prosecution has produced the documents that are written by A3 as Exs.P.144, 146, 147 etc., The Handwriting expert was examined as P.W.32 who had confirmed that the writer of the specimen signatures as S1 to S54 viz., A3 Ganesh is the person who has made the questioned writings in the said application form, bio-data etc., The report of the Handwriting Expert is marked as Ex.P219.

5.15 The argument that is made by A3 is that the two witnesses viz., the brother of Gopu who was examined as P.W.25 and another person who is involved in the business of A1 P.Srinivasalu Reddy viz., R.Suresh, who was examined as P.W.31 has spoken that A2 Gopu was also called as Dhanesh Kumar. Therefore, it is pleaded that A3 being the brother-in-law who married the sister of A2 only few years before the transaction unknowingly filled the application form, while he was on vacation. Firstly, with reference to P.Ws.25 and 31, it can be seen that on the original day of chief examination viz., P.W.25 on 13.09.2010 and P.W.31 on 27.05.2010, both of them had categorically denied that there is no such name as Dhanesh Kumar for A2. In respect of the same, both of them were recalled belatedly on 18.12.2013 and 20.11.2013 and when they were again cross examined, they made this prevaricating statement. Therefore, the said statements have to be rejected outright by this Court. Further, the witness may lie, but the circumstances will not. A3 is said to be the brother-in-law of A2 and very well knows that the name of the father of the said Gopu is only Sundaram and not Ganesan. In the bio-data and the application form submitted to the bank , he has filled up as G.Dhanesh Kumar. Thus, the version of A3 that without knowing that the application contained false particulars of properties and that his brother-in-law is misrepresenting as Dhanesh Kumar, he has filled up the application forms, cannot be believed and has to be rejected outright. The fact is that he has knowingly filled up the application form and thereby participated in the activity, in the crime, along with the other accused stands proven.

5.16 This apart, the current account opening form in Ex.P91 was also filled up by him. The pay-in slip for a sum of Rs.1,00,000/- which was marked as Ex.P139 is also filled up by him. The cheque No.081317 is issued in his favour for a sum of Rs.8,00,000/- from the account of Shri Sai Granites from out of the money siphoned off from the facilities that were granted by the Allahabad Bank. Similarly, another cheque for a sum of Rs.3,65,000/- which is marked as Ex.P192 which was issued self favouring A7 partnership firm signed by A1 dated 08.05.2003 was signed in the reverse by A3 and money was withdrawn by him.

5.17 It was contended by the learned counsel for A3 that, being the brother-in-law he again helped them only in withdrawing the money and did the ministerial act of withdrawing money and handing it over to A1 and A2 as a manual help on that particular day when he had come to their home during vacation. As rightly contended by the learned Special Public Prosecutor that is a fact to the personal knowledge of A3, which in fact is not been proven by him either by letting in any evidence except for a suggesstion in the cross examination of the Investigating Officer. No favourable answers were extracted. Therefore, I am unable to accept the contentions that are made on behalf of A3 that he filled up the forms unknowingly of the impersonation, cheating and forgery and that he did not receive any pecuniary benefit out of the same and I conclude that he actually took part in the transactions from the very inception of filling up of the relevant forms and thereafter also had received benefits by way of cheques in his name. Thus, the conspiracy between A2, A1, A7 and A3 also stands proved by his active conduct. Thereby the charges against him stand proven.

5.18 Now coming to the public servants viz., A4, A5 and A6, it is clear that they are the persons who received the loan application, processed the same by preparing credit appraisal report, approving the recommendation and sanctioning the facility. The same is marked as Ex.P.150. Thus, the first set of transactions of processing, recommending and granting the facilities that happened on 28.03.2023 and 30.03.2003 were all done by A4, A5 and A6 exclusively. It has to be further seen whether with dishonest intention and by conspiring with A7, A1 to A3, A4 to A6 did all the things done by them. Conspiracies are hatched in secrecy and as such can be proved only be conduct and not otherwise. In this case, there is no direct evidence of A4 to A6 receiving any pecuniary benefits. Therefore, this Court has to consider the conduct on their part to conclude as to the only hypotheses that they have approved, sanctioned and disbursed the facilities and the money only with dishonest intention by joining hands with the other accused and defrauding the bank.

5.19 The first and foremost conduct that is proved by the prosecution is that, when A7 partnership firm represented by A1 and A2 made the application for loan, they had stated vide their letter that they have been granted facility by Indian Overseas Bank vide Ex.P39. When A4 to A6 wanted to get confidential information, A5 being the Chief Manager writes a letter in Ex.P38 requesting the Chief Manager, Indian Overseas Bank, Mount Road Branch to advice them as to the nature of the credit facility, security furnished by the firm and the conduct of the account. It is clearly written in the said letter that the details provided by the Indian Overseas Bank will be treated confidential. If so, the first misconduct committed by them is to hand over the letter to the accused himself to get the advice from the Mount Road Branch. As pointed out by the learned Special Public Prosecutor, the second misconduct is that there is no endorsement also in the said letter or file as if it was handed over in person. Another abnormal conduct is that when the accused had submitted a forged document in Ex.P39, being the letter from the Chief Manager, Indian Overseas Bank, Mount Road Branch dated 22.03.2003 by stating that all was well with their conduct of the account, they did not even telephonically verify from the said branch or to ask anyone of the staff by visiting the said branch and confirm the facts with them.

5.20 The next misconduct that is proved by the prosecution is that when the loan application is being processed by A4,A5 and A6, a letter was written by them on 25.03.2003 to the Export Credit Guarantee Corporation (ECGC) of India enquiring as to whether the name of the firm and its partner appear in the Specific Approval List (SAL) which is like a black list. But, even without waiting for the reply of the ECGC, the gravest misconduct that is committed by A5 is that he makes a declaration in Ex.P187 that he has verified and satisfied that the exporter / proprietor / partner is not in SAL of ECGC and notifies the same to ECGC. Further, on 04.04.2003 vide Ex.P54, the Senior Manager writes back to them enclosing a copy of the relevant page in the SAL list whereby some names resembling that of P.Srinivasalu Redy appeared in a similar manner and they requested the bankers to confirm whether the present parties are related in any way to the name appearing in the SAL list. The list mentioned the name of another Indira Stones Private Limited being represented by P.Srinivasulu Reddy. Instead of properly verifying the same, the next misconduct that is committed by A4, A5 and A6 is that they go again to A1 and A2 themselves and get a declaration by them that they are not in any way connected to the names mentioned in the SAL list and on that basis, writes back to the ECGC by Ex.P189, letter dated 02.06.20003 that they are different from the persons mentioned in the SAL list. By this time, the entire facilities and amounts were being periodically sanctioned and completely siphoned off by the said borrowers and the bank was cheated. As a matter of fact, the prosecution has further demonstrated that even the exporters license is in the name of 'Natural Stones' and not of 'Naatural Stones'. These acts are proved by the prosecution to point out the complicity of the Accused 4, 5 and 6 in the crime.

5.21 On the very first occasion on 25.03.2003 when the first request to purchase two bills were made by the accused 1 & 2, A4 addressed the Chief Manager by a communication dated 25.03.2003, whereby he categorically states that since the loan proposal is to be disposed of next week, the bill can be sent on collection basis alone. On the said day, A5 was absent and the person in-charge also makes an endorsement that 'Yes, bills can be sent on collection basis' and accordingly those two bills were sent on collection basis. Only after three days ie., on 28.03.2003 A5 makes an endorsement, by which time, the application for loan has been sanctioned and the equitable mortgages have been executed and therefore, he had made an endorsement stating, 'on one time basis, pending further signing of the regular limits, bills can be purchased'. These two endorsements point out towards a normal conduct on the part of A4 and A5. This apart, from the evidence of the subsequent Manager P.W.26, it can be seen that the entire exercise of calling A1 and A2 and enquiring whether they are the same persons in the SAL list happened in the month of May in the presence of P.W.26. Therefore, it can be seen that even at that point of time, even P.W.26 did not strictly advise them to verify with the other banks that are mentioned in the SAL list, is another factor in favour of A4, A5 and A6 acting normally in the day-to-day affairs. It is only after the foreign bank had categorically replied that the transactions are with discrepancies and no amount was forthcoming, P.W.26 entertained a doubt because he remembered writing back to ECGC and thereafter he started verifying things.

5.22 This apart, the ECGC has granted agent policy under Ex.D1 and buyer-wise policy in Ex.D4 dehors the names finding place in the SAL list. The facts being thus, after the verification was started by P.W.26 it is established by the prosecution that A1 and A2 have already done the same mischief with the Indian Overseas Bank. As a matter of fact, they managed to obtained the previous loan from Indian Overseas Bank. There also A2 had successfully misrepresented as Dhanesh Kumar until the closure of account. They have even given one set of forged documents to the said bank. As a matter of fact, they had opened two accounts with Central Bank of India and without knowing that they have opened the account in the name of sister concern, the said Bank had given the facilities and the security which was submitted in the said bank also proved to be false. Similarly, an account was opened and loan was obtained with Bank of Baroda also. Therefore, A1 and A2 being the primary accused in this case, a granites exporter having some transactions, utilized the said transactions to obtain loans from various banks. Paricularly, A1 has been operating in the name of Indira Stones Private Limited. He has been operating in the name of Natural Stones Private Limited and in this case in the name of 'Naatural Stones'. There is another partnership firm in the name of 'Grantech International', in which also A2 had impersonated as Dhanesh Kumar being the other patner. They have also got yet another firm by name Shri Sai Granites. Thus, these facts would only show that A1 and A2 were professional fraudsters who have produced complete sets of forged documents and hoodwinked the bank authorities.

5.23 Thus, If I consider the grave misconducts that are proved by prosecution to point out the guilt on the part of A4 to A6 and other circumstances of the case which point out the absence of complicity on the part of A4 to A6 and their prior knowledge, the case hangs in a balance and swings like a pendulum to and fro, thereby giving room for a hypotheses that A4, A5 and A6 were negligent in not meticulously following the banking procedures and the rules and were completely fooled and hoodwinked by A7, A1 to A3. When there is a possibility of the same, the entire material that is placed by the prosecution is nothing but pointing out to a very strong suspicion. The suspicion howsoever strong, will not form the basis of this Court convicting A4 to A6. In the absence of proof by direct evidence or by the circumstances pointing out the only hypotheses of the dishonest intention on the part of A4 to A6, I am unable to sustain the charges against A4 to A6 that they conspired with the other accused or they have abused their position and committed criminal misconduct so that the other accused will get undue pecuniary benefits. Therefore, they are entitled to the benefit of doubt in respect of the charges leveled against them. It is crystal clear that A4, A5 and A6 have completely acted in the manner unbecoming of the responsible officials of the bank and violated all tenets of prudence and the conduct that is exhibited by them while committing the above misconducts that are proved by the prosecution. However, unless the element of dishonesty or working for any pecuniary benefits is demonstrated, the same would not be held as criminal misconduct for the purpose of convicting them for the offences under Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 or convicting them for the offence under Section 120 B of IPC.

F. The Sentence :

6. Now coming to the question of sentence, it can be seen that A2 is very much part of the business being a partner and impersonator, associated with the prime accused No.1 P.Srinivasalu Reddy. The entire amount remains unpaid till date and the bank is thoroughly cheated. Therefore, any lenience that is shown would be undue and improper. At the same time, the fact that A1 is dead and A2 is a lesser accomplice as has been seen from the various transactions that A1 has been hoodwinking several

other banks both with and without showing A2 also as a partner has to be seen. By considering the overall facts and circumstances, the maximum imprisonment imposed for 7(seven) years is reduced to 4 (four) years and the fine shall remain the same.

6.1 As far as A3 is concerned, it can be seen that, being the brother-in-law of A2, he had been part of the conspiracy, but except for receiving minor portion of amounts as stated above, it cannot be said that he was the actual beneficiary of the entire facilities that are granted to the A7, A1 and A2. He is not a partner in the business. Therefore, the maximum punishment that is imposed on A3 can be reduced to three months instead of three years, while the fine amounts remaining the same.

G. The Result:

7. In view thereof, the above Criminal Appeals are ordered on the following terms.

(i) Criminal Appeal No.210 of 2014 filed by appellants / A4, A5 and A6 stands allowed and they are acquitted of all the charges.

(ii)Criminal Appeal No.222 of 2014 is partly allowed and while treating the appeal of A1, P.Srinivasalu Reddy as having abated, the conviction in respect of the other appellant viz., Sundaram Gopu (A2) as made by the trial Court for all the charges is confirmed, however the punishment is modified as follows:

a) A2 is found guilty for offences under Sections 120B read with 419, 420, 467, 468, 471 of IPC and sentenced to undergo 4 (four) years rigorous imprisonment and to pay a fine of Rs.9,00,000/- and in default to undergo simple imprisonment for 4 (four) months.

b) A2 is found guilty for offence under Section 420 IPC (eight counts) and sentenced to undergo 4 (four) years rigorous imprisonment and to pay a fine of Rs.72,00,000/- and in default to undergo simple imprisonment for 4 (four) months.

c) A2 is found guilty for offence under Section 467 IPC (eight counts) and sentenced to undergo 4 (four) years rigorous imprisonment and to pay a fine of Rs.72,00,000/- and in default to undergo simple imprisonment for 4 (four) months.

d) A2 is found guilty for offence under Section 468 IPC (eight counts) and sentenced to undergo 4 (four) years rigorous imprisonment and to pay a fine of Rs.72,00,000/- and in default to undergo simple imprisonment for 4 (four) months.

e) A2 is found guilty for offence under Section 471 read with Section 467 IPC (eight counts) and sentenced to undergo 4 (four) years rigorous imprisonment and to pay a fine of Rs.72,00,000/- and in default to undergo simple imprisonment for 4 (four) months.

f) A2 is found guilty for offence under Section 419 IPC (eight counts) and sentenced to undergo 4 (four) years rigorous imprisonment and to pay a fine of Rs.72,00,000/- and in default to undergo simple imprisonment for 4 (four) months.

(iii) Criminal Appeal No.195 of 2014 is partly allowed as under:

a) A3 is found guilty for offences under Sections 120-B read with Sections 419, 420, 467, 468 and 471 of IPC and sentenced to undergo 3 (three) months rigorous imprisonment and to pay a fine of Rs.1,000/- and in default to undergo simple imprisonment for another 10(ten) days.

b) A3 is found guilty for offence under Section 467 of IPC (eight counts) and sentenced to undergo 3 (three) months rigorous imprisonment and to pay a fine of Rs.8,000/- and in default to undergo simple imprisonment for another 10(ten) days.

c) A3 is found guilty for offences under Section 468 IPC (eight counts) and sentenced to undergo 3 (three) months rigorous imprisonment and to pay a fine of Rs.8,000/- and in default to undergo simple imprisonment for another 10(ten) days.

d) A3 is found guilty for offences under Section 471 IPC (eight counts) and sentenced to undergo 3 (three) months rigorous imprisonment and to pay a fine of Rs.8,000/- and in default to undergo simple imprisonment for another 10(ten) days.

(iv) The sentences except the default sentence for not payment of fine to run concurrently. However, the default sentence of not payment of fine shall start only on completion of the substantial sentence and the various periods of default sentence for non payment of fine shall be undergone concurrently. The period already undergone can be set off.

(v) Fine amounts, if any, paid by A4, A5 and A6 shall be ordered to be refunded to them.

30.07.2025

Neutral Citation : Yes
KST

To

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

2.Inspector Of Police

CBI Economic Offices Wing (EOW)
Chennai.

3.The Public Prosecutor
High Court, Chennai.

<u>D.BHARATHA CHAKRAVARTHY,J.</u>
KST

<u>Pre-Delivery Order in Criminal Appeal</u>

<u>Nos.222, 214 and 195 of 2014</u>

30.07.2025

Criminal Appeal No.222, 210 and 195 of 2014

D.BHARATHA CHAKRAVARTHY, J.

After pronouncing the judgment, the learned counsel appearing for the appellants sought some more time for surrendering the appellants viz., A2 and A3 before the Trial Court.

Considering the prayer that is made by the learned counsel for the appellants, A3 is granted three months time from today (i.e.,30.07.2025) and A2 is granted one month time from today (i.e., 30.07.2025) to surrender themselves before the Trial Court, to undergo the sentence as confirmed by this Court.

30.07.2025

KST