



CRL.A(MD).Nos.154, 163 and 164 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	29.07.2024
Pronounced On	:	04.03.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).Nos.154, 163 and 164 of 2020

Crl.A(MD).No.154 of 2020:

K.Rajaraman

.... Appellant/Accused No.1

Vs.

The State through
DSP of Police,
SPE/CBI/ACB,
Chennai.

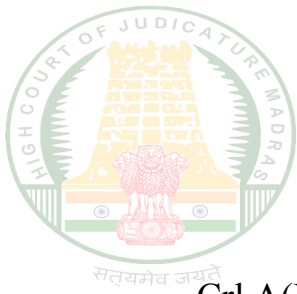
thro RC MA1 2009 A 0036

...Respondent/Complainant

Prayer : This Criminal Appeal is filed under Section 374 (2) of Cr.P.C. to admit the appeal, call for the records and set aside the conviction and sentence imposed by the learned II Additional District Judge for CBI Cases, Madurai vide his Judgment in C.C.No.2 of 2011, dated 12.03.2020, and acquit the appellant.

For Appellant : Mr.G.Prabhu Rajadurai
for Mr.N.Karthik Kanna

For Respondent : Mr.C.Muthu Saravanan,
Special Public Prosecutor for CBI



CRL.A(MD).Nos.154, 163 and 164 of 2020

CrI.A(MD).No.163 of 2020:

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R.Rajasekar

... Appellant/Accused No.3

Vs.

State through the Deputy Superintendent of Police,
SPE, CBI, ACB, Chennai.
(RC MA1 2009 A 0036)

... Respondent/Complainant

Prayer : This Criminal Appeal is filed under Section 374 of Cr.P.C. to call for the records and set aside the conviction and sentence passed in C.C.No. 2 of 2011 vide judgment dated 12.03.2020 by the learned II Additional District Judge (CBI Cases), Madurai and acquit the appellant.

For Appellant : Mr.R.Shunmugasundaram,
Senior Counsel for T.Balakrishnana

For Respondent : Mr.C.Muthu Saravanan,
Special Public Prosecutor for CBI

CrI.A(MD).No.164 of 2020:

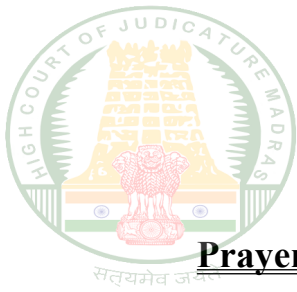
S.Murugan

... Appellant/Accused No.2

Vs.

The State through the
Deputy Superintendent of Police,
SPE,CBI,ACB, Chennai.
RC MA1 2009 A 036

... Respondent/Complainant



CRL.A(MD).Nos.154, 163 and 164 of 2020

Prayer : This Criminal Appeal is filed under Section 374 (2) of Cr.P.C. to call for the records in C.C.No.2 of 2011 on the file of the II Additional District Court(CBI Cases) Madurai and set-aside the conviction and sentence imposed on the appellant vide Judgment dated 12.03.2020 and allow the Criminal Appeal.

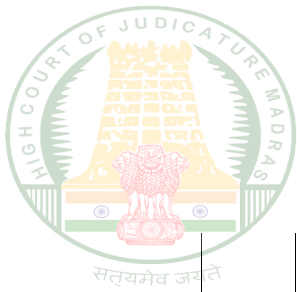
For Appellant : Mr.Arul Vadivel @ Sekar,
Senior Counsel for
Mr.D.Ramesh Kumar

For Respondent : Mr.C.Muthu Saravanan,
Special Public Prosecutor for CBI

COMMON JUDGMENT

The accused No.1 to 3 in C.C.NO.2 of 2011, on the file of the II Additional District Court(CBI Cases) Madurai, have preferred these appeals challenging the following conviction and sentence imposed against them, vide the impugned judgment dated 12.03.2020:-

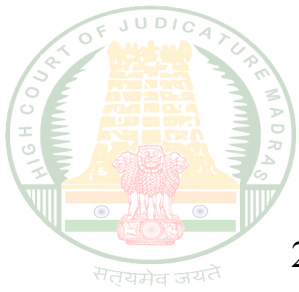
<i>CrL.A. (MD). No.</i>	<i>Rank of the Accused and Name</i>	<i>C.C. No.</i>	<i>Charges proved under sections</i>	<i>Punishment (Imprisonment and Fine)</i>
154 of 2020	A-1 K.Rajaraman	2 of 2011	U/s.120-B r/w 420 IPC	Sentenced to undergo Rigorous Imprisonment for four years and to pay a fine of Rs.1,25,000/- in default to undergo Simple Imprisonment for Six months.



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			U/s.420 of IPC	Sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.75,000/- in default to undergo Simple Imprisonment for Six months.
			13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988	Sentenced to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.50,000/- in default to undergo Simple Imprisonment for Six months.
163 of 2020	A-3 R.Rajasekar		U/s.120-B r/w 420 IPC	Sentenced to undergo Rigorous Imprisonment for five years and to pay a fine of Rs.1,25,000/- in default to undergo Simple Imprisonment for Six months.
			U/s.420 of IPC	Sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.75,000/- in default to undergo Simple Imprisonment for Six months.
			13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988	Sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.75,000/- in default to undergo Simple Imprisonment for Six months.
164 of 2020	A2		U/s.120-B r/w 420 IPC	Sentenced to undergo Rigorous Imprisonment for five years and to pay a fine of Rs.5,00,000/- in default to undergo Simple Imprisonment for Six months.
			U/s.420 of IPC	Sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.2,00,000/- in default to undergo Simple Imprisonment for Six months.



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2.The brief facts of the case:-

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When the appellants in Crl.A.(MD).Nos.154 and 163 of 2020, were working as managers of the Indian Overseas Bank, Thiruvanaikovil Branch, Tiruchirapalli, during the period from 23.06.2003 to 12.02.2006, they had entered into conspiracy with the private individual namely the appellant in Crl.A.(MD)No.164 of 2020, to cheat the Indian Overseas Bank and defraud an amount of Rs.2,02,42,674/- and granted loan to the following agencies managed by A2:

- i.M/s. Vasan News and Advertising
- ii.M/s. Vasan Canteen service
- iii.M/s.Vasan Catering Services
- iv.Hotel Mani vilas unit – I
- v.Hotel Mani Vilas unit - II

Totally, seven loans were granted to the above said agencies without obtaining registered mortgage deed and sufficient securities and diverted the loan amount for some other purpose other than the purpose for which the loan was granted and therefore, caused loss of Rs.2,02,42,674/-and acted contrary to the banking norms and regional office instructions. Therefore, the CBI registered the case under Sections 120(b) r/w 420 of IPC r/w 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, against



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number of persons and after the investigation, CBI filed the final report against the appellants for the above said offences before the II Additional District Court(CBI Cases) Madurai, and the same was taken on file in C.C.No.2 of 2011. After taking cognizance, in C.C.No.2 of 2011, the learned special Judge issued summons to the accused and on their appearance, served the copies under Section 207 Cr.P.C. Thereafter, framed the appropriate charges and questioned the appellants and they pleaded not guilty and they stood for trial.

3.To prove the charge framed against the appellants, the prosecution examined P.W.1 to P.W.19 and marked the Ex.P.1 to Ex.P.110. After the completion of the examination of the prosecution witnesses, the learned trial Judge questioned the appellants under Section 313 Cr.P.C., by putting incriminating evidence available against them and they denied them as false and specifically answered that they had not committed any offence. The appellants examined D.W.1 to D.W.4 and marked Ex.D1 to Ex.D8. The learned trial judge after considering all the evidence came to the conclusion that the prosecution proved the charges framed against the appellants beyond reasonable doubt and convicted the appellants for the above stated offences and imposed the sentence of imprisonment as stated



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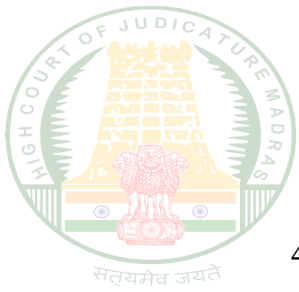
above, by passing the impugned judgment dated 12.03.2020. Challenging the same, the appellants have preferred these appeals.

4. Thiru.R.Shanmuga Sundaram senior counsel appearing on behalf of the appellant in Crl.A.(MD).No. 163 of 2020 made the following submission:-

4.1. The appellant in Crl.A.(MD).No. 163 of 2020 was arrayed as a accused No. 3 in the C.C.No. 2 of 2011. He was working as manager of the Indian Overseas Bank, Thiruvanaikovil Branch, Trichirappalli for the period from 12.06.2005 to 12.02.2006. In the said branch, A2 operated and managed various accounts of the following partnership firms and proprietorship concern:-

- i.M/s. Vasan News and Advertising
- ii.M/s. Vasan Canteen service
- iii.M/s.Vasan Catering Services
- iv.Hotel Mani vilas unit – I
- v.Hotel Mani Vilas unit - II

4.2. The CBI had filed the final report with the following allegation against the appellants :-



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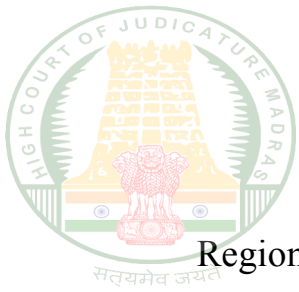
4.2.1. He had sanctioned term loan to the Hotel Mani vilas unit – I and Hotel Mani Vilas unit – II without obtaining proper security and also against the banking norms.

4.2.2. He also sanctioned term loan to M/s.Vasan Catering Services without execution of any registered mortgage deed inspite of the direction to get the mortgage for the account of A2 stating that the original deed of the property was lost.

4.2.3. He also allowed A2 to avail two set of accommodation cheque facilities against the banking norms.

4.2.4. The appellant conspired with A2 to defraud the bank money by granting the above said term loan against the banking norms and also allowed A2 to divert the said fund for some other purpose and thereby caused loss to the bank.

4.3.The learned senior counsel would submit that this appellant acted as per direction of the chief regional manager who was arrayed as accused in the FIR and was deleted purposely and false case was initiated against this accused whose name was not found place in the FIR. Once regional office sanctioned the loan, this appellant as a branch head would have to disburse the loan. The entire loan documents were submitted to the regional office and the same had been perused and recommended by the



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Regional office to grant loan. Therefore, there is no criminality in granting loan to A2.

4.4. The execution of mortgage deed by deposit of title had been already made. As per the bank norms, even after sanctioning the loan, the borrowers always can be called for registration of the mortgage deed. Before exercising the said procedure by calling the borrower to register the mortgage, the property was sold and in between he was transferred to some other branch and therefore no material is available against the appellant to implicate him in the crime.

4.5. According to the prosecution among the two types of the accommodation cheque facilities, dues relating to one type of accommodation cheque facility the same had been settled on 06.02.2009 much earlier to the registration of the FIR on 30.06.2009. For the other type of the accommodation cheque facility, the regional office itself made arrangement for rescheduling the said credit facility. Therefore, there was no loss and hence the charge for the said issuance of the accommodation cheque facility in violation of the banking norms is not legally maintainable.

4.6. D.W.2, D.W.3, D.W.4 and P.W.19 clearly deposed that P.W.11 alone owned the above said partnership firms and proprietorship concerns.



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All the loan application and other formalities were made in her name.

Without arraying P.W.11 as accused, the criminal case registered against the appellant is not legally maintainable. For the same reason, her evidence is also not admissible against the appellant and other accused. Apart from that she is totally a liar and her evidence should be eschewed from consideration to convict the appellant and others. She deposed to the extent that she was not an income tax assessee but she was income tax assessee and also paid the income tax periodically. Instead of arraying the said person as accused, investigating agency has shown her as a witness.

4.7. The prosecution had not produced any witness to prove that the loan amount was diverted by A2. P.W.15 and P.W.3 clearly admitted that the amount was utilized for the purpose for which the loan had been granted.

4.8. Similar loan was granted by another bank manager namely Rajaram, Sankara Narayanan and said Sankaranarayanan was not arrayed as accused either in the FIR or final report. Therefore, bias investigation was conducted by the CBI and framed the accused *ipse dixit*.

4.9. Merely because A2 sold the secured property it is not a ground to presume the offence of cheating when there was no outstanding on the date of the FIR. Apart from that, number of other properties were



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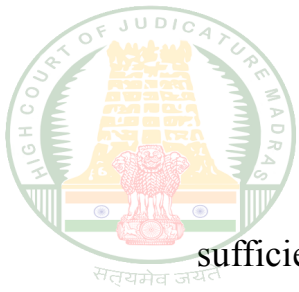
mortgaged by deposit of title deeds other than the sold out property and without initiating the recovery proceedings as per the recovery law, the CBI found fault with the act of the appellant with jaundiced eye and hence he seeks for acquittal.

4.10. The regional office never gave instructions to get the insurance policy for the security of the loan.

4.11. Before granting the loan, purchase bills of various goods were perused and thereafter reimbursement loan was granted. The prosecution witnesses never disputed the said bills. Therefore, the prosecution case of diversion of fund is not correct.

4.12. The learned senior counsel would further submit that the sanctioning authority is not a competent authority to accord sanction for prosecution. Therefore, the CBI Court ought not to have taken cognizance as against the appellants.

4.13. The learned senior counsel finally submitted that to compete with the private sector bank, some adjustment and compromise of procedure were made in the branch in order to enhance the business of the bank even before the appellant joined the office. The same was followed by the appellant on the basis of the permission granted by the regional office to grant loan to A2 and the above stated firms. When there were



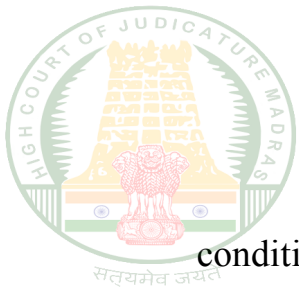
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sufficient assets to recover the dues, initiation of the criminal proceedings against the officials would paralyse the banking business. The learned trial judge has not considered the said practical difficulty of the officers. Therefore, he seeks for acquittal.

5. Thiru. Prabhu Raja Durai learned counsel appearing for the appellants in Crl.A.(MD).No.154 of 2020 made the following submissions:-

5.1. The learned counsel submitted that the appellant in Crl.A.(MD).No.154 of 2020 was arrayed as A1 in the above C.C.No. 2 of 2011. He was working as a manager of the Indian Overseas Bank, Thiruvanaikovil Branch, Trichirappalli for the period from 23.06.2003 to 03.05.2005. He reiterated the portion of the above submission of the learned senior counsel appearing for A3 in respect of the recovery proceedings, running of business in the competitive sector with some compromise on the procedure, absence of the evidence relating to the diversion of fund, getting further security during the subsistence of the loan and made the following specific submission :-

5.1.1. The investigating agency have not come forward with the specific stand that the appellant had granted loan in violation of the

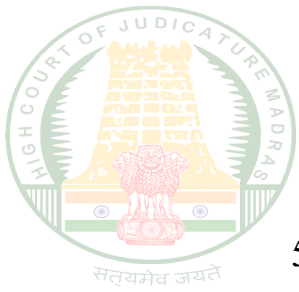


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conditions, terms or instruction of the regional office. They have not produced the existing conditions, terms, instruction, rules relating to the period of disbursement of the loan and without producing the same, they simply filed the final report that the appellant sanctioned loan in violation of the banking norms. Without specifying the material violation in the course of granting of loan with the intention to cheat the bank, the charge against the appellant is not legally maintainable.

5.1.2. No evidence was adduced or material circumstances were established that the appellant was benefited in the grant of the loan and without such evidence the charge of criminal conspiracy and the charge under Section 13 (1) (d), r/w. 13 (2) of the Prevention of Corruption Act 1988 is not made out against the appellant.

5.1.3. A2 is a promoter and purchaser of the flats and availed the loan and he also facilitated the purchasers to avail the loan in the appellant's branch providing sufficient security and also acting as a guarantor which is not an offence unless the said amount was received and misutilized by A2 and the said all the loans were secured by marketable title deeds and the outstanding loan was easily recoverable by initiating the recovery proceedings.



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5.1.4. In the present day of competitive market, some irrelevant lapse and omissions would happen during the processing of the loan. For which the authority has power to initiate the departmental proceedings and the CBI has no jurisdiction to register the criminal case against the officials and the customer. If criminal prosecution is initiated for small lapses, there would be no banking business. Therefore, according to the counsel, the initiation of the criminal proceeding by the CBI itself without obtaining complaint from the bank is illegal.

5.1.5. P.W.11 Pangajam in order to save her skin, had tendered false evidence before the court with false particulars and therefore her evidence should have been rejected by the learned trial judge. The learned counsel reiterated the submission of the learned senior counsel Thiru.Shanmuga Sundaram in this aspect in elaborate manner to eschew her evidence from the record.

5.1.6. One of the borrowers sold the mortgaged property could not be treated as a material circumstance to convict this appellant for granting the loan to her without obtaining the original title deed. It is settled principle that once property is mortgaged with the bank and if the borrower sold the property, the title is passed on with liability and apart from that the said transaction would be void one. Therefore, the approach of the learned



trial judge in this aspect is not in accordance with law.

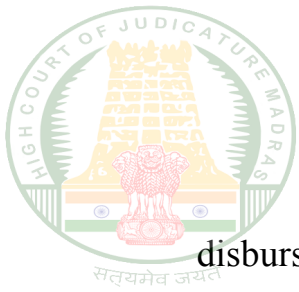
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5.1.7. The learned counsel also reiterated the submission of the learned senior counsel Thiru.Shanmuga Sundaram that the reimbursement loan was made only after obtaining number of receipts for purchase of the goods. Therefore, the prosecution miserably failed to prove the diversion of the funds.

5.1.8. The learned counsel also submitted that during his tenure he had sanctioned five loans and the same was granted with proper marketable title deeds. Till date, the value of the property is continuously appreciating and therefore, there is no loss to the bank. Apart from that proper surety also was obtained. Therefore there is no criminality in the entire process of granting loan except some assumed negligence or irregularity in the course of the disbursement of the loan.

5.1.9. The prosecution has not proved the forgery committed by A2 in obtaining the loan by forging the signature of Pangajam and A2 misappropriated the fund.

5.1.10. He also reiterated the submission of the learned senior counsel that deletion of the similarly placed bank managers in the final report amounts to biased investigation more particularly when the case of the appellant and the said deleted managers were similar in nature in



disbursing the loan .

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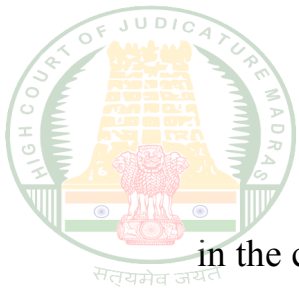
5.1.11. In this case, the appellant acted as per the norms and converted the reimbursement loan into the term loan and there was no criminality in the said process.

5.1.12. He also submitted that Ex.P.92 and Ex.P.93 are not admissible for the reason of non compliance of the requirement of the banker books evidence Act.

5.1.13. The appellant granted loans only after verifying the document and entitlement of the borrowers as per law. Therefore, he seeks for acquittal.

6. Thiru. Arul Vadivel @ Sekar appearing for the appellant in Crl.A.(MD).No. 164 of 2020 after making the detailed preliminary submission about the facts made the following submission on behalf of A2 in C.C.No.2 of 2011.

6.1. A2 had not obtained any loan in his individual capacity. The prosecution did not produce any material to show that he had obtained the loan in his individual capacity. Except the “*Vasan Canteen service*” in all other above said partnership firm or proprietorship concern he was not holding the position either as a partner or any other official capacity. Even



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in the case of the “*Vasan Canteen service*” without arraying the remaining partners and the partnership firm as accused, array of the appellant alone as an accused and conducting the prosecution is not legally maintainable.

6.2. Except the “*Vasan Canteen service*”, all are proprietorship concerns and P.W.11 is the proprietor for some concerns and A2 is partner of one of the concerns and without arraigning P.W.11 as accused, registration of the case by adding this appellant alone as accused clearly demonstrated the biased investigation conducted by the CBI. Even no material was collected by the investigating agency to prove A2's role in the entire process of the obtaining the loan and he alone is benefited from the said loan.

6.3. He also reiterated the submission of the counsel appearing for A1 and A3 that every loan was granted with sufficient security upon execution of equitable mortgage and therefore, without initiating the recovery proceedings relating to the unpaid loan, registration of the FIR by the CBI without complaint from the bank is not legally correct. He further submitted that number of loans had been settled before the registration of the case and also remaining unpaid loans are secured debt. For number of loans, the value of the security is more than three times of the liability.



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Therefore, the conviction of the appellant under the offence of cheating and other charges is not legally correct.

6.4. He also reiterated the submission of the other counsel that evidence of P.W.11 is unbelievable and also there is no evidence to prove the diversion of the fund.

6.5. The principal debtor was not added as accused and this appellant was added as a accused without any material to prove that he had received the loan proceeds and hence, the prosecution is illegal.

6.6. Mere breach of promise made at the time of the receipt of the loan is not a ground to initiate the criminal proceedings. Non payment of the loan due to the some intervening cause is not a ground to register the criminal case by the premier investigating agency. He also submitted that the defense witness ought to be treated on par with the prosecution witnesses. He also submitted that the CBI conducted investigation with bias attitude without collecting any material to show violation of any of the banking rules or procedure in the course of the granting of the loan and also arrayed the accused as witness and witness as accused. Therefore, he



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seeks for the acquittal. He also submitted that even more than Rs.80 Lakhs loan amount was recovered and only remaining loan amount is to be recovered which is secured with marketable title deeds and without initiating the recovery proceedings, initiation of the criminal proceedings is not legally valid.

6.7. The learned senior counsel also made elaborate argument on the principle of lifting the corporate veil and submitted that without arraying the partnership concern, proprietorship concern as accused, array of this appellant as accused is not legally correct. The learned senior counsel has concluded the argument by submitting the following precedents after reading the relevant portion:-

S.No.	Citations
1.	1981 2 SCC 166 (Dudh Nath Pandey Vs. State of UP)
2.	1989 4 SCC 630 (Sham Sunder and others Vs. State of Haryanan)
3.	2000 4 SCC 168 (Hridaya Ranjan prasad Verma Vs. State of Bihar)
4.	2001 6 SCC 145 (Takhaji Hiraji Vs. Thakore Kubersing Chamansing and others)
5.	2002 2 SCC 426 (State of Haryana Vs. Ram Singh)
6.	2007 5 SCC 103 (Raghu Lakshminarayanan Vs. Fine Tubes)
7.	2009 8 SCC 617 (State of Madhya Pradesh Vs. Sheetla Sahai and others)



8.	2012 5 SCC 661 (Aneeta Hada Vs. Godfather Travels and Tours Pvt Limited)
9.	2014 SCC Online Del 4637 (Freezair India p. Ltd Vs. Commissioner of Central Excise, Commissionerate)
10.	2015 12 SCC 781 (Sharad Kumar Sanghi Vs. Sangita Rane)
11.	2019 3 SCC 797 (Himanshu Vs. B.Shivamurthy and Another)
12.	Judgment of Madras High Court in S.Saravanan vs. S.Murugesan in Crl.O.P.No.11916 of 2014, dated 26.11.2019.
13.	2019 16 SCC 739 (R.K.Vijayasarathy Vs. SudhaSeetharam)
14.	2020 10 SCC 531 (Mohan Vs. State of Madhya pradesh)
15.	Judgment of the Hon'ble Supreme Court in Parveeb @ Sonu Vs. State of Haryan in C.A.No.1571 of 2021, dated 07.12.2021
16.	Judgment of AP High Court in Criminal petition No.315 of 2021, dated 22.03.2022.
17.	2022 LiveLaw (SC) 709 Ram sharan Chaturvedi Vs. State of Madhya Pradesh
18.	Judgment of Madras High Court in Santhosh Vs. Commercial Tax Officer and another in Crl.O.P.No.34570 of 2019, dated 10.01.2023.
19.	2023 Live Law (SC) 157 (Sarabjit Kaur Vs. State of Punjab and another)
20.	2023 LiveLaw (SC) 1022 (Vijay Vs. Union of Indian and others)

7. Thiru Muthusaravanan learned special public prosecutor for CBI made the following submission :-

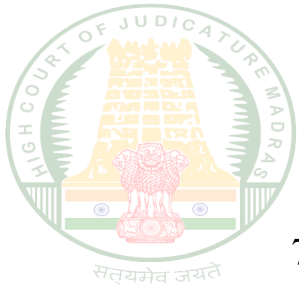
7.1. A1 and A3 were the managers. They are supposed to grant term loan by obtaining the sufficient security in the form of registered mortgage



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deed. This is the fundamental requirement for any loan. For which it is not necessary to produce the relevant norms, rules, circular. When A1 and A3 granted loan without obtaining registered mortgage deed itself is a circumstance to show their intention to cheat the bank with active collusion with A2. Apart from that, the loan was granted in violation of the specific direction issued by the regional branch to obtain the registered mortgage and not receiving the original title deed is another important material circumstance to presume the guilty mind of all the accused.

7.2. A2 is the kingpin for the entire transaction and he only managed the entire units stated above and all the material documents were dealt by him and entire business activities were administered by him and to prove the same the prosecution produced number of documents and A2 never denied the said documents. The learned public prosecutor strenuously collected number of material documents and read the relevant evidence from the huge volumes of the recorded evidence and marked documents on the side of the CBI to substantiate their charge during the course of the trial.

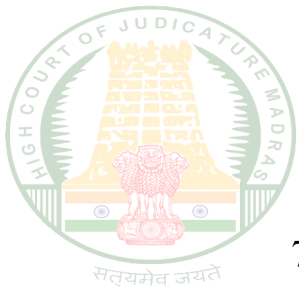


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7.3. Relating to the term loan of Rs.35 Lakhs by A3 in the name of “*Vasan Catering Services*” the learned public prosecutor referred Ex.P.32, Ex.P.90, Ex.P.84, Ex.P.53, Ex.P.55, Ex.P.56, Ex.P.57, Ex.P.59, Ex.P.60, Ex.P.61, Ex.P.62, Ex.P.64, Ex.P.65, Ex.P.66 & Ex.P.67 and evidence of P.W.3 and P.W.16 and argued that the manner of the granting of loan is in violation of the norms and the direction of the regional office to obtain proper document and disburse the loan amount.

7.4. Similarly, relating to the additional term loan of Rs.20 Lakhs by A3 in the name of “*Mani Vilas No.I*” the learned public prosecutor referred Ex.P.33, Ex.P.44, Ex.P.45, Ex.P.101, Ex.P.12 & Ex.P.43 and argued that the manner of the granting of loan is in violation of the norms and the direction of the regional offence to obtain proper document and disburse the loan amount.

7.5. Similarly, relating to the additional term loan of Rs.20 Lakhs by A3 in the name of “*Mani Vilas No.II*” the learned public prosecutor referred Ex.P.34, Ex.P.50, Ex.P.48 & Ex.P.49 and argued that the manner of the granting of loan is in violation of the norms and the direction of the regional office to obtain proper document and disburse the loan amount.

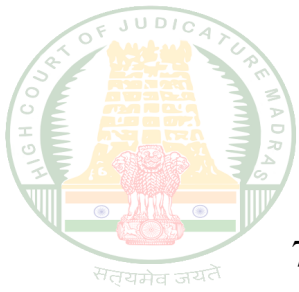


7.6. Similarly, relating to the additional term loan of Rs.25 Lakhs by

A1 in the name of “*Mani Vilas No.I*” the learned public prosecutor referred Ex.P.33, Ex.P.10, Ex.P.40 & Ex.P.41 and argued that the manner of the granting of loan is in violation of the norms and the direction of the regional office to obtain proper document and disburse the loan amount.

7.7. Similarly, relating to the term loan of Rs.20 Lakhs by A1 in the name of “*Vasan News Advertising Agency*” the learned public prosecutor referred Ex.P.29, Ex.P.30, Ex.P.75, Ex.P.76, Ex.P.77 & Ex.P.78 and argued that the manner of the granting of loan is in violation of the norms and the direction of the regional office to obtain proper document and disburse the loan amount.

7.8. Similarly, relating to the term loan of Rs.20 Lakhs by A1 in the name of “*Vasan Canteen Services*” the learned public prosecutor referred Ex.P.99, Ex.P.98, Ex.P.75, Ex.P.76, Ex.P.77 & Ex.P.78 and argued that the manner of the granting of loan is in violation of the norms and the direction of the regional office to obtain proper document and disburse the loan amount.



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7.9. Similarly, relating to the additional term loan of Rs.35 Lakhs by

AI in the name of *Vasan Canteen Services*” the learned public prosecutor referred Ex.P.34, Ex.P.98, Ex.P.99, Ex.P.8, Ex.P.31, Ex.P.68 Ex.P.69, Ex.P.70, Ex.P.71, Ex.P.72 & Ex.P.73 and argued that the manner of the granting of loan is in violation of the norms and the direction of the regional office to obtain proper document and disburse the loan amount.

7.10. Similarly, relating to the additional term loan of Rs.20 Lakhs by A3 in the name of *“Mani Vilas II”* the learned public prosecutor referred Ex.P.34, Ex.P.51 & Ex.P.52 and argued that the manner of the granting of loan is in violation of the norms and the direction of the regional office to obtain proper document and disburse the loan amount.

8. This Court considered the rival submission made by the learned counsel for the appellants and the learned special public prosecutor for CBI and perused the records and the precedents relied by them.

9. The question that arise for consideration before this Court is *whether the conviction and sentence imposed against the appellants is in accordance with law?*



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9.Discussion on Conspiracy:

9.1.A1 was the senior manager of Indian Overseas Bank Thiruvanaikovil Branch, Trichirappalli during the period 23.06.2003 to 03.05.2005. A3 was the manager of the said Branch from 12.06.2005 to 12.02.2006. During their tenure, they have sanctioned and disbursed the loan in utter violation of the banking procedure in favour of A2 who operated and managed the business activities of the following concerns and defrauded the bank fund:

- (a).M/s.Vasannews and advertising,
- (b).M/s.Vasan Canteen Services,
- (c).M/s.VasanCateringService
- (d).HotelManivilasUnit-I
- (e).Hotel ManivilasUnit

9.2. Among the above concerns, the Vasan news and advertising and Vasan Catering Service are Proprietrix concerns and the proprietrix was (Mrs. S.Pankajam) P.W.11. Hotel Mani Vilas Unit-I and Hotel Mani Vilas Unit-II are Proprietrix concerns and the proprietrix was (Mrs.Sarajoni) P.W.15. Vasan Catering Service was a partnership firm consisting of 6 partners including A2. The above all concerns, had been actively



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administered by A2. He alone had operated the entire business transaction of the above concerns. P.W.11, P.W.15 and other partners never participated in the day to day business of the said concerns.

9.3. A2 was a reporter for Daily Thanthi Newspaper during the period 1992 – 2004 at Trichirappalli. Therefore he had contact with Vasana news and advertisement agency. The said agency functioned at Sannathi Kovil Street, Thiruvanaikovil. The said Vasana news and advertisement agency also got the best performing award for three consecutive years from the Daily Thanthi Newspapers. The said concern was operated through P.W.11. The account of the said concern was originally opened and operated in the IOB, Sindhamani Branch. They had the credit facilities upto Rs.1,40,000/-. Subsequently, they requested to increase the limit. But there was no sufficient enhancement. On 21.05.2004 therefore, they had transferred the said account from Chinthamani Branch to the Thiruvanaikovil Branch of IOB. At that time A1, had been discharging the duty as a chief manager of the said branch. He made recommendation to grant various loan to the above said concerns and also sanctioned loans for the same. The details of the loans sanctioned are as follows :-



1	Hotelmani vilasunit-I.	22.07.2004	Rs.25,00,000/-
2	Vasancanteen services.	22.03.2005	Rs.35,00,000/-
3	Vasancanteen services	25.04.2005	Rs.20,00,000/-

9.4. A1 had recommended and sanctioned the above loans without any sufficient surety. A1 had not disbursed the loan as per the terms of the loan. As per the terms of the loans, he is bound to supervise the post sanction disbursement of loan proceeds and disburse the amount periodically. But, A1 had disbursed the entire amount to meet out the other commitment of A2. The details of the diversion of the said loan amount are as follows:-

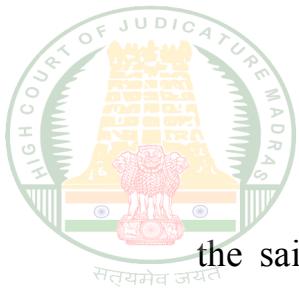


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10. Discussion on the diversion of the loan amount sanctioned for

Hotel mani Vilas unit-I dated 22.07.2004:-

After sanctioning of the loan dated 22.07.2004 on the basis of the Ex.P10, A1 debited the amount in the account number 129. The said loan was reimbursement loan. A1 is duty bound to disburse the said amount upon verification of the paid invoices, cash receipt and verification by the approved engineers. But, the loan had been disbursed without following the above terms. He allowed to withdraw the said entire amount without any paid invoices, cash receipt etc., on the same day itself i.e., 22.07.2004 by accepting the self cheque of P.W.15 who is none other than the wife of the A2. A2 got the withdrawal through the self cheque of his wife/ P.W.15. P.W.3 clearly deposed about the same and Ex.P34 clearly revealed the above fact. As per Ex.P.11, the said amount has been diverted into the account of Hotel Mani Vilas. As stated above, the said Hotel Mani Vilas was run by A2 in the name of his wife, P.W.15. Therefore, this court inclines to accept the argument of the learned special public prosecutor that A1 and A2 hatched conspiracy to defraud the loan amount and cheated the bank without utilizing the said amount for the purpose of reimbursement. The said conspiracy materialized into act of diversion of



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the said fund in the account of the Hotel Mani Vilas as revealed from Ex.P.11.

11. Discussion on the diversion of the loan amount sanctioned for Vasan Canteen Services dated 22.03.2005:-

The Vasan Canteen Service was a partnership firm as stated earlier which consists of 6 partners as on 14.01.2005. A2 was managing partner. He alone actively participated in the affairs of the said firm. Ex.P.98 was the authorization letter signed by the partners and given infavour of A2. Through Ex.P.98, A2 actively involved in the loan process. A2 applied loan to develop Vasan Canteen Service. The Vasan Canteen Service was engaged in the business of running canteens in various TASMACH shops. A2 has opened SB Account in Punjab National Bank, Sethurapatti Branch, Trichirappalli in the name of P.W.13 for the said purpose. According to P.W.13 he alone operated the said account. P.W.14 one of the partners and also brother of A2 has deposed that he has not participated in the said Vasan Canteen Service as a partner. A2 alone executed demand promissory note for Rs.35 Lakhs in favour of the bank. The loan was short term loan to start 13 canteens in the TASMACH shops and the loan amount was recommended and sanctioned for purchase of furniture, fixture, utensils,



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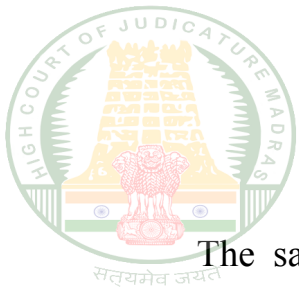
interior, decoration etc., i.e., for the purpose of infrastructure activities. But

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the said amount was diverted to self cheques as stated below:-

Date of the self cheque	Amount	Withdrawn by A2
21.03.2005 Ex.P-68.	Rs.5,00,000/-	A2
23.03.2005 Ex.P-69.	Rs.7,00,000/-	A2
23.03.2005 Ex.P-70.	Rs.8,00,000/-	A2
24.03.2005 Ex.P-71.	Rs.3,00,056/-	A2
26.03.2005 Ex.P-72.	Rs.3,90,974/-	A2
28.03.2005 Ex.P-73.	Rs.8,00,000/-	A2

11.2.The argument of the learned senior counsel for the appellant that there was no investigation relating to the purchase bills collected under Ex.P.31 as to whether it is forged or not would no way advance the case of the appellant for the reason that the said receipts were issued by one Saroj Kumar builders for the purpose of interior decoration works for 13 canteens. In the said receipts amount was mentioned as Rs.35,75,000/- and Rs.36,75,000/- respectively. The learned trial judge perused the said receipts and considered the other circumstances and specifically has held that the said receipts appeared to be unbelievable one on the ground that the same was issued without date. This court also perused the said exhibit.



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The said exhibit neither contain date nor contain any other particulars about the decoration made and if he received the amount mentioned for the said purpose. Apart from that, the loan was meant for decoration, purchasing the utensils, furniture etc., There was no evidence to prove that the loan amount was utilized for the purpose of purchasing the utensils etc., In addition to that already the amount of more than Rs.30,00,000/- had been withdrawn through the self cheque under Ex.Ps.69,70,71,72 and 73. In that event the case of the appellant/A2 that the amount was used for interior decoration alone for the value of Rs.35,75,000/- and Rs. 36,75,000/- respectively cannot be accepted. There was no material that the said amount was disbursed to Sarojkumar Builders by using the above said withdrawn amount through the said self cheques. Therefore, the diversion of the fund as argued by the learned special public prosecutor stands proved.

12 Discussion on the diversion of the loan amount sanctioned for Vasam Canteen Services dated 25.04.2005:-

The Vasam Canteen service was partnership firm and there were 8 partners. A2, Murugan was the managing partner under Ex.P.99 and it is clear that Murugan was authorised to operate the account and he applied



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for term loan of Rs.20 Lakhs. No further security was furnished and also the loan amount was withdrawn through the self cheques and said amount was not utilized for the purpose for which the loan was sanctioned. The loan was credited in the account on 25.04.2005. Ex.P.77 and Ex.P.78 are the self cheques and the same was withdrawn on 25.04.2015 and 26.04.2005 respectively. There was no document to prove the purchase of furniture, fixtures, utensils and interior decoration. Without any materials and bills A2 was allowed to withdraw the amount under Ex.P.77 and Ex.P.78. Therefore, the prosecution clearly proved the charge that A1 and A2 conspired together and obtained the loan without proper security and also diverted the loan amount and defrauded the bank fund.

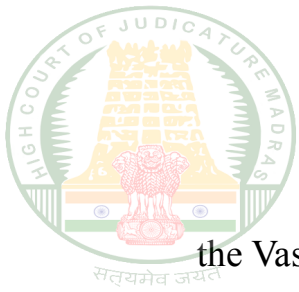
13.Discussion on the loan sanctioned by A3:-

13.1.As per the prosecution case and records A3 is proved to have granted following loans.

13.1.1. Additional term loan Rs. 20 Lakhs for the improvement of the Mani Vilas II.

13.1.2. Additional term loan Rs. 20 Lakhs for the improvement of the Mani Vilas I.

13.1.3. Additional term loan Rs. 35 Lakhs for the improvement of



the Vasan Catering Service.

WEB COPY 14. Discussion on the term loan of Rs. 35 Lakhs in the name of Vasan Catering Service.

14.1.A2 applied loan of Rs. 35 Lakhs to construct the community hall at Thiruvanaikovil and to purchase the furniture to run the catering service in the said hall. The regional office made lot of queries and finally directed to act as per the legal opinion. A2 stated that the original document of the collateral security was missing. Therefore, the legal opinion was furnished with specific direction to obtain the registered mortgage deed for the security. The regional office also specifically directed to obtain registered mortgage deed for security. But, A3 without obtaining the registered mortgage deed granted loan. Subsequently, the said property was sold. Therefore, there is a clear case of cheating on the part of A2 and A3. The learned senior counsel's submission on the basis of the evidence of one of the bank officials that even in some cases registration of the mortgage deed had been done after the granting of the loan and if the succeeding officer has not obtained the same it cannot be accepted. When there was a direction to obtain the registered mortgage deed and in case of missing of the original title deed of secured asset, it is the duty of A3 to obtain the registered mortgage in order to avoid any

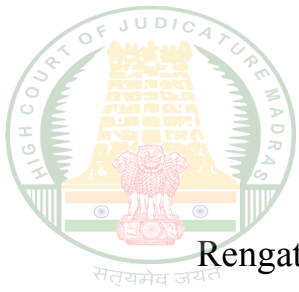


alienation of the mortgaged property. Without doing the same, A3 granted loan and he cannot be allowed to say that the successor failed to obtain the mortgage deed. A2 sold the said property subsequently to the third parties on the basis of the original title deed. Therefore, the intention is clear to cheat the bank and defraud the amount on the part of both A2 and A3.

14.2. Apart from that, A3 allowed A2 to divert the loan amount for some other purpose. Under Ex.P.55, Ex.P.56, Ex.P.57, Ex.P.58, Ex.P.59, Ex.P.60, Ex.P.61, Ex.P.62, Ex.P.63, Ex.P.64, Ex.P.65 and Ex.P.66, it is clear that the amount was used for some other purpose namely, clearing the earlier loan due of Rs.16,17,000/- and remaining amount was used for other purpose. Therefore, the prosecution case that the loan was obtained and misappropriated by the way of diversion of the loan amount is clearly proved beyond reasonable doubt.

15.Discussion on the Additional term loan Rs. 20 Lakhs in the name of Hotel mani Vilas II:-

The additional term loan amount of Rs 20 lakhs was disbursed for the development of Mani Vilas Hotel No. I without creating valid mortgage. The secured asset was settlement property of the Sri



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Rengathasamy Temple. Except the kist receipt, no other document was submitted. The said Hotel Mani Vilas No.I, stands in the name of his wife, A2 actively participated and applied for the loan and diverted the fund. The loan amount was granted for construction of the building with interior decoration, electrical, furniture fittings and for purchase of utensils, kitchen equipments etc., The said loan was granted without obtaining any valuation certificate and granted with direction to obtain the latest valuation report of the property under Ex.P48, Ex.P49 and the amount of Rs.10 lakhs was diverted for some other purpose. Therefore, the prosecution case that the loan was obtained and misappropriated by way of diversion of the loan amount is clearly proved beyond reasonable doubt.

16.Discussion on the Additional term loan Rs. 20 Lakhs in the name of Hotel mani Vilas I:-

The additional term loan of Rs.20 Lakhs was granted for carrying out renovation work of A/c hall, purchase of furniture, fixtures, kitchen utensils and also for providing interior decoration. No additional security was obtained. The sanctioned amount also utilized for some other purpose and the same was proved through Ex.P.44 and Ex.P.45. The learned senior counsel submitted that earlier the above practice was followed and this is



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not a ground to grant loan by A3. Therefore the prosecution clearly proved that A3 and A2 conspired together to cheat the bank and defraud the bank amount as stated above. Hence, this court holds that the prosecution clearly proved the charged offence against A1, A2 and A3.

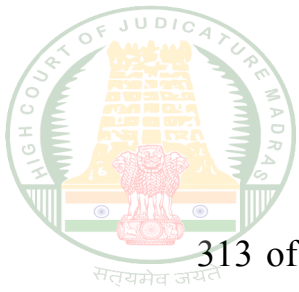
16.1. From the above discussion, it is clear that A1 and A3 sanctioned loan in violation of the mandatory procedure which were to be followed in granting loan in favour of the above stated various firms and Proprietrix concern managed by A2. They sanctioned the loan without obtaining the proper security, without obtaining the registered mortgage deed and allowed to divert the loan amount. The specific purpose behind each loan is to utilize the same in order to run the unit profitably and for repayment. But in this case the amount was diverted for some other purpose and hence the business was not successfully carried out. Even before making loan application, the said commitment to use the loan amount for some other purpose was within the knowledge of A2 and A3 and therefore they allowed A2 to use the said amount for some other purpose without making objection to withdrawal by way of self cheque, to pay the due amount of other account, to make the payment to other persons and all these clearly proved that all the accused conspired together to cheat



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and defraud the bank amount deliberately. It is well settled principle, that

conspiracy can be proved through the chain of events. The above chain of events including the granting of loan without obtaining the registered mortgage deed and original title deed, alienation of the mortgaged property within the short span of the loan period, using the loan amount for some other purpose are all material incriminating circumstances to draw the legal inference and consequently to hold that the said legal inference only tends to prove the conspiracy. Fraud is one of the white collar crimes, namely, banking fraud is entirely different from the ordinary case as held by the Hon'ble Supreme Court in 2003 (2) SCC 641 and 2009 (11) SCC 737 and the duty of the prosecution ends with the proof of the circumstances and the considered opinion of this court that the same has been properly done in this case. That apart in the case of the banking fraud, the officials acted against the legal procedure which amounts to proof of cheating as held by the Hon'ble Supreme Court in 2003 (2) SCC 641 and 2009 (11) SCC 737. The learned senior counsel and other counsels argument that there was no meeting of mind between A1,A2 and A3 to prove the conspiracy cannot be accepted on the principle that the prosecution clearly proved the case through the material circumstances and there was no explanation on the side of the appellant during the course of



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313 of Cr.P.C. proceedings. Therefore, this court inclines to hold that the prosecution clearly proved the conspiracy.

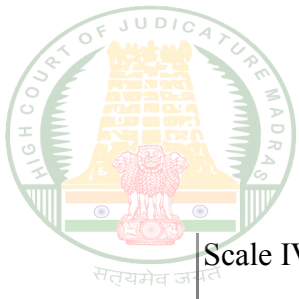
17. Discussion on sanction :-

The learned senior counsel for A3 would contend that the sanction was granted by the incompetent person to prosecute A1 and A3 and was not granted as per the Indian Overseas Bank Officers Employees (Discipline and Appeal) Regulation, 1976, by the competent authority. To consider the same this court perused the said regulation of 1976. The regulation specifically defined competent authority and disciplinary authority as follows :-

“Competent authority” means the authority appointed by the Board for the purpose of these regulations.	“Disciplinary authority” means the authority specified in the schedule which is competent to impose on an officer employee any of the penalties specified in Regulation 4
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And in the regulation 4 it is stated as follows :-

Name/ category of post	Disciplinary authority	Appellate authority	Reviewing authority
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Scale IV and V	General Manager	Executive Director or in his absence chairman and managing director	Chairman and Reviewing director or in his absence/ in case he is functioning appellate authority, the committee of the board.
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17.1. From the above it is clear that the General Manager is either competent authority or disciplinary authority to remove the officer belonging to the scale IV and V. Accused No.1 and 3 are the scale IV officers. P.W.1 is the General Manager and his superior is Executive Director. Therefore, he is competent to accord sanction. The learned senior counsel's submission that he is not a disciplinary authority and he is only competent authority to remove the scale IV and V officer and his sanction is without authority cannot be accepted. Competent authority is the person appointed to discharge the function stated in the regulation. As per regulation, the disciplinary proceedings is also a part of the function. Therefore, the contention of the learned senior counsel that disciplinary authority has alone power to accord sanction cannot be accepted. The competent authority also are empowered to accord sanction. Accordingly, the sanction was properly granted by the General Manager namely, P.W.1 upon perusal of the entire documents and the materials collected by the investigating officer. He specifically deposed that he had perused the



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materials submitted to him and he also was convinced that there was a *prima facie* case against A1 and A3 to continue the prosecution for various offences. Therefore this court holds that the sanction was accorded by the competent authority and also sanction was accorded with due application of mind.

18. Discussion on the purchase of accommodation cheques by

A3:-

18.1.The Vasan news and advertising unit had miscellaneous cash credit account and also cheque purchase facilities for genuine trade transaction. One of the terms and condition of Ex.P.4 is as follows :-

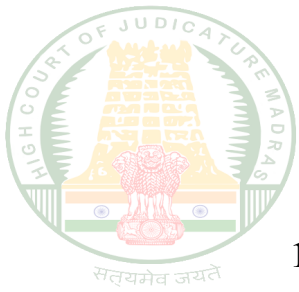
“Branch to purchase cheque arising out of genuine trade transaction only in the name of M/s. Vasan News and advertising. Self cheques and cheques drawn by associates and sister concerns should not be purchased”.

18.2.From the reading of the above, it is clear that A3 had been prohibited from purchasing cheques either from A2 or any of the associates or sister concerns. But, in this case, five cheques were purchased by A3 in the name of P.W.13, Karthikeyan, P.W.15, Sarojin and A2. The details of the purchase as follows:-



Sl. No.	Payee of the cheque	Drawer	Date of Purchase	Amount
1	Vasan News and advertising CP - 134	PW13-Karthikeyan	07.06.2005	Rs.5,00,000/-
2	Vasan News and advertising CP - 284	PW15-Sarojini	25.07.2005	Rs.5,00,000/-
3	Vasan News and advertising CP - 286	PW13-Karthikeyan	28.07.2005	Rs.5,00,000/-
4	Vasan News and advertising CP - 295	PW15-Sarojini	10.08.2005	Rs.5,00,000/-
5	Vasan News and advertising CP - 300	A2-Murugan	16.08.2005	Rs.5,00,000/-

18.3.The above amount also used by A2. A2 opened the account in the name of Karthikeyan, who was driver of A2 and he utilized the said amount. P.W.13, Karthikeyan had been treated as hostile and his evidence relating to the operation of the said account and withdrawal of the said amount is cogent and trustworthy. A2 and A3 in their explanation under section 313 of Cr.P.C. did not furnish any explanation in this regard. The only submission before the court below and before this court is that the said amount was already repaid. The repayment cannot wipe out the criminal liability when they utilized the money by obtaining it in fraudulent manner. Therefore, the prosecution clearly proved fraudulent act of purchase of accommodation cheque in the name of A2 and his close associate in utter violation of loan condition and thereby, defrauded the bank money.



19. Discussion on the principle of lifting corporate veil :-

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The learned senior counsel Thiru. Arul Vadivel @ Sekar made a detailed submission apart from the issues discussed above that A2 is not the proprietor or partner in the Hotel Mani Vilas Unit I, Hotel Mani Vilas Unit II, Vasan news and advertising. He was one of the partners in the Vasan Catering Service. In the said factual circumstances, without arraying the proprietor and other partners, the prosecution initiated the proceedings only against A2 and hence there is a legal infirmity in the prosecution case. To address the said issue, this court perused the volumes of records produced by the prosecution. It is the specific case of the prosecution that he alone managed and conducted the business of the above said concerns. The other persons are his wife, sister and brother in law. So far as the Vasan catering service is concerned, it is a partnership firm consisting of 6 partners and A2 is the managing partner. In both cases, he was the authorized agent for the entire loan transaction. Evidence adduced by the prosecution clearly proved that he alone applied the loan and processed the loan and withdrawn the amount. He acted as guarantor for all the transaction. The prosecution also produced relevant document of authorization letter in the name of A2 by the other proprietor and partners to handle the transaction. In view of the above factual circumstances the

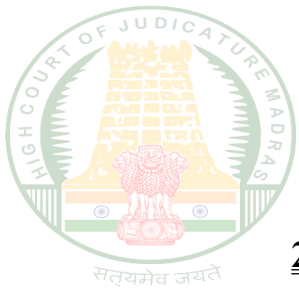


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learned senior counsel's submission on the principle of lifting corporate veil cannot be accepted.

20.Discussion on the non – examination of the material witness :-

The learned senior counsel Thiru. Arul Vadivel @ Sekar would contend that the prosecution has not examined one Seethalakshmi, Income Tax Authority and auditor Jeyaraman to prove the case and the said non examination is fatal to the prosecution. To substantiate the said contention he relied the judgment of the Hon'ble Supreme Court reported in 2001 (6) SCC 145. It is settled principle that the prosecution need not examine all witnesses to prove its case. In this case sum and substance of the allegation is that A2 obtained loan fraudulently and diverted the said amount and failed to repay the same and accounts became NPA and thereby, the bank amount was defalcated. To prove the said fact, the prosecution produced the relevant loan documents and examined number of witnesses. In the said circumstances, the submission of the learned senior counsel that non examination of the above said persons is fatal to the prosecution, is misconceived one.



21.Discussion on the principle of equal treatment to both

prosecution and defense witness :-

The Learned Senior counsel Thiru. Arul Vadivel @ Sekar would contend that the learned trial judge failed to treat the defense witness on par with the prosecution witness by relying the judgment of the Hon'ble Supreme Court reported in 1981 (2) SCC 166 (para 19) and 2002 (2) SCC 426 (Para 45). There is no quarrel about the said principle. In this case learned trial judge considered the evidence of the defense witness in elaborate manner and disbelieved the portion of their version and accepted some portion of their version. DW1 the senior manager of the IOB Thiruvanaikaval, was examined. He deposed that before 06.02.2009 the entire cheque purchase amount was settled. The cheque purchase amount is only portion of defalcated amount. The repayment of a portion of defalcated amount is not a ground to seek acquittal when the remaining huge defalcated amount was yet to be settled. The said evidence was properly considered by the trial court and this Court too. The said evidence no way advances the case of either of the accused to wipe out the criminal prosecution or exonerate them from the charge. Therefore this court declines to accept the contention of the learned senior counsel that the deposition of DW1 was not properly considered.



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WEB COPY 21.1. DW2 was working as a editor of the 'Dhina Thanthi' during the period 1992 to 2004. At that time, the Vasan News and Advertisement Agency was run by the Pangajam and the said agency received appreciation award from the Dhina Thanthi papers for their valuable contribution in bringing numerous advertisements. The said evidence is no way connected with the charges framed against A2. Pangajam is the proprietor of the said agency and she is the sister of A2. At that time A2 was working in the news paper company and hence the said agency was started in the name of Pangajam and there is clinching evidence to prove that A2 alone operated the said agency's accounts and the business. Therefore, the said evidence also no way helps the accused.

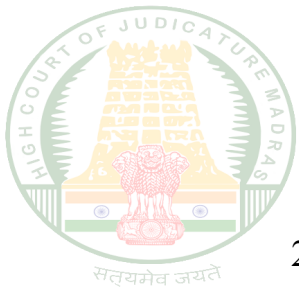
21.2. DW3 was working as a marketing agent of the said Vasan news agency and he also corroborated the version of DW2 that the said agency received appreciation award. Similarly DW4 is the driver of the said Pangajam and he also stated relating to the transaction of the said account. In sum and substance, the above witnesses clearly deposed that A2 was running the said agency in the name of the Pangajam. The said aspect was considered by the learned trial judge and this court as well. Their evidence



no way helps the defense case. Hence, the submission of the learned senior counsel that different yardstick was followed in appreciating the evidence of defence witness cannot be accepted.

22. Discussion on the viability of secured asset:-

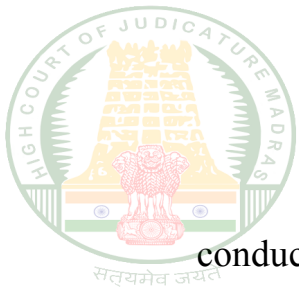
The learned counsel Thiru. Prabhu Raja Durai after reiterating the above all submissions would contend that the loan was obtained with proper security and the duty of the bank is to initiate the recovery proceedings. But after initiating recovery proceedings, continuing the criminal prosecution is illegal. The said submission of the learned counsel is without substance. The specific case of the prosecution is that A1 and A3 granted loan and other facilities without any proper surety. To substantiate the same, the prosecution produced number of materials like the defective title deed etc., and they obtained loan without producing the original document and subsequently sold the mortgaged property on the basis of the original deed and they even obtained the loan relating to the temple assigned land. Therefore, the contention of the counsel Thiru. Prabhu Raja Durai cannot be accepted.



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22.1. The learned counsel Thiru. Prabhu Raja Durai also submitted that the prosecution has not come forward with specific case of violation of the either particular rule or regulation in granting, and disbursing the loan. Therefore, the charge against the officials cannot be held to be proved. The said submission of the counsel is misconceived one. The prosecution has clearly stated that the loan amount was granted against the directions of the regional office and without obtaining the registered mortgage deed as directed by the panal advocate, and also there is clear diversion of the fund in violation of the terms and conditions of the loan. Therefore, this court is unable to accept the argument of the said counsel Thiru. Prabhu Raja Durai in this aspect. The supplementary argument of the said counsel that the said violation is not offence is also not acceptable for the reason that when the bank amount was defalcated and the prosecution case is of total violation of the terms and conditions of the loan it amounts to offence and the same clearly constitutes the offence under section 420 and other offence of IPC apart from the criminal misconduct under section 13 (1)(d) r/w. 13 (2) of the Prevention of Corruption Act.

22.2. All the counsel made this submission that there was lapse on the part of the Investigating Agency in collecting the materials and



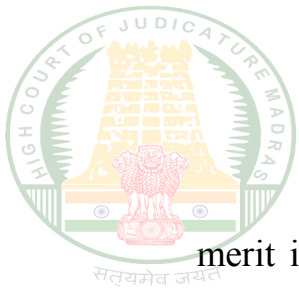
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conducting the investigation in a particular manner cannot be accepted on the principle that the conviction cannot be set aside on the ground that Investigating Agency committed lapses in the course of the investigation.

22.3. In view of the above discussion, this court is unable to accept the argument of the learned senior counsel and other counsel's submission that prosecution has not proved the case beyond reasonable doubt. The prosecution clearly proved all the charges beyond reasonable doubt. In this type of the banking fraud, the circumstances emanated from the documents and corroborated by the oral evidence are sufficient to hold that the prosecution proved the case beyond reasonable doubt. The act of the bank officials sanctioning loan against the terms and conditions of the loan itself is a strong circumstance to hold against them.

23. Conclusion on conviction:

Hence, in all aspects the prosecution proved the charge against all the appellants and this court finds no ground to interfere with the conviction passed against the appellants herein in C.C.No.2 of 2011 on the file of the learned II Additional District Judge for CBI Cases, Madurai, vide, impugned judgment dated 12.03.2020. Therefore, this Court finds no



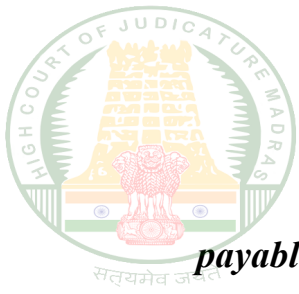
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merit in these appeals to set aside the conviction and sentence passed in C.C.No.2 of 2011 on the file of the learned II Additional District Judge for CBI Cases, madurai, vide, impugned judgment dated 12.03.2020.

24.Discussion on sentence of A3/Rajasekar/Appellant in

Crl.A.No.163 of 2020:

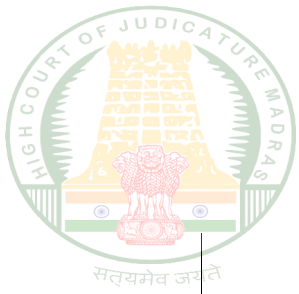
24.1. The learned Senior counsel appearing for A3 submitted that he is now more than 67 years and he is ailing with various illnesses and he was terminated from service. He also paid the fine amount of Rs.2,75,000/- and also deposited further sum of Rs.2,50,000/- in C.C.No.2 of 2011, on the file of the learned trial Judge as per the condition imposed by this Court. This Court, already directed to transfer the said amount to the credit of the defacto complainant's bank viz., Indian Overseas Bank, Thiruvanaikovil Branch, Tiruchirappalli and hence he seeks to reduce the sentence. The learned Special Public Prosecutor would submit that there was planned execution of criminal Act and as sequel, there was a wrongful loss of Rs.2,02,42,674/-. Therefore, he seeks to confirm the sentence of imprisonment. Considering the above mitigating circumstances, this Court inclines to reduce the sentence of imprisonment as stated below *with condition to deposit further sum of Rs.5,00,000/- as a compensation*



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payable to the complainant's bank within one month from the date of receipt of a copy of this order otherwise, the sentence of imprisonment passed by the learned trial Judge in C.C.No.2 of 2011 by judgment dated 12.03.2020 will automatically be restored and the sum already deposited as per the order of this Court along with interest also shall be treated as compensation payable to the defacto complainant's bank viz., Indian Overseas Bank, Thiruvanaikovil Branch, Tiruchirappalli:

<i>Sl.No</i>	<i>Offence under Sections</i>	<i>Punishment imposed by the Trial Court</i>	<i>Punishment imposed by this court.</i>
163 of 2020	U/s.120-B r/w 420 IPC	Sentenced to undergo Rigorous Imprisonment for five years and to pay a fine of Rs. 1,25,000/- in default to undergo Simple Imprisonment for Six months.	Sentenced to undergo Rigorous Imprisonment for 1 year. Direction to pay fine of Rs. 1,25,000/- in default to undergo Simple Imprisonment for Six months is confirmed.
	U/s.420 of IPC	Sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs. 75,000/- in default to undergo Simple Imprisonment for Six months.	Sentenced to undergo Rigorous Imprisonment for 1 year. Direction to pay fine of Rs. 75,000/- in default to undergo Simple Imprisonment for Six months is confirmed.



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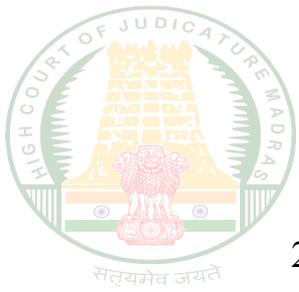
CRL.A(MD).Nos.154, 163 and 164 of 2020

13(2) r/w 13(1)(d) of Preventio n of Corruptio n Act, 1988	Sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs. 75,000/- in default to undergo Simple Imprisonment for Six months.	Sentenced to undergo Rigorous Imprisonment for 1 year. Direction to pay fine of Rs. 75,000/- in default to undergo Simple Imprisonment for Six month is confirmed.
	<i>All sentence shall run concurrently</i>	<i>All sentence shall run concurrently</i>

25. Accordingly the CrI.A.(MD) No.163 of 2020 is partly allowed in the following terms :

25.1.Conviction passed against the appellant in C.C.No. 2 of 2011 on the file of the Learned II Additional District Judge, for CBI Cases, Madurai vide impugned judgment dated 12.03.2020 is confirmed.

25.2.1. The sentence of imprisonment passed against the appellant is reduced as stated below ***with a condition to deposit further sum of Rs.5,00,000/- as a compensation payable to the credit of complainant's bank within one month from the date of receipt of a copy of this order otherwise, the sentence of imprisonment passed by the learned trial Judge in C.C.No.2 of 2011 by judgment dated 12.03.2020 will automatically be restored :***



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25.2.2(i) Sentenced to undergo Rigorous Imprisonment for **five years** for offence U/s.120-B r/w 420 IPC is reduced to undergo **1 year** and Direction to pay the fine of Rs.1,25,000/- with default to undergo Rigorous Imprisonment for 6 months is confirmed.

25.2.2(ii) Sentence of Rigorous Imprisonment to undergo **3 years** for the offence under section 420 of IPC is reduced to **one year** and direction to pay a fine of Rs.75,000/- in default to undergo Rigorous Imprisonment for 6 months is confirmed.

25.2.2(iii) Sentenced to undergo Rigorous Imprisonment for **three years** under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 is reduced to **one year** and direction to pay a fine of 75,000/- in default to undergo Rigorous Imprisonment for 6 months is confirmed.

25.3. All sentences shall run concurrently.

26.Discussion on sentence of A1/K.Rajaraman/Appellant in Crl.A.(MD) No.154 of 2020:

The learned counsel appearing for A1 submitted that he is more than 71 years and he also has undergone bypass surgery and also under constant treatment and he was terminated from service and hence he seeks to reduce the sentence. The Learned Special Public Prosecutor would submit that

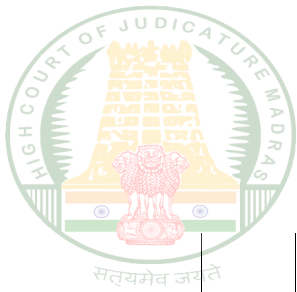


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there was planned execution of criminal act and as sequel, there was a wrongful loss of Rs.2,02,42,674/- Therefore he seeks to confirm the sentence of imprisonment.

Considering the above mitigating circumstances, this Court inclines to reduce the sentence of imprisonment as stated below ***with condition to deposit further sum of Rs.15,00,000/- (Rs.Fifteen Lakhs) as a compensation payable to the credit of complainant's bank within one month from the date of receipt of a copy of this order otherwise, the sentence of imprisonment passed by the learned trial Judge in C.C.No.2 of 2011 by judgment dated 12.03.2020 will automatically be restored.***

Sl.No	Offence under Sections	Punishment imposed by the Trial Court	Punishment imposed by this court.
154 of 2020	U/s.120-B r/w 420 IPC	Sentenced to undergo Rigorous Imprisonment for four years and to pay a fine of Rs. 1,25,000/- in default to undergo Simple Imprisonment for Six months.	Sentenced to undergo Rigorous Imprisonment for 1 year. Direction to pay fine of Rs. 1,25,000/- in default to undergo Simple Imprisonment for Six months is confirmed.



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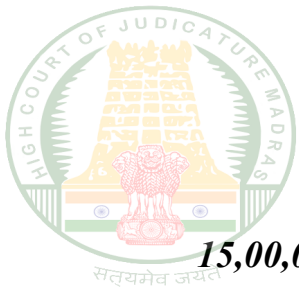
CRL.A(MD).Nos.154, 163 and 164 of 2020

	U/s.420 of IPC	Sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs. 75,000/- in default to undergo Simple Imprisonment for Six months.	Sentenced to undergo Rigorous Imprisonment for 1 year. Direction to pay fine of Rs. 75,000/- in default to undergo Simple Imprisonment for Six months is confirmed.
	13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988	Sentenced to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.50,000/- in default to undergo Simple Imprisonment for Six months.	Sentenced to undergo Rigorous Imprisonment for 1 year. Direction to pay fine of Rs. 50,000/- in default to undergo Simple Imprisonment for Six month is confirmed.
		All sentence shall run concurrently	All sentence shall run concurrently

27. Accordingly the CrI.A.(MD) No.154 of 2020 is partly allowed in the following terms :

27.1.Conviction passed against the appellant in C.C.No. 2 of 2011 on the file of the Learned II Additional District Judge, for CBI Cases, Madurai vide impugned judgment dated 12.03.2020 is confirmed.

27.2.1. The sentence of imprisonment passed against the appellant is reduced as stated below ***with a condition to deposit further sum of Rs.***



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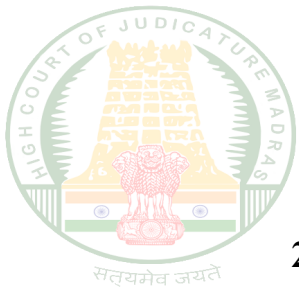
15,00,000/- (Rs.Fifteen Lakhs) as a compensation payable to the credit of complainant's bank within one month from the date of receipt of a copy of this order otherwise, the sentence of imprisonment passed by the learned trial Judge in C.C.No.2 of 2011 by judgment dated 12.03.2020 will automatically be restored :

27.2.2(i) Sentenced to undergo Rigorous Imprisonment for **four years** for offence U/s.120-B r/w 420 IPC is reduced to undergo **1 year** and Direction to pay the fine of Rs.1,25,000/- in default to undergo Rigorous Imprisonment for 6 months is confirmed.

27.2.2(ii) Sentence of Rigorous Imprisonment to undergo **3 years** for the offence under section 420 of IPC is reduced into **one year** and direction to pay a fine of Rs.75,000/- in default to undergo Rigorous Imprisonment for 6 months is confirmed.

27.2.2(iii) Sentenced to undergo Rigorous Imprisonment for **two years** under section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 is reduced into **one year** and direction to pay a fine of 50,000/- in default to undergo Rigorous Imprisonment for 6 months is confirmed.

27.3. All sentenced shall run concurrently.

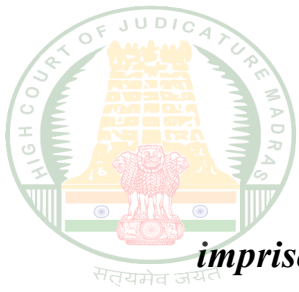


28.Discussion on sentence of A2/S.Murugan/Appellant in Crl.A.

(MD) No. 164 of 2020.

The learned senior counsel appearing for A2 submitted that he is more than 65 years and suffering from the acute diabetes from 2002 and he also has undergone multiple surgeries and he is not even able to take care of his only female child. He also paid the fine amount of Rs.2,50,000/- and also deposited further sum of Rs.5,00,000/- in C.C.No.2 of 2011, on the file of the learned trial Judge as per the condition imposed by this Court. This Court already directed to transfer the said amount to the credit of defacto complainant's bank viz., Indian Overseas Bank, Thiruvanaikovil Branch, Tiruchirappalli and hence he seeks to reduce the sentence. The Learned Special Public Prosecutor would submit that there was planned execution of criminal Act and, as sequel, there was a wrongful loss of Rs. 2,02,42,674/- Therefore he seeks to confirm the sentence of imprisonment

Considering the above mitigating circumstances, this Court inclines to reduce the sentence of imprisonment as stated below ***with a condition to deposit further sum of Rs.20,00,000/- (Twenty Lakhs) as a compensation payable to the credit of the complainant's bank within one month from the date of receipt of a copy of this order otherwise, the sentence of***



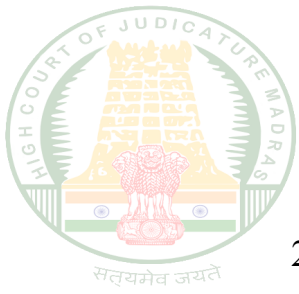
CRL.A(MD).Nos.154, 163 and 164 of 2020

imprisonment passed by the learned trial Judge in C.C.No.2 of 2011 by judgment dated 12.03.2020 will automatically be restored.

Sl.No	Offence under Sections	Punishment imposed by the Trial Court	Punishment imposed by this court.
154 of 2020	U/s.120-B r/w 420 IPC	Sentenced to undergo Rigorous Imprisonment for five years and to pay a fine of Rs. 5,00,000/- in default to undergo Simple Imprisonment for Six months.	Sentenced to undergo Rigorous Imprisonment for 1 year. Direction to pay fine of Rs. 5,00,000/- in default to undergo Simple Imprisonment for Six months is confirmed.
	U/s.420 of IPC	Sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs. 2,00,000/- in default to undergo Simple Imprisonment for Six months.	Sentenced to undergo Rigorous Imprisonment for 1 year. Direction to pay fine of Rs. 2,00,000/- in default to undergo Simple Imprisonment for Six months is confirmed.
		All sentence shall run concurrently	All sentence shall run concurrently

29. Accordingly the Crl.A.(MD) No.164 of 2020 is partly allowed in the following terms :

29.1.Conviction passed against the appellant in C.C.No. 2 of 2011 on the file of the learned II Additional District Judge, for CBI Cases, Madurai vide impugned judgment dated 12.03.2020 is confirmed.



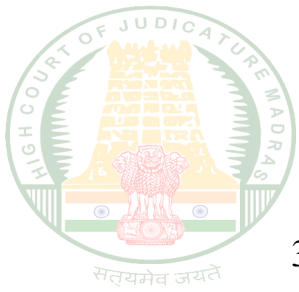
CRL.A(MD).Nos.154, 163 and 164 of 2020

29.2.1. The sentence of imprisonment passed against the appellant is reduced as stated below ***with a condition to deposit further sum of Rs. 20,00,000/- (Twenty Lakhs) as a compensation payable to the credit of the complainant's bank within one month from the date of receipt of a copy of this order otherwise, the sentence of imprisonment passed by the learned trial Judge in C.C.No.2 of 2011 by judgment dated 12.03.2020 will automatically be restored :***

29.2.2.(i) Sentenced to undergo Rigorous Imprisonment for four years for offence U/s.120-B r/w 420 IPC is reduced to undergo 1 year and Direction to pay the fine of Rs.5,00,000/- in default to undergo Rigorous Imprisonment for 6 months is confirmed.

29.2.2(ii) Sentence of Rigorous Imprisonment to undergo 3 years for the offence under section 420 of IPC is reduced into one year and direction to pay a fine of Rs.2,00,000/- in default to undergo Rigorous Imprisonment for 6 months is confirmed.

29.3. All sentences shall run concurrently.



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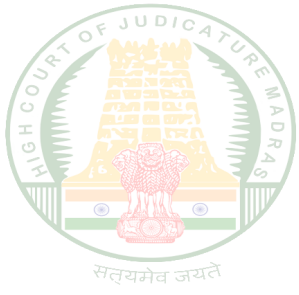
30. The bail bonds executed by the appellants stand cancelled. The learned trial judge is hereby directed to secure the accused to make them undergo the remaining part of the sentence of imprisonment after setting off the period already undergone.

04.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
sbn

To

1. The II Additional District Judge for CBI Cases,
Madurai.
2. The Deputy Superintendent of Police,
SPE,CBI,ACB, Chennai.
(RC MA1 2009 A 036)
3. The Special Public Prosecutor for CBI Cases,
Madurai Bench of Madras High Court, Madurai.
4. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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CRL.A(MD).Nos.154, 163 and 164 of 2020

K.K.RAMAKRISHNAN,J.

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CRL.A(MD).Nos.154, 163 and 164 of 2020

04.03.2025