

CrI.A.(MD) Nos.179, 189, 190, 204, 207, 208, 216 & 224 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	:	25.07.2024
Pronounced on	:	28.04.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).Nos.179, 189, 190, 204, 207, 208,
216 & 224 of 2019
and
CrI.M.P(MD).No.6966 of 2019

CrI.A(MD).No.179 of 2019:

Shanmugavel

... Appellant

Vs.

The State Rep.by
Inspector of Police,
CBI:ACB:Chennai
RC/MA1/2011/A0031

... Respondent

PRAYER : This Criminal Appeal is filed under Section 374 (2) of Cr.P.C., to call for the records of the Judgment dated 05.04.2019, in C.C.No.24 of 2012 on the file of the II Additional District Court for CBI cases, Madurai and set aside the same and acquit the appellant/accused No.13.



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For Appellant : Mr.John Sathyan, Senior Counsel
for M/s.Veera Associates

For Respondent : Mr.M.Karunanithi,
Special Public Prosecutor for CBI

Crl.A(MD).No.189 of 2019:

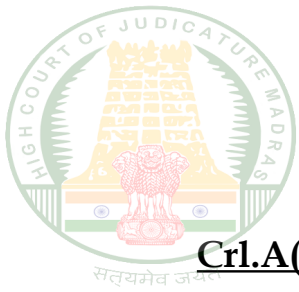
Dr.K.Ramalakshmi ... Appellant
Vs.

The Inspector of Police,
CBI:ACB:Chennai
RC/MA1/2011/A0031 ... Respondent

PRAYER : This Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records of the Judgment dated 05.04.2019, in C.C.No.24 of 2012 on the file of the II Additional District Court for CBI cases, Madurai and set aside the same and acquit the appellant/accused No.11.

For Appellant : Mr.T.Lajapathi Roy,
Senior Counsel for
M/s.Lajapathi Roy Associates

For Respondent : Mr.M.Karunanithi,
Special Public Prosecutor for CBI



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Crl.A(MD).No.190 of 2019:

S.P.Shenbagamoorthy

... Appellant

..Vs..

The Inspector of Police,
CBI:ACB:Chennai
RC/MA1/2011/A0031

... Respondent

PRAYER : This Criminal Appeal is filed under Section 374 (2) of Cr.P.C., to call for the records of the Judgment dated 05.04.2019, in C.C.No.24 of 2012 on the file of the II Additional District Court for CBI cases, Madurai and set aside the same and acquit the appellant/accused No.2.

For Appellant : Mrs.S.Devasena

For Respondent : Mr.M.Karunanithi,
Special Public Prosecutor for CBI

Crl.A(MD).No.204 of 2019:

Dr.M.Ammamuthu

... Appellant

Vs.

The Inspector of Police,
CBI:ACB:Chennai
RC/MA1/2011/A0031

... Respondent



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PRAYER : This Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records of the Judgment dated 05.04.2019, in C.C.No.24 of 2012 on the file of the II Additional District Court for CBI cases, Madurai and set aside the same and acquit the appellant/accused No.3.

For Appellant : Mr.T.Lajapathi Roy,
Senior Counsel for
M/s.Lajapathi Roy Associates

For Respondent : Mr.M.Karunanithi,
Special Public Prosecutor for CBI

Crl.A(MD).No.207 of 2019:

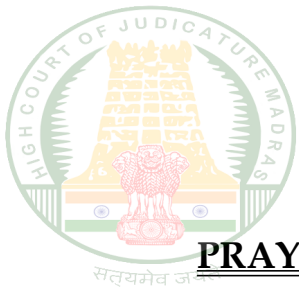
R.Siva Subramaniam

... Appellant

Vs.

The Inspector of Police,
Central Bureau of Investigation,
Anti-Corruption Branch,
Shastri Bhavan, Chennai-600 006
RC/MA1/2011/A0031

... Respondent



CrI.A.(MD) Nos.179, 189, 190, 204, 207, 208, 216 & 224 of 2019

PRAYER : This Criminal Appeal is filed under Section 374 (2) of Cr.P.C., to call for the records of the Judgment dated 05.04.2019, in C.C.No.24 of 2012 on the file of the II Additional District Court for CBI cases, Madurai and set aside the same and acquit the appellant/accused No.7.

For Appellant : Mr. V.Kathirvelu, Senior Counsel for
Mr.S.M.S.Johnny Basha

For Respondent : Mr.M.Karunanithi,
Special Public Prosecutor for CBI

CrI.A(MD).No.208 of 2019:

S.Alwar Siva Subramaniam

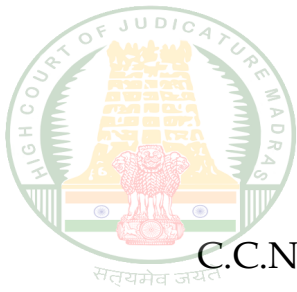
... Appellant

Vs.

The Inspector of Police,
Central Bureau of Investigation,
Anti-Corruption Branch,
Shastri Bhavan, Chennai-600 006
RC/MA1/2011/A0031

... Respondent

PRAYER : This Criminal Appeal is filed under Section 374(2) of Cr.P.C., to call for the records of the Judgment dated 05.04.2019, in



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C.C.No.24 of 2012 on the file of the II Additional District Court for CBI cases, Madurai and set aside the same and acquit the appellant/accused No.8.

For Appellant : Mr. V.Kathirvelu, Senior Counsel for
Mr.S.M.S.Johnny Basha

For Respondent : Mr.M.Karunanithi,
Special Public Prosecutor for CBI

CrI.A(MD).No.216 of 2019:

G.Balasubramanian

... Appellant

Vs.

The Inspector of Police,
CBI:ACB:Chennai,
RC/MA1/2011/A0031

... Respondent

PRAYER : This Criminal Appeal is filed under Section 374(2) of Cr.P.C., to call for the records of the Judgment dated 05.04.2019, in C.C.No.24 of 2012 on the file of the II Additional District Court for CBI cases, Madurai and set aside the same and acquit the appellant/accused No.1.



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For Appellant : Mr.R.M.Somasundaram

For Respondent : Mr.M.Karunanithi,
Special Public Prosecutor for CBI

Crl.A(MD).No.224 of 2019:

Kalyanasundaram

... Appellant

Vs.

State rep.by
The Inspector of Police,
CBI/ ACB, Chennai,
RC/MA1/2011/ A0031

... Respondent

PRAYER : This Criminal Appeal is filed under Section 374(2) of Cr.P.C., to call for the records of the Judgment dated 05.04.2019, in C.C.No.24 of 2012 on the file of the II Additional District Court for CBI cases, Madurai and set aside the same and acquit the appellant/accused No.4.

For Appellant : Mr.G.Mohan Kumar

For Respondent : Mr.M.Karunanithi,
Special Public Prosecutor for CBI



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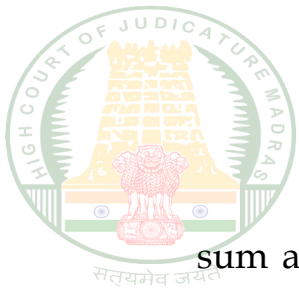
COMMON JUDGMENT

Since these criminal appeals are arising out of the same crime number, these cases are taken up for hearing together and disposed of by way of this common judgment.

2. Convicted accused in C.C.No.24 of 2012, on the file of the Special Court for CBI cases in Madurai, have filed these appeals before this Court, challenging the conviction and sentence imposed against them.

3. Brief facts of the case:

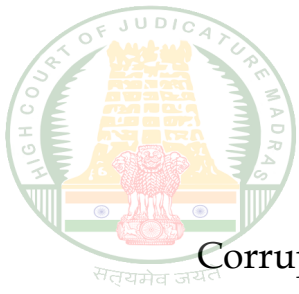
According to the prosecution, A1 was the chief manager of the Indian Overseas Bank, Palayankottai Branch. He and other accused conspired together and misappropriated the bank fund to the tune of more than 2 crores of Rupees. A1 granted loan to the remaining accused without following the guidelines issued by the bank. The



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sum and substance of the charge is that A1 sanctioned loan to the fictitious company and disbursed various loans, namely, cash credit, hypothecation loan, term loan, vehicle loan, packing credit against letter of credit loan to those who were arraigned as the remaining accused. It is also alleged that all the accused produced forged valuation certificate and obtained whopping loan amount. some of the accused got the loan furnishing over-valuation certificate. They have also diverted loan. With the said allegation, the FIR was registered against number of accused and the final report was filed only against 13 accused. The same was taken on file in C.C.No.24 of 2012, by the learned II Additional District Court for CBI cases, Madurai.

3.1.After appearance of the accused, copies of records were furnished to them under Section 207 Cr.P.C. The learned Trial Judge, on perusal of records and on hearing both sides and being satisfied that there existed a *prima facie* case against the accused/appellants, framed charges under Sections 120 B r/w 420 of IPC 13(2) r/w 13(1)(c) and 13(2) r/w 13(1)(d) of the Prevention of



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Corruption Act, 1988 and under Sections 471, 420 and 468 of IPC

and the same was read over and explained to them and on being questioned, the accused/appellants denied the charges and pleaded not guilty and stood for trial.

3.2.The prosecution, in order to prove its case, had examined 83 witnesses as P.W.1 to P.W.83 and exhibited 167 documents as Ex.P.1 to Ex.P.167.

3.3.When the accused were examined under Section 313(1) (b) of Cr.P.C., with regard to incriminating evidence against them, they denied the evidence as false and further stated that a false case was foisted against them.

3.4. A5 filed a detailed explanation and also he examined himself as D.W.1 and deposed before the Court that he obtained the loan on furnishing all the required documents and that the investigation officer without properly conducting investigation filed



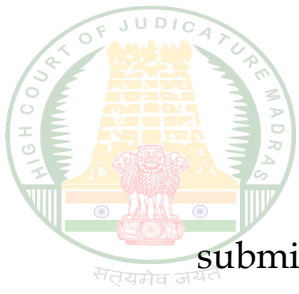
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the final report against him despite having been paid the entire loan amount. Apart from that, he also marked exhibit D1 to D20. On the side of the Court, exhibit C1 was marked. No material object was marked.

3.5. The learned trial Judge, after considering all the evidence, convicted A1, A2, A3, A4, A7, A8, A11 and A13 and acquitted the A5, A6, A9, A10 and A12. All the convicted accused filed appeals before this Court.

4. Submission of Mr.R.M.Somasundaram, learned Counsel for the appellant in CrI.A.(MD).No.216 of 2019, namely Manager/A1:

4.1. A1, the bank manager, appeared through his counsel Thiru R.M.Somasundaram. The counsel made eloquent and detailed submission on the whole issue involved in these appeals. He meticulously prepared the notes and submitted a detailed



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submission, ably assisted by Mr.K.Samithurai, Advocate.

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4.2. The counsel presented his argument under various heads:-

4.2.1. He firstly stated that clubbing of different periods of conspiracy for the different transactions with different accused is not legally permissible. The counsel further submitted that according to the investigating agency, all the transactions were independent transactions and all the accused can no way be linked with each other. In the said circumstances, for each transaction a separate final report should have been filed and separate investigation should have been conducted and hence there is total violation of mandate of section 218 Cr.PC.

4.3. He also submitted that the crux of the charge is that some of the accused obtained loan with the active connivance of the appellant namely chief manager A1 by producing forged valuation certificate. According to the prosecution, accused obtained



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astronomical loan amount on the basis of forged inflated valuation

certificate. P.W.16's signature is said to have been forged and forged inflated valuation certificate was obtained. The alleged original of the valuation certificate was not marked. Without marking the original certificate, the signature found in the Xerox copy of the said forged valuation certificate was sent to the Hand writing expert for analysis. The Hand writing expert specifically stated that he was unable to compare the questioned documents as there was only a trace of signature. Hence, no scientific evidence is available to prove that the valuation certificate was forged. He further submitted that the said Prabhakaran has not even identified his admitted signature. In the said circumstances, the crux of the charge that the accused forged the valuation certificate is not proved. The same was not properly considered by the learned Trial Judge.

4.4. The counsel further submitted that totally seven accounts were stated to be fraudulent accounts. Among the seven accounts,



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only for six accounts FIR was registered. Among the six accused found in FIR, one accused was acquitted in trial. Four accused's loan account was settled even before registration of the FIR. During the pendency of the investigation, one account was closed. In the said circumstances, the registration of the FIR and the filing of the final report is unwarranted and he reiterated that this is an illegitimate prosecution initiated by the CBI without properly conducting a fair investigation.

4.5. The learned counsel further submitted that as per the banking procedure, the bank has a post called manager (credit). His duty is to do the pre-sanction and post-sanction verification. The counsel submitted that the said manager (credit) was not arraigned as accused. Hence, there is apparent bias on the side of the investigating agency.

4.6. The counsel submitted that the charge of loan was granted to non-existent firm or non-existent entity is not correct. The



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evidence adduced on the basis of the records, show that the allegation is not correct. Apart from that, the investigating agency has not produced any records, namely, the customs registration certificate and sale tax receipt etc. to show that there were no such companies. The said lacuna made by the investigating agency is material in this case.

4.7. Next, the learned counsel submitted that according to the prosecution, a particular loan was granted to “Jeyas Ayush Hospital”. The said hospital obtained the loan for purchasing the medical equipment. As per the loan program, the Jeyas Ayush Hospital authorities have to make part payment of the medical equipment cost. Remaining amount of Rs.85,00,000/- were to be granted by the bank. After the receipt of the amount, the machinery has to be installed. In this case, the installation report was recovered by the investigating agency and the same also was produced. The inspection was conducted, long after the settlement of loan amount. At the time of the inspection, major portions of medical equipments



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were available. Only the printer and other small materials alone

were not available. In the said circumstances, the case of the

prosecution that the medical equipments were not at all purchased

is not correct. The learned counsel further submitted that the

machinery's value was inflated is not correct. To prove the

allegation of inflated certificate they examined P.W.16. The said

witness has deposed that, he made inspection at the instigation of

the bank manager. The said bank manager visited the hospital and

found that three equipments were not available. The inspection was

conducted after two years from the closure of the loan and much

after the settlement of the loan amount. In the said circumstances,

the inspection itself is illegal. According to the counsel, once the

loan was closed, the bank has no relationship with the accused

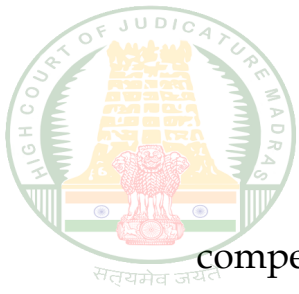
premises and the search in the accused premises itself is illegal one.

Hence, the learned counsel submitted that the bank officers with

ulterior motive, conducted inspection and filed a complaint before

the CBI and CBI without verification, registered the case and filed

the final report. The counsel further submitted P.W.16 was the



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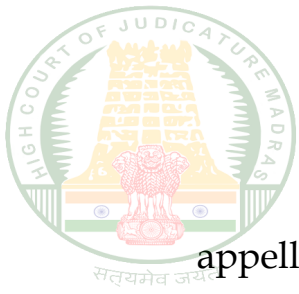
competitive party to A13's company which supplied the equipments. As per the evidence of the said witness, he is not the approved authority to evaluate the equipments. Further, the bank has no qualified person for evaluation of the medical equipments. According to the counsel, when the supply of the equipments are disputed by the investigating agency, it has to prove the said fact. They have not examined any customs authority or sale tax authorities to prove that the machinery was not installed at all in the said premises. All are imported equipments and for all imported the equipments, they should have paid the custom duty and in the said circumstances, most vital document is the customs duty record. In the absence of customs duty records, the prosecution has no legs to stand on. Only on the basis of the statement and the claim of inspection, the trial Court erroneously came to the conclusion that the equipments were less value machineries and the same were not installed. Hence, the charge is not made out.

4.8.The learned counsel further submitted that according to



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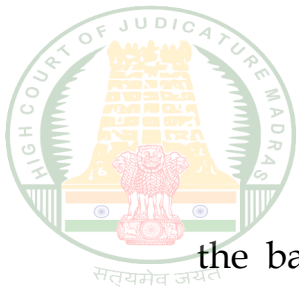
the account statement of the appellant, the inspection was conducted after granting the loan. The said inspection report was not marked. From that, it is clear that the inspection Report is burked and the prosecution has not proved the case in accordance with law. Apart from that, bank obtained immovable property security valued Rs.85,00,000/- (Rupees Eighty Five Lakhs only). But the value of the property even as per the valuer is more than Rs. 1,00,00,000/- (Rupees One Crore). In the said circumstances, no intention can be attributed to the act of granting loan to the said doctor. Further, he said that in the communication sent by the accused on 24-07-2009, it is clear that the installation of the equipment was already done and he requested to disburse the loan amount and after verification they disbursed the amount. Another circumstance pointed out by the learned counsel is that, the accused officer was transferred to another Branch before installation of the machineries in the said hospital. The machineries were installed after the date of transfer of the appellant/ A1 (Crl.A.(MD).No.216 of 2019), namely, the Chief Manager. Another allegation against the



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appellant is that he granted loan amount by single payment without paying it in installments. The learned counsel submitted that this is agreement to purchase medical equipment by making full payment. The said agreement was also produced as a document. From that it is clear that only after making full payment only the machine would be supplied. As per the procedure, the loan amount was directly granted to the seller company and machinery was installed and same was intimated to the bank authorities and same reflected in their own documents. In the said circumstances, he argued that the prosecution failed to prove the case beyond reasonable doubt against the appellant.

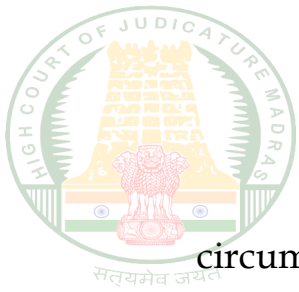
4.9. The learned counsel submitted that the loan for purchase of the car was granted. According to the prosecution, the car was purchased in the name of the said ISO doctor's wife. According to the prosecution, the said amount was diverted to some other purpose. The learned counsel submitted that the purchase of the car value was not properly proved. The value of the car mentioned in



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the banker cheque is different from the purchase amount. Apart from that, the said banker cheque was not produced. No statement was recorded from the supplier of the said car. On comparing Ex.P84 and 159, it is clear that the valuation is different and all the material facts are different. Apart from that, the loan amount was already settled before registration of the case. Hence, there was no loss to the bank. Hence, he prays for acquittal from the said charge also.

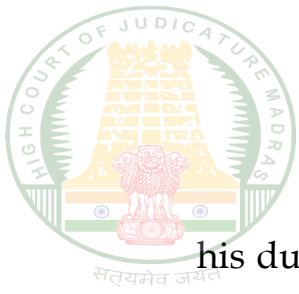
4.10. The learned counsel further submitted that running of the “pavana Steel Company” is clearly proved through unimpeachable documentary evidence, but the trial judge has not correctly appreciated the said documents which would show that the company was in existence. The learned counsel further submitted that inspection was conducted in the company premises only in the year 2012, that is, after the settlement of the entire loan amount and closure of loan. In the said circumstances, the non-existence of the building, in the said premises is not a ground to argue that such building was never in existence. In the said



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circumstances, the filing of the final report against the appellant on the ground that he conspired with others and granted loan is not legally maintainable.

4.11.From the above submission, it is clear that the offence against the appellant under sections 13(1)(c), 13(1)(d) of the Prevention of Corruption Act is not made out. There is no iota of evidence for the corrupt act. The learned trial Judge has not given any finding regarding Section 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act and other offence. There was no proper discussion by the learned trial Judge. The learned counsel also stated that in Volume No.2 P.W.78, has clearly stated that pavana Steel Company was in existence and running and hence the allegation that the appellant conspired with others and granted loan is not legally maintainable. He has not stated that the said company did not exist at all. The learned counsel further submitted that the appellant, namely, the chief manager, after complying all the legal formalities, report from the manager (credit), discharged



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his duty after ascertaining the existence of the building, existence of all the equipments and recommended to grant loan. He verified the same. Thereafter, he granted loan. As per the evidence of the prosecution, the company also was running for sometime. To disprove the same, nothing was adduced before the trial Court. Hence, in the said circumstances, the prosecution miserably failed to prove the ingredients of the offense against the accused appellant. Hence, he seeks for acquittal.

4.12.The learned counsel further submitted that “Marigold Company” is concerned, the allegation is, cash credit was converted into packing credit. The learned counsel submitted that statutory audit was conducted, on 31.03.2009 and to prove the same Ex.D8 was marked. From that it is clear that the said allegation is not correct. Apart from that the prosecution has not proved by collecting Inspection Report from the central office. He further submitted that the diversion of the fund is not clearly proved. In the said circumstances, he submitted that the allegation that this



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accused and the owner of the Marigold conspired also not legally proved beyond reasonable doubt. As per the Ex.P.137 inspection was conducted in the godown of accused for which inspection charge was collected. But godown register was not marked. Apart from that the same was admitted through the evidence of P.W.1 and P.W.32. Packing credit loan was only for 180 days and the day was not fixed, so it means that it is extended until further orders. The same was not properly considered by the learned trial judge.

4.13. He summarized the argument that main allegation of nonexisting company is not clearly proved by the prosecution by producing the legal documents, namely the customs documents or sale tax report and the other documents. The same is material because the inspection was conducted long after closure of the loan account by crediting the entire due amount. He also submitted that the allegation of obtaining of loan on the basis of forged valuation certificate by forging signature of Prabhakaran was not proved through legal evidence. The original valuation certificate was not



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produced and hence the xerox copy was sent to the expert and the expert was not able to give positive report. Apart from that, the medical equipments were purchased and the same was proved through evidence, but, the learned trial judge has not properly considered the same. The learned counsel further submitted that for each transaction, there is individual accused and they are not relatives and they cannot be linked, and they are not in anyway related to each other. In the said circumstances, for each transaction, the prosecution ought to have conducted separate trial. Therefore, charge of common conspiracy in this case, with different persons, connected with different transactions is not legally maintainable and hence a basic error was committed by the Court below as well as the investigating agency. Hence, he seeks for the setting aside the judgment of the Court below.

4.14. Further, he stated that he was dismissed from service and he is aged about 64 years at the time of filing of this criminal appeal and without any fault on his side was punished by the learned trial



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Judge with the maximum punishment for all the offences. Hence, he seeks for the interference with impugned judgment and seeks to set aside the same.

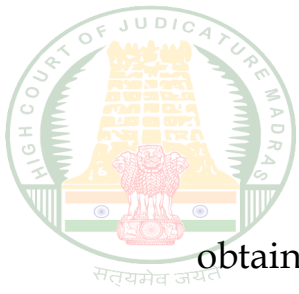
5. The submission of Mrs.S.Devasena, learned counsel for the appellant in Crl.A.(MD).No.190 of 2019:

5.1. The learned counsel for the appellant in C.A.(MD)No.190 of 2019, namely, Mrs.S.Devasena made the following submission after reiterating the argument of the above counsel Mr.Somasundaram, relating to the “pavana steal”. She made further submission that, no witness was examined on the side of the prosecution to prove the meeting of the mind of A1 and the remaining accused to cheat the bank and without any evidence relating to meeting of minds between the accused, the charge of the conspiracy is not made out. As far as the charge under Section 120B is concerned, there should be meeting of minds and further there should be an agreement to commit the illegal act and on the basis of the agreement, the act should have been done. In this case, the above three ingredients were not established by the prosecution



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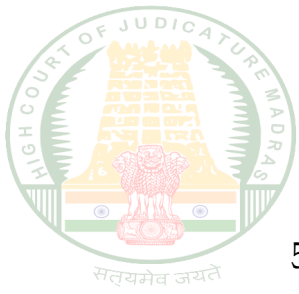
beyond reasonable doubt. To prove the conspiracy, they examined five witnesses, all the five witnesses were planted witnesses to support the allegation of conspiracy. The evidence of said planted witnesses are not sufficient either to infer existence of conspiracy or to render a finding that there was conspiracy. In the said circumstances, the charge conspiracy was not proved. The counsel further submitted that original forged valuation report was not produced before the Court. They produced the Xerox copy and the Xerox copy was sent to the forensic report and the same was returned with endorsement that the expert was unable to compare the signature. In the said circumstances without any corroborative evidence of scientific report that the appellant forged the signature in the valuation report, the charge of the manipulation of the record and the forgery is not legally made out. She also stated that, after the payment of the loan, the loan gets discharged and the two loan was closed. In the said circumstances, the initiation of the proceeding itself illegal. The learned counsel also, after going through the entire records, stated that the prosecution case is, he



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obtained the forged document from “Prabhakaran”, but the evidence shows, one Ashok is involved in the said transaction, but the same was not clearly proved. She relied the contents of Ex.P14 and also evidence of the investigating officer. The said Ashok was not examined by the prosecution. One Kalyana Sundaram was also not examined. He also stated that the Prabhakaran's valuation report was forged by the appellant. The said Prabhakaran was terminated from the panel of the bank valuation. Thereafter, he was forced to give the evidence. That is why the original valuation report was not marked. The same is clear from the Ex.P14. Hence, she stated that Prabhakaran's evidence can not be relied to convict the accused. The learned counsel also submitted that, P.W.82, did not collect the material document to prove the allegation against this appellant. The other learned counsel also reiterated the above submission and, concluded the argument stating that the prosecution failed to prove the case.

5.2. The submission of Mr.Lajapathi Roy, learned counsel for the appellant in Crl.A.(MD).Nos.189 and 204 of 2019:



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5.2.1. The learned Senior Counsel Mr. Lajapathi Roy after reiterating the arguments of Mr.R.M.SomaSundaram specifically submitted that Appellant in Crl.A.No.189 of 2019 made detailed explanation during her 313 of Cr.P.C. questioning and the same was not considered by the learned trial Judge. All machineries were installed and the same was duly acknowledged during the relevant period inspection. As per cash credit loan scheme loan has to be sanctioned on the quotation given by M/s. Cape Medical system marked as Ex.P.116. The amount mentioned in quotation under Ex.P.116 was released on 31.12.2008. Prosecution case is that said cape medical system inflated machinery value. Further as per scheme, equipment will be supplied within 90 days from the date of receipt of complete payment i.e. 31.03.2009. Further no material was adduced except the self serving report under Ex.P.94 from the office of rival company which was participated in tender process against A3 company. Appellant in Crl.A.No.189 of 2019 is a doctor, she had obtained loan and settled and closed the loan on 19.04.2011 much earlier to registration of the criminal case on 29.08.2011 and he

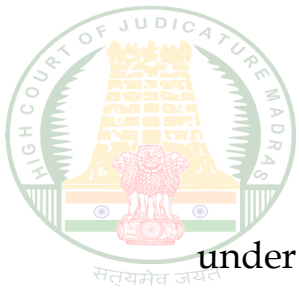


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placed the reliance of the Hon'ble Supreme Court Judgment reported in **2012 SCC online SC 769** and **2008 (9) SCC 677** and he seeks acquittal.

5.3. The submission of Mr.V.Kathirvel, learned Senior counsel for the appellant in Crl.A.(MD).No. 216 of 2019:

5.3.1. The learned Senior Counsel Mr.V.Kathirvel also reiterated the argument of Mr.R.M.Somasundaram, learned counsel appearing for the accused No. 1 and specifically submitted that the learned Trial Judge has adopted different yardstick to appreciate the evidence of the prosecution witnesses in convicting the appellants in Crl.A.(MD) No. 207 of 2017 and Crl.A.(MD) No. 208 of 2019 and acquitting accused No.5, 6, 9, 10, 12. All the accused are facing the similar charges and prosecution relied very same evidence but learned Trial Judge disbelieved the evidence against A5, A6, A9, A10, A12. Contrarily believed the evidence against the appellants and convicted them. The learned Senior Counsel would further submit that the prosecution miserably failed to prove the charge



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under section 420 of I.P.C. And also he relied the judgment of the

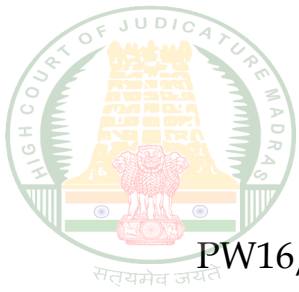
Hon'ble Supreme Court reported in **2015 (8) SCC 293** and Crl.A.1066

of 2010 *Ram Sharan Chaturvedi Vs. The State of Madhya Pradesh*.

The learned Senior Counsel would also submit that the reasoning of the learned Trial Judge in Para 109 acquitting accused No.5, 6, 9, 10, 12 relating to the Indian Steel Corporation is equally applicable to the appellant's case therefore he seeks for acquittal.

5.4. The submission of Mr.G.Mohankumar, learned counsel for the appellant in Crl.A.(MD).No.224 of 2019:

5.4.1. Mr.G.Mohankumar, the learned counsel for the appellant in Crl.A.(MD) No. 224 of 2019 also submitted that, after the settlement of the entire due on behalf of the Pavana Steels, the learned Trial Judge erroneously convicted the appellant/A4. PW4 never deposed about the involvement of A4. According to the prosecution, there was some irregularities in granting loan, but prosecution did not mention about the irregularities. The learned Trial Judge erroneously placed reliance on the evidence of



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PW16/Prabhakaran and his report. The learned Trial Judge failed to see that he had already been removed from panel of the bank valuers and he did not conduct inspection in the presence of the A4/Kalyanasundaram. PW23, 24, 26 deposed before the court under duress and learned trial Judge failed to consider inconsistencies, infirmities in their evidence and their untrustworthiness and erroneously connected the appellant. Therefore he submitted that prosecution failed to prove the case. He also seeks acquittal of all the accused.

5.5. Learned Thiru.M.Karunanithi, the learned Special Public Prosecutor appearing for CBI with equal force would make the following elaborate submission:

5.5.1. Appellant in Crl.A.(MD) No.216 of 2019 was ranked as A1 and he was working as Chief Manager of the IOB, Palayamkottai Branch from the year 2007 to 2009. He conspired with the remaining appellants in the above various appeals and granted loan to the various appellants under the category of cash



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credit, hypothecation loan, term loan, vehicle loans, packing credit

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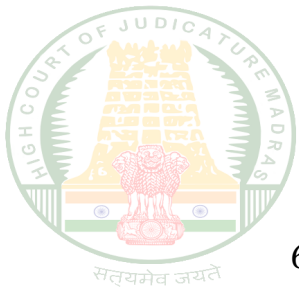
against the letter of credit against the banking norms in order to defraud the bank amount on the basis of the forged document and thus investigating agency filed the final report under section 120(B) r/w 468, 471, 420 of I.P.C. And also 13(2) r/w 13(1)(c) and 13(1) (d) Prevention of Corruption Act and also individual charge under section 468, 471, 420 of I.P.C. The learned Trial Judge framed the charges and convicted the above appellants for the various charges as stated above. The learned Trial Judge has made a detailed discussion on each heading by grouping the accused and segregating evidence. The handwriting expert did not give assertive report but the PW16 specifically deposed about the forgery of his signature in the valuation report, therefore the learned Trial Judge correctly convicted the appellants. The learned Trial Judge also considered the entire material and has discussed about the diversion of the loan amount. The acquittal of some of the accused on different ground is not a reason to acquit the appellants. The settlement of the loan amount before the registration of the FIR is



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not a bar to register the case when the appellants have conspired together and defrauded the bank amount and it is not necessary to prove the offence of cheating by expressly stating about the presence used by accused and the same can be inferred from the circumstances established by the prosecution. He also submitted that the appellant never raised 'misjoinder of charges' during the trial and hence the plea of the misjoinder charges can not be allowed to be raised at this stage. He submitted that prosecution proved the charges against the appellants beyond reasonable doubt. He also placed reliance of the following judgments of the Hon'ble Supreme Court AIR 1967 SC 986, 1973(1) SCC 726, AIR 2011 SC 1713, 1989 SCC (Cri) 418.

6.This Court considered the rival submissions made by the learned counsel appearing for the appellants and the learned Special Public Prosecutor appearing for the respondent and perused the materials available on record and the precedents relied upon by them.

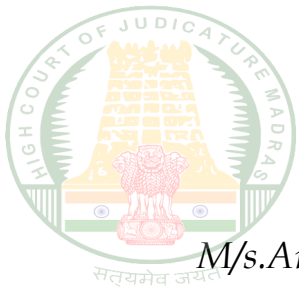


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6.1.The question arises in these appeals is whether the prosecution proved the charges framed against the appellants beyond reasonable doubt to sustain the conviction and sentence passed against the appellants?

6.2. For convenience and better appreciation of these appeals, this court refers the appellants' rank as referred in the trial Court judgment. A1 was the Chief Manager of the Indian Overseas Bank, Palayamkottai Branch. He conspired with remaining appellants to cheat the bank and defrauded the bank amount with intention to cause wrongful loss to the bank and wrongful gain to them. As per the conspiracy, A1 sanctioned loan to the appellants against KYC norms of the Bank in their fictitious business entity and allowed them to divert the loan amount and thereby they caused loss to the bank. In the course of the loan proceedings, A1 and some of the accused submitted the forged over valuation certificate to get boosted loan amount. Therefore, CBI filed the final report with the above allegation against A1 and number of business entities namely, “M/s.Pavana Steels” , “M/s.Marie Gold Agro Exports,



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M/s.Arumugam Traders and M/s.Saravana Traders” , “M/s.Jeyas Ayush Hospital”, “M/s. Indian Steels Corporation”, “M/s.Cape Medical Systems” .

6.3. According to the prosecution, the above said business entities were not existing and the same were fictitious concerns. Each accused belonging to the said entity, obtained boosted loan amount on the basis of forged valuation certificate and without running any business and without utilizing the loan amount sanctioned for business purpose siphoned off the loan amount. A1 Manager also granted loan in violation of the KYC norms of the Bank. The learned trial Judge has not accepted the case of the prosecution against M/s.Indian Steel Corporation and acquitted accused No.1, 5, 6, from charge No.6. In the considered opinion of this Court, the reasoning of the learned trial Judge to acquit accused No.1, 5, 6 from the charge No.6 in peculiar circumstance of the case is also equally applicable to the remaining charges. The learned Judge also failed to adopt the similar standard of appreciation of



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evidence to deal with similar charges framed against the present appellants when similar type of evidence was adduced on the side of the prosecution. A detailed submission made by the learned counsel for the appellants in the above aspects and more particularly Mr.R.M.Somasundaram, learned counsel appearing for the bank manager submitted detailed argument and written submission dealing with each charge. Other learned counsels referring paragraph 107 to 109 of the judgment of the trial court which carries discussion to acquit accused No.1,5, 6 from the charge No.6 would submit that the same standard of appreciation is applicable to their case also. In view of the charges framed against the each business entity with different periods of conspiracy, without conjoined period of conspiracy, this Court inclines to find out whether the prosecution has proved the charges against each business entity. Therefore, this Court make an effort to deal the case charge wise and also discuss the common issues and specifically the merits of individual case.



6.4. Discussion of Charges:

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<i>Charge No.</i>	<i>Framed against the accused</i>	<i>Offence</i>	<i>Name of the Business entity</i>
1	A1 to A4	U/s.120-B r/w 468, 471, 420 and sec.13(2) r/w 13 (1) (c) and (d) of P.C. Act 1988.	M/s.Pavana Steels
2	A5 to A13	U/s.120-B r/w 420 and sec.13(2) r/w 13 (1) (c) and (d) of P.C. Act 1988.	A. M/s.Indian Steel Corporation. B. M/s.Marie Gold Agro Exports, Arumugam Traders, Saravana Traders. C. Jeyas Ayush Hospital.
3	A1 to A4	U/s.468 of IPC.	M/s.Pavana Steels
4	A1 to A4	U/s.471 of IPC.	M/s.Pavana Steels



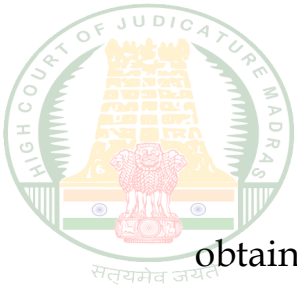
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5	A1 to A13	U/s.420 of IPC.	A. M/s.Indian Steel Corporation. B. M/s.Marie Gold Agro Exports, Arumugam Traders, Saravana Traders. C. Jeyas Ayush Hospital. D. M/s.Pavana Steels
6	A1	Under sec.13(2) r/w 13 (1) (c) and (d) of P.C. Act 1988.	

7. Discussion on the case against Pavana Steels in Crl.A. (MD) No.216 of 2019, Crl.A.(MD) NO.224 of 2019, Crl.A.(MD) NO. 190 of 2019.

7.1. The discussion on the violation of KYC Norms:

Charge No.1, 3, 4 and 5 are relating to M/s.Pavana Steels. A1- was the Chief Bank Manager of IOB, Palayankottai Branch, and A2- S.P.Shenbagamoorthy, A3-Dr.Ammamuthu, A4 -N.Kalyanasundraram are involved in the defrauding of bank amount of Rs.87,00,000/- lakhs. A2 proprietor of M/s.Pavana Steels



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obtained cash credit loan violating the KYC norms without conducting pre-inspection and entertained forged worthiness certificate and fabricated collateral security with the active connivance of A1, A3 and A4 and diverted the loan amount.

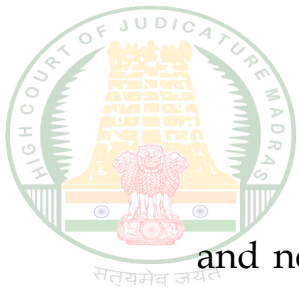
7.1.1. To prove the violation of KYC norms, the prosecution had not produced any circular of KYC norms prevailing at the relevant point of time. The same was admitted by Investigating Officer PW.82 in the following terms:

“வங்கியினுடைய KYC Norms சம்பந்தப்பட்ட விதிமுறைகளை வங்கியிடமிருந்து சேகரித்து இவ்வழக்கில் தாக்கல் செய்யவில்லை.”

Therefore, the case of the prosecution that loan was sanctioned by A1 in favour of A2 violating of the KYC Norms is without proof.

7.2. The discussion on the forgery of the valuation certificate:

According to the prosecution, A1 and A2 conspired and fabricated the inflated valuation report. The valuation report was forged with the signature of one Prabhakaran. The said Prabhakaran was examined as P.W.16. He deposed before the Court below that he only issued the valuation certificate for lesser value



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and not issued a valuation certificate, for a higher value. To prove the fact, his sample signature was never taken. His, admitted signature was not compared with the signature found in the disputed documents. According to the investigating agency, they obtained the sample signature from A2 and sent to the forensic lab. The Xerox copy was sent to the forensic department, and the FSL expert PW.65 says that only a trace of signature found in the questioned document, they were unable to conduct the test. In the said circumstances, the prosecution miserably failed to prove the forgery. Looking the credit worthiness of the evidence of the said Prabakaran, the submission of the counsel is that he was the earlier approved panel valuer. Thereafter, he was removed from the panel on 24.03.2011. Thereafter, he sent a representation to the chief regional manager on 30.03.2011 to reappoint him. From the reading of the letter it is seen that, he gave an explanation that his signature was forged. To prove the same, the prosecution never produced any evidence as stated above. In the said circumstances, as argued by the learned counsel for the appellants, he was forced to give false



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evidence against the appellant accused A1 and A2. It is well settled principle that to prove the forgery the signature in the forged document should be proved by the prosecution in two ways. Prabhakaran's signature was not found in the said document and the signature of Prabhakaran found in the said disputed document is to tally with the signature of any of the accused. In this case, both evidence are absent. Apart from that, the handwriting expert has opined that he is unable to compare. The original valuation report was also not marked. Apart from that, no evidence is available that the said forged xerox copy of document, indeed contained the signature of the said Prabhakaran. In the said circumstances, this Court is unable to concur with the finding of the learned trial Judge that the valuation certificate was forged and all the accused conspired together to forge the valuation certificate and obtained loan.

7.3. Discussion on the finding of the Learned Trial Judge about the Non-existence of the M/s.Bavana Steel and obtainment of the loan:

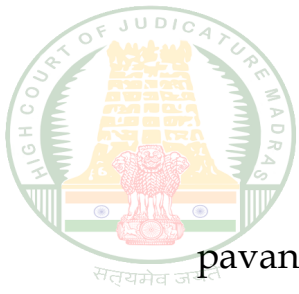
7.3.1. Firstly, there is no charge and there is no allegation that



M/s.Pavana Steel was not in existence and they obtained the loan without doing the business. Ex.P.83 lease agreement was produced to show the M/s.Pavana Steel was in existence in the address mentioned in the loan application. The same forms part of the loan application. Ex.P.22 is the Sale tax certificate and same reveals that business was carried out in the said address. Ex.P78 also specifically deposed as follows:

“ செண்பகமூர்த்தி பாவனா ஸ்டீல்ஸ் என்ற பெயரில் இரும்பு கடை நடத்தி வந்தது பற்றி தெரியும்”, பாவனா ஸ்டீல்ஸ் நடத்தி வந்த கட்டிடத்திலேயே பாவனா ஆப்செட் பிரிண்டர்ஸ் நடத்தி வந்தார் என்றால் சரிதான், திருநெல்வேலியில் பாவனா ஸ்டீல்ஸ் என்ற பெயரில் இரும்பு கடை 2009-லிருந்து நடத்தி வந்தார் என்பது எனக்கு தெரியும்.”

7.3.2. M/s.Pavana Steels Initially carried out business in Tirunelveli, subsequently to develop the business, they shifted the place. In the said circumstances, the claim of non-existence of the place by the investigating agency is not correct. pavana Steel closed the loan much earlier to the inspection conducted by the inspection team. The inspection was conducted after many years, and also after the closure of the loan. In the said circumstances, non-existence of

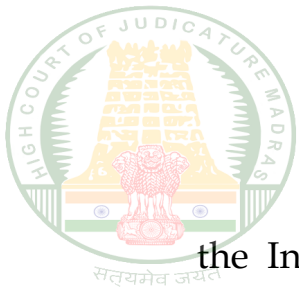


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pavana Steel at the said address on the basis of oral evidence cannot be accepted. It is the duty of the investigating agency to collect the materials from sales tax and the customs department to prove that they were not doing the business as stated in the loan application. The most vital document could have easily been obtained by the premier investigating agency, namely CBI, and they have not collected such documents to prove the fact that they were not running the industries. Therefore, this Court is unable to accept the allegation that the industry was not functioning.

7.4. Discussion on the obtainment of forged credit report of Indus Ind Bank:

7.4.1. According to the prosecution, Pavana Steel Company produced the "Credit Report" (performance report) obtained from the Indus Ind bank, Sivakasi, to show that their performance was good. In Ex.P.43, the alleged forged credit report is annexed in Page 38. According to prosecution, the said document was forged. The said document was produced by accused No.A2 allegedly given by



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the Indus Ind Bank, Sivakasi to prove that credit was good. To

prove the same, prosecution has not examined any witness.

According to the prosecution evidence, one Mr.Karthikeyan, Branch

Manager of the Indus Ind Bank is the competent person to give the

said certificate. But the said Mr.Karthikeyan was not examined. To

prove the same, no witness was examined. According to the

prosecution that the same was issued by one Karthikeyan. The said

Karthikeyan's signature was not sent for the expert's opinion. Apart

from that, no evidence was produced that the said document was

containing the accused's signature. The said Karthikeyan was not

examined to deny the said signature. PW.32 was examined from the

Indus Ind bank, and he stated that the Karthikeyan's signature was

not known to him. Apart from that, he also has no personal

knowledge about the said certificate. Further, PW.32 deposed as

follows;

“நான் CBI-க்கு கொடுத்த வாக்குமூலத்தில் Indus Ind Bank கொடுத்த Credit Report fabricated என்று சொல்லவில்லை.” In the said circumstances, the claim of prosecution that the said document was forged



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is not accepted. Apart from that, the same document was not material one.

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There was no need to the said company authorities to produce the same to obtain the loan. To obtain the loan, the said document was not required. Without the said document, the loan can be granted. In the said circumstances, the said charge was also not clearly proved by the prosecution.

7.4.2. Discussion on the loss to the Bank.

According to the prosecution, Rs.82.34 lakhs was the loan amount for which immovable property security for the value of Rs. 112.50 lakhs was given. Even in the valuation report submitted by the Investigation agency marked under Ex.P.137, the valuation of the property stated as Rs.85 to 90 lakhs. Further, the CBI officer obtained the valuation from one Ashok and his assessment is Rs. 52,42,695/- The said Ashok was not examined. The amount was settled by the M/s.Pavana Steels and Bank also issued no due certificate under Ex.D4 and the settlement amount was around Rs. 53 lakhs. PW.82 deposed as follows:

“பாவனா ஸ்டீல்ஸ்மிருந்து வங்கிக்கு முதல் தகவல் அறிக்கைப் பதியப்பட்ட தேதியில் எவ்வளவு தொகை வரவேண்டும் என்றால்



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எனக்கு ஞாபகமில்லை குற்றபத்திரிக்கையிலும்
பாவனா ஸ்டில்ஸ்டமிருந்து வங்கிக்கு எவ்வளவு தொகை
பாக்கியுள்ளது என்று குறிப்பிடப்படவில்லை என்றால் சரிதான்.”

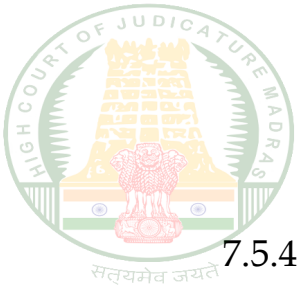
Before the date of final report entire loan amount was settled and the bank authorities stated that, there was no loss to the bank.

7.5. Discussion on the Easy trade Finance Scheme.

7.5.1. According to the prosecution, the loan was granted without any periodical stock verification. But, PW.5 and PW.32 deposed that the said loan was granted on the basis of the immovable security and not on the basis of the stocks. The relevant portion of the evidence of PW.5 and PW.32 are as follows:

7.5.2. PW.5 deposed that: “when I was enquired by the CBI, I had stated to them that for Easy Trade Finance, as the advance was fully secured, there was no need for obtaining and verification of stock statements”

7.5.3. “It is correct to say Easy Trade finance, the security offered is the important criterion and other guidelines which are applicable to cash credit loan accounts are not applicable to Easy Trade Finance, and to this particular case, submission and verification of stock statement is not required.”



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7.5.4. PW.32 deposed that:

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“Easy Trade Finance — “பொறுத்தவரை அடமானமாக

கொடுக்கும் அசையா சொத்து Primary security ஆகும்.

அந்த கணக்குகளை பொறுத்தவரை மாதாந்திர சரக்குகளின் பட்டியல் தேவையில்லை.”

Therefore, the allegation that the loan under the Easy trade finance was granted without conducting stock verification is without any basis.

7.6. Discussion of the withdrawal of the excess amount:

According to the prosecution there was withdrawal of the excess amount in the cash credit account. But, no evidence was adduced. According to PW.1, PW.5, PW.32 if there is any excess advance, there must be immediate communication from the Regional Office to the Head Office and also the same can be easily seen in the computer system of Head Office under the CBS Status. The Ex.D8 is the Statutory Audit report for the relevant period. There are no particulars about the excess withdrawal. Therefore, the prosecution failed to prove the excess withdrawal.



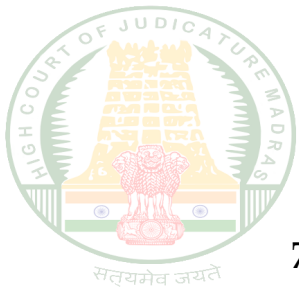
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7.7. Discussion about the failure on the part of the A1 to conduct on the pre-sanction inspection:

7.7.1. According to the prosecution A1 failed to conduct pre-sanction inspection. But, according to the PW.4 Manager credit, PW.5, PW.63 and PW.74 it is duty of the loan officer to conduct “Pre-sanction and post sanction inspection. Their case is that for conducting the pre-sanction and post sanction charges were deducted from the loan account for the said purpose. Therefore, the prosecution has failed to prove that A1 is duty bound to conduct pre and post sanction inspection.

7.8. Discussion on the Car Loan:

7.8.1. According to the prosecution, the car loan was granted by A1 in favour of A2 as against the regulation. But, according to the evidence of PW.59, he is the loan officer and only on the basis of his recommendation, loan amount was granted. Therefore, there is no violation of any norms. Further, according to PW.82 and PW.63 the said loan amount was settled.



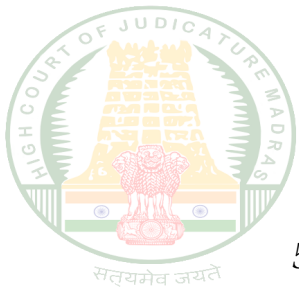
7.9. Discussion on the non-array of loan officer, Manager

Credit as accused:

7.9.1. According to PW.4, he signed in the loan documents of M/s.Indian Steel Corporation, M/s.Marie Gold Agro Exports, Arumugam Traders, Saravana Traders, Jeyas Ayush Hospital, M/s.Pavana Steels as directed by A1. But, in cross-examination he has deposed as follows:

“ The duty of the loan officer are as follows:

- 1. To inspect the borrowers permanent place of residence and place of doing business before giving loan.*
- 2. To receive loan application along with the financial statements of the unit.*
- 3. If those statement is satisfactory then to receive loan application along with copoies of the documents of the collateral security offer.*
- 4. Then valuation report must be obtained from the bank approved engineer and legal opinion from the bank panel lawyer. If every thing is satisfactory then the manager (credit) can recommend for loan.*

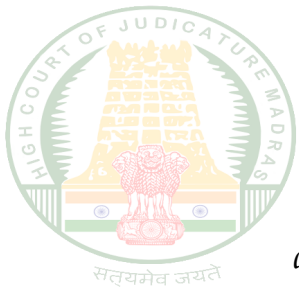


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5. *The documents received from the borrower must be entered in the title deed register.*

6. *Pre-sanction and Post-sanction inspection. Before the disbursement of the loan amount concurrence must be obtained from the controlling office. It is correct to say that if the direction given by the superior officer are against to the banking guidelines or rule then it is not necessary for me to sign in any documents. It is correct to say that if the superior officer giving any instructions to me against the bank guidelines then I can give a complaint to the controlling office. But I have not given any complaint against the chief Manager to the controlling office. I will sign in any document only after reading the same. It is correct to say that the godown inspection of the borrowers must be done by the bank officers at the branch level in rotation basis. Every branch of our bank must give monthly control returns to the controlling office. The Officer's of the Regional Office use to visit the branch frequently for inspection. Yearly once there will be a Central Office Inspection and also statutory audit firm inspection. It is correct to say that the periodically the branch manager of the other branch must visit and inspect the loan*

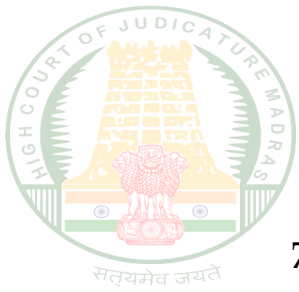


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documents. It is correct to say that if any register which has to be maintained as per the banking guidelines is not maintained then it will be found in the inspections done by the above said authorities.

The loan documents of M/s.Pavana Steel were filled by me. The Office note dated: 02.03.2009 of M/s.Pavana Steels was signed by me. I had filled the details of property prosposed as security of Pavana steel. I had signed in the office note dated 10.07.2008 of India steel corporation loan. I had signed in the office note dated 24.09.2008 of M/s.Marie gold agro exports. I had signed in Ex.P.5 I had signed in the office note dated 28.04.2009 of Saravana Traders loan amount. I had filled the loan documents of M/s. Saravana Traders. I had signed the office noted dated 19.01.2009 of Mrs.Alwar Siva Subramaniyan's car loan. I had filled the loan documents of Mrs.Alwara Siva Subramanian's . I had signed in the office note dated 26.12.2008 of M/s.Jeys Ayush Hospital loan. I had filled the loan documents of M/s.Jeys Ayush Hospital I had filled the loan document dated 31.12.2008 of Jeys Ayush Hospital. It is incorrect to say that I am deposing falsely at the instance of CBI."



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7.9.2. Further, PW.63, PW.74 also deposed about the duties of the loan officer and hence only on the basis of the recommendation, A1 has acted. Hence, in all fairness, the loan officer and manager (credit) should have been arraigned as accused. In addition to that each loan was disbursed after the recommendation of the loan officer manager credit and the competent officer of the Regional office. Therefore, the CBI, in the considered opinion of this court conducted biased investigation without arraying all the bank officials involved in this case.

8. Discussion on the Charge No.2 pertaining to M/s.Marie Gold Agro Exports, Arumugam Traders, Saravana Traders:

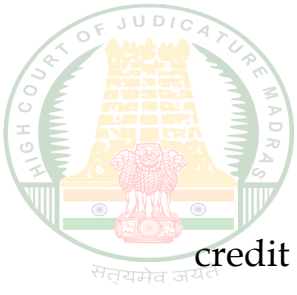
8.1.The allegation that the Marry Gold company converted the “Packing credit”, into “cash credit”, with the help of the bank manager is without substance and without material. In Ex.P.46 both PW56 and PW4 had countersigned. The statutory audit also was conducted on 31-03-2009. The particulars of the statutory audit, by



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Regional Office as well as central office were collected by CBI, but intentionally they did not produce them. Hence the accused filed the application under section 91 of Cr.P.C. Only Regional Office audit report was produced and marked under Ex.D-8. In the said Ex.D-8, page 98, nothing was found about the criminality in conversion of packing credit into cash credit. Central audit report was not produced. Hence the prosecution failed to prove the said fact. Apart from that, it is the duty of the investigating agency to collect the material from the central office inspection report relating to the said conversion. As per the banking norms, the said conversion will immediately be informed to the central office through the Core Banking system. It is easy for the premier investigation to collect the materials from the said central office and mark the document, but they failed to do so.

8.2. According to the prosecution Marie gold Agro exports. Arumugam Traders and Saravana Traders are non existing firms during the time of lending of packing loan. After “packing credit loan”, there was illegal conversion of packing credit loan into cash

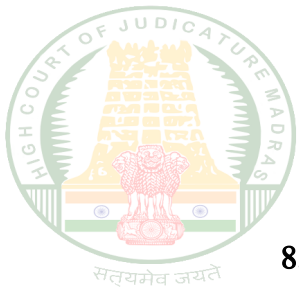


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credit loan. There was further diversion of amount to purchase a hospital namely Karthik Hospital. Prosecution examined PW42, 46, 47, 55, 60, 71 to prove non existence of said firms. All witness categorically admitted that they made inspection much later than 2 years from the date of closure of loan. They were unable to disclose the address of the said firms. PW60 in his cross examination specifically deposed that the firms were registered both under central and state sale tax and obtained certificate from both the authorities under Ex.P.46, Ex.P71, Ex.P.48.

PW.82 also deposed that கடன் வழங்கிய கால காட்டத்தில் IOB பாளையங்கோட்டை கிளையில் பணிபுரிந்த எந்த ஒரு அதிகாரியும் கடன் வாங்கிய நிறுவனங்கள் செயல்படவில்லை என்று என் விசாரணையில் சொல்லவில்லை.”

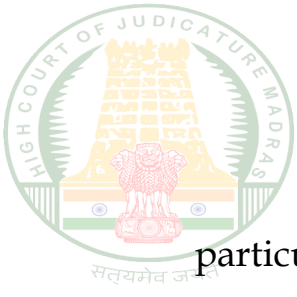
IOB officer, as per existing guideline has to maintain “godown inspection register” and same was admitted by PW1, PW74, PW82. The same was not collected and produced to prove that nonexistence of firms and diversion of loan amount.



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8.3. PW.4 & PW.5, deposed that it is the duty of the loan officer to inspect the borrowers permanent place of residence and place of business before granting loan. In the respective loan file, loan officer has signed and recommended. Therefore, the loan was granted in compliance with the guidelines and same was officially done with the recommendation of the loan officer and therefore prosecution miserably failed to prove the case of the granting of loan by A1 in favour of Marie gold Agro exports. Arumugam Traders and Saravana Traders against guidelines and recommendation of the loan officer.

8.4. To prove non-existence of stocks and to prove false declaration about stock statements, they failed to collect and produce evidence. Apart from that in Ex.P.137, bank investigator clearly stated about stock statements. Purchase order given by M/s. Srivari Seabing Pvt. Ltd., Singapore, S.Shanmugam & CO Colombo under Ex.P.46 were marked. According to prosecution the said orders are fake but to prove fake order, nothing was adduced. Mere vague allegation without proof of material does not amount to a



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particular fact is said to have been proved.

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8.5. To prove further allegation that the loan amount was used for purpose of purchasing M/s. Karthik Hospital, no evidence was adduced and the same was admitted by PW82 and relevant evidence is as follows:-

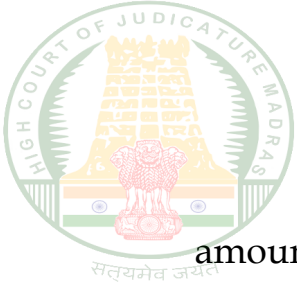
8.5.1. Mls. Saravana Traders, M/s.Arumugam Traders and

M/s.Marie Gold Agro Exports ஆகிய நிறுவனங்கள் கடன் பெற்றது ஒரு மருத்துவமனை வாங்குவதற்கு தான் என்று குற்றப்பத்திரிக்கையில் சொல்லியுள்ள விவரத்தை நிரூபிப்பதற்கான ஆவணம் எதையும் நான் விசாரணையின்போது சேகரிக்கவில்லை.”

8.6. Further, no evidence was produced to prove the allegation that the loan amount was used for closing the dues of accused No.7 & 8 and PW.82 deposed as follows:

8.6.1. M/s.Marie Gold Agro Exports-க்காக பெற்ற கடனை தனது மனைவி திருமதி.ஆழ்வார் சிவசுப்ரமணியம் கணக்குக்கு மாற்றியுள்ளார் என்பதை காண்பிக்கும் எந்தவித ஆவணமும் இல்லை. மேற்படி கணக்கை முடிப்பதற்கு பாளையங்கோட்டை Bank of Baroda-ல் கடன் பெற்று அந்த கடனை IOB-க்கு கட்டி முடித்துள்ளார் என்பதைக் காட்டுவதற்கு எந்த ஒரு ஆவணமும் இல்லை என்று சொன்னால் சரிதான்.

8.6.2. Apart from that, the prosecution failed to prove that

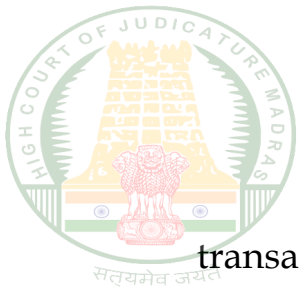


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amount of Rs.7,07,143/- was used to purchase a car from Kodai Cars (P) Ltd., in the name of B.Suseela. PW.82 has deposed as follows:

கசீலா கார் சம்பந்தமாக நான் Kodai Cars (P) Ltd., மூலம் எந்த ஒரு சாட்சியை விசாரித்து வாக்குமூலம் பெறவில்லை.”

8.6.3. PW.44 was examined from Kodai Cars (P) Ltd and he has not produced any document to prove the purchase of the car in the name of B.Suseela. The banker cheque was not marked under Ex.P.139 through the author of the said document and the author was not examined. To prove diversion of found of loan amount prosecution has produced Ex.P.21. In the said Ex.P.21 I.e. to purchase car in the name of wife there was no reference about transfer of the amount from account of Marie Gold Agro Export. Nothing was produced to prove cash payment. The prosecution only produced Ex.P.159 to substantiate the allegation of diversion of loan amount I.e. payment of loan amount to purchase the car in the name wife of accused vide banker cheque. The said document was collected after registration of FIR much after of closure of loan

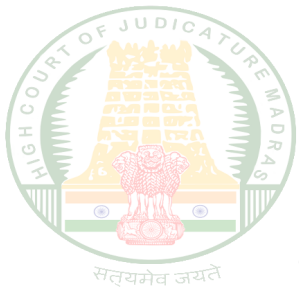


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transaction. Total cost of the car also do not tally with the banker cheque amount. The amount of discount was strangely deducted much after delivery of car. This court inclines to accept the case of appellant in this aspect that to adjust the cash price with the banker's cheque all the entries were made in Ex.P.159. Even manipulated under Ex.P.159. That apart while calculating wrongful loss mentioned in final report, amount of car loan was not taken into account. That apart in Ex.P.47, there was specific reference that “sanctioned and file submitted to regional office for confirmation” PW32 also deposed about the submission of the file to the regional office for confirmation.

8.6.4. Further, this court on going through the following content of the Ex.P.154, without any hesitation holds that the allegation of the prosecution that the company defrauded the bank amount is not proved in accordance with law.

“proprietor hauls from a business family for four decades and her got vast experience. Marie Gold Agro Exports Activity is Export and Trading.”



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8.7. It is further case of prosecution, A8, 9 conspired with A1 to divert loan amount on 03.09.2009. But A1 was transferred much earlier on 09.05.2009 itself. After his transfer, he had conspired together with A8, A9 and siphoned off the bank fund is not correct and it is stage managed one. Therefore, in all aspects the case of the prosecution that there was diversion of the loan amount is not proved beyond reasonable doubt. . Hence, this Court comes to the conclusion that the said fact has also not been clearly proved by the prosecution.

9. Discussion on the case of the M/s. Jeyas Ayush Hospital:

According to the prosecution, the said hospital authority applied for loan to purchase the medical equipments. As per the terms of the supplier of the medical equipments, the medical equipments would be supplied only on payment of advance payment. The equipment was to be imported from foreign country and would be supplied within a period of two months after advance payment. There may be extension of time. In this case, the equipment was supplied within a period of 90 days from the date of payment of entire costs.



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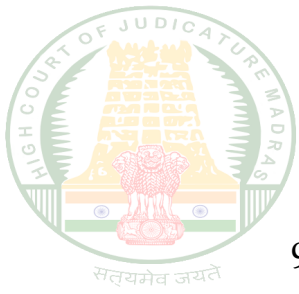
In this case, allegation against A1, the chief manager is that, he without conducting the pre-loan and post-loan inspection, granted the entire loan amount. The said charge itself is, not legally correct in considering the peculiar circumstances of this case. According to him, A1 recommended and granted the loan on the basis of the available legal documents. But before the post-loan verification, ie., before installation of the machinery, he was transferred from the said place. Hence, the successor manager is duty bound to verify the said installation process, and without, even verifying the said fact, the CBI filed the final report.

9.1. Apart from that, the inspection was conducted by one Devadoss Samraj. He was the competitor for the said company. The said person is not an authorized person from approved panel to conduct the such inspection. As rightly argued by the learned counsel for the appellant, the loan was closed much earlier to the inspection date. The inspection was conducted after number of years. The bank authorities, after closure of the loan, have no



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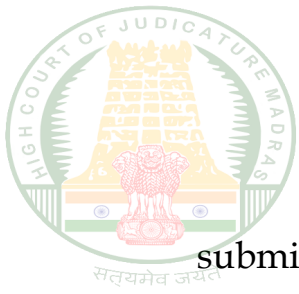
relationship with the said hospital. In the said circumstances, the inspection itself is illegal one. The bank authorities abused their power and made a inspection without any debtor-creditor relationship. This court finds total misuse of power on the part of the bank officials in conducting the inspection much later after settling the loan amount and even the purpose for which loan granted also got expired. The investigating agency also without analysing of the situation, registered the case and obtained the certificates from the business rival of the accused and filed the final report even without noticing the settlement of amount and closure of the loan much earlier to the registration of the case. Therefore, the bank authority without jurisdiction made the inspection after closure of the loan and the CBI without any basis have filed the final report and prosecution also failed to prove the case against the appellants beyond reasonable doubt through the evidence adduced before the court below.



9.2 Discussion on the CAP medical heading:

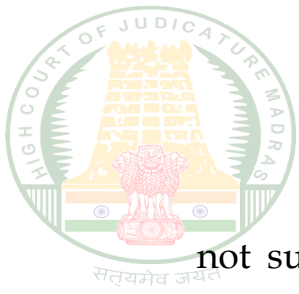
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According to the prosecution, the company supplied the machineries after receiving the loan amount. Thereafter, they re-transferred the amount of Rs.88,00,000/-. Subsequently, they had re-transferred the loan amount to the SBI. Hence, there is a diversion of funds and the materials were not supplied. To prove the same, they examined P.W.64 valuer. The said valuer is not the government approved valuer. Even he has admitted that valuation is to be made by engineer. The said valuer belongs to the rival group participated in supply of medical equipment, and hence, he has a grudge against the appellant company. Even in his report, he has not ascertained the place where he inspected. The senior counsel submitted that earlier the hospital was running in Door No. 199, Main Road, Perumalpuram, Tirunelveli. Subsequently, a new hospital was constructed and all machineries were shifted to the said place. In the report, it is not found whether he visited the old premises or the new premises. In the said circumstances, apart from his ineligibility, his report is liable to be rejected. The learned senior counsel further



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submitted that in the FIR, the company was arraigned as an accused. In the final report, the company was not arraigned as accused. Hence, without arraigning the company, the prosecution against the director is not legally maintainable. The learned senior counsel further submitted that the loan amount was obtained by the hospital authorities, was settled long back before the inspection made by the officers of the bank. Once the debtor-creditor relationship got severed, the bank authorities have no jurisdiction to inspect the premises and hence there was no criminal liability. In the said circumstances, without any authority, inspection was made and on the basis of the inspection report, FIR was registered and hence he states that the registration of FIR is illegal. And the final report on the basis of the FIR, without sufficient evidence is not legally valid. The counsel further submitted that the investigation officer himself admitted that the investigating agency has not produced any document to show that the supply of medical equipment to the value of the loan was not supplied. Further, there was no evidence to prove that all the imported machineries were



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not supplied, by collecting the materials from the central exercise department and other relevant departments. In all aspects, the prosecution failed to prove the case against the appellant. This Court considers the peculiar circumstances of the present case that the entire cheque transaction was made only through the company account and no way used by A9 in his individual capacity and for his personal benefit and without hesitation inclines to accept the argument of the learned Senior counsel appearing on behalf of the A9 that without arraigning the company, the prosecution against A9 is not legally maintainable. He has only acted on behalf of company. Hence, without any evidence to show that he has independently received any amount of the company, the offence of cheating is not made out against him. As admitted by the investigating officer, he has not collected any material to show that the company has not supplied the material mentioned in the loan account. Apart from that, the loan amount was paid and closed much earlier i.e. 15 months prior to the date of the inspection. In the said circumstances, jurisdiction of the bank authorities looking into



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granting of loan which was already closed, amounts to illegal transgression. As per the evidence of the bank authorities and CBI, the amount was settled, loan was closed, and there was no loss to the bank. A.11 in her 313 Cr.PC questioning gave detailed explanation. She specifically stated that loan amount was properly utilized and bank officials conducted inspection and there is reference about the materials purchased through the loan amount and they made in the loan inspection register but they failed to produce the loan inspection register. There was a deduction of amount towards the inspection charges. Before 5 months from the date of registration of FIR entire loan amount was settled. Therefore, there was no loss to the bank even before registration of the case. She also pleaded that CBI falsely roped them at the instigation of the one financier against whom she made a complaint under the exorbitant interest Act and FIR was also registered and final report was also filed. CBI without properly conducting investigation acted as a tool of PW.49 namely said financier. She also filed the documents namely FIR and final report. The same was not properly

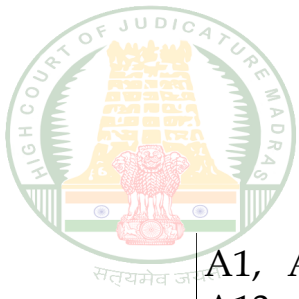


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considered by the Learned Trial Judge. CBI also not conducted investigation in this aspect. As per the 313 Cr.PC it is duty of the court to consider explanation furnished U/s.313 Cr.PC. The said explanation in the considered opinion of this court is plausible and same is proved through the documents. Therefore, the case of A.11 that a false case was registered has got its own merits. Hence, the allegation against the said appellant that she committed a cheating, is not made out. Therefore, this Court is inclined to accept the case of the appellants and acquit the appellants from all the charges.

9.3. FIR was registered against 7 loan accounts but final report was filed only relating to 6 accounts. Among 6 accounts, learned trial judge acquitted the accused in respect of one account.

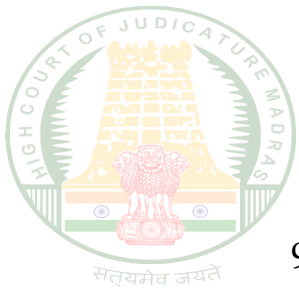
Accused	Name of Firms	
A1, A2, A3, A4	Pavana Steels	Convicted
A1, A5, A6, A10, A12	Indian Steel Corporation	A5, A6 acquitted A10, A12
A7, A8, A1, A4, A9	Marie Gold Agro Exports, Arumugam Traders, Saravana Traders	A1, A7, 8, 9, A4 convicted



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A1, A10, A11, A12, A13	Paravana Steels Jeyas Ayush Hospital	Convicted A1, A10, A11, A12, A13
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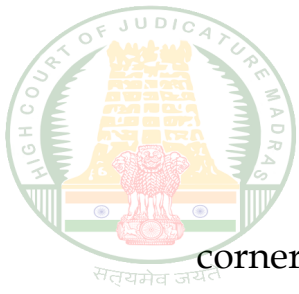
9.4. The learned Trial Judge has acquitted A5, A6, A10, A12 belonging to Indian Steel Corporation without accepting the prosecution evidence in Para 107 to 109. The reasons found by the learned Trial Judge to acquit the accused Nos.5, 6, 10, 12 are also equally applicable to the remaining appellants. Therefore this court is unable to differentiate the reasoning of the learned Trial Judge in acquitting the accused Nos.5, 6, 10, 12 and convicting the remaining appellants. The facts of the convicted appellant and acquitted appellant are similar and similar accusation were made in both against the acquitted appellants and convicted appellants. Same set of evidence was adduced. Therefore the learned Trial Judge committed illegality in not acquitting the appellant by appreciating the similar evidence properly. Therefore in all aspects the prosecution has miserably failed to prove the charged offences against the appellants beyond reasonable doubt.



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9.5. Similarly the investigating agency also followed different yardsticks to different companies. Originally FIR was registered against 7 loans. They deleted one account on the ground that they settled the amount much earlier to the registration of the case, but they laid the final report against the four accused who had settled the loan amount and closed the loan much earlier to the registration of the case. Therefore this court holds that both the investigating agency and learned trial judge have not acted in fair manner in deciding the case on the similar material and similar facts. Hence this court inclines to accept the argument of the learned counsel for the appellants that there was unfair prosecution and investigation which resulted in miscarriage of justice. Therefore this Court is inclined to allow the appeal on this ground also.

9.6. In this case, the CBI registered the case on the basis of the source information. In this case, all the loan amounts were already settled much earlier to the inspection conducted by the bank officials. The bank officials conducted motivated inspection to



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corner the particular bank officials and illegally made the inspection without any debtor and creditor relationship. Once the loan was closed much earlier to the inspection and reopening of the said closed transaction without any legal material relating to the misuse of the loan amount, the bank authorities are disentitled to conduct the inspection after the shifting of the business place, hospital etc., They also obtained inspection report from the business rival of the each accused. *To the extent of obtaining the valuation certificate from the person who has been deleted from the panel of valuers.* The investigating agency is duty bound to verify the same and restrain themselves from filing case of this nature. In the considerable opinion of this court they filed the final report without any material to substantiate their allegation. Absolutely, this court finds no material to constitute the offence from the prosecution evidence. This court finds lapse in every stage and this is a classical case to show the CBI had conducted a shoddy investigation. Firstly, the CBI have not adduced any evidence that the loan amount was not utilized. It is not the case of the bank authority that the loan was not settled prior to the



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registration of the case. The CBI has not produced any material to show the amount was misused. Therefore in all aspect, the appellants are entitled for acquittal.

10. Conclusion

Accordingly all the appeals are allowed on the following terms:-

10.1.The judgment passed by the II Additional District Court for CBI cases, Madurai in C.C.No.24 of 2012 dated 05.04.2019, is set aside.

10.2.The appellants are acquitted from all the charges in C.C.No.24 of 2012 dated 05.04.2019, passed by the II Additional District Court for CBI cases, Madurai

10.3.Fine amount paid by the appellants shall be refunded to the appellants forthwith.

10.4.Bail bond executed by the appellants shall stand cancelled.

11. CBI is the premier investigating agency of this country. People of this country have more faith in them. Whenever any serious issue/controversy crops up people make vociferous voice asking for CBI Probe since they have cent precent faith that the CBI officers are upright officers. Further they have faith over the



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working of the CBI that they would discharge the duty impartially uninfluenced by any source. Nowadays the working culture of the CBI has reduced to the level of being criticized by everyone for their lopsided investigation. This court during its last two portfolios was assigned with the cases relating to the CBI. All the CBI cases including the appeal against acquittal, appeal against conviction, Criminal Revision Case against the discharge petition, Criminal Original Petition to quash the criminal proceedings based on the CBI investigation were heard by this Court during that time. More than, 60 Criminal Appeals were listed before this Court for final hearing. During the course of the hearing, the learned Senior counsel appearing for accused in number of cases unanimously submitted that CBI have conducted preliminary enquiry, detailed enquiry and registered the case. But, at the time of registration of the FIR, they have intentionally omitted the prime accused and registered the cases only against some accused and conducted investigation and filed the final report only against the selected accused. In number of cases, they had followed differed yardsticks



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against the similarly placed accused. In some cases, they had deleted the accused and added them as witnesses on the ground that the accused settled the entire due amount. But, in the similar set of cases, the accused who had already settled the amount had been added as accused, without adding as a witness. In most of the cases, even though strong materials were found, the CBI deleted the high level officers and arrayed only low grade officers. In almost all the cases, there is a chasm in the chain of events due to the deletion of number of main accused. They would collect voluminous record and omit to collect the material record even though they have knowledge about the said record. In number of cases, even they have not obtained the handwriting expert's opinion and other scientific expert's opinion. Even in number of cases, there is corruption allegation against the officers of the CBI. In one case, one of the party in person produced the authenticated electronic evidence to prove the demand of bribe amount by a CBI Officer. In the said case, CBI high level officers had registered a case against the said CBI officer and initiated departmental proceeding. This is



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only the tip of the ice beg. In the case of the trap, they have not even

used the modern technology to entrap the accused. Therefore, question of fair investigation is in peril. This has eroded the faith of people with CBI. People have more faith in the Special Investigation Department than in the Courts that the Special Investigation Officers will be honest, upright and impartial and their conduct should be pure as mother's milk. It should regain the said faith so that it does not cause any harm to the reputation attached with them. With heavy heart, this court observes the intentional lapse of the part of the CBI in arraying the unwanted accused, continuing unwarranted investigation, deleting the important accused, not examining material witnesses, not collecting the scientific evidence relating to hand writing etc., improper supervisory mechanism by director of the CBI, adding the similarly placed persons as witnesses concentrating on collection of immaterial particulars and omitting to collect material particulars have become the order of the day. All the above shows that the CBI officers think they have sky high powers and no one can question them. Hence, people feel their



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working culture is plummeting down and this Court also finds the said allegations have some reason and, this Court in order to restore the trust of the people over the CBI, is inclined to give the following suggestions to the director of CBI to have a relook and revamp their programme of investigation to regain the original image in the vision of the people of India.:-

(i)The Director shall meticulously supervise the array of the accused in the FIR and final report.

(ii)The Director shall consciously supervise the progress of the investigation constantly watching the collection of the materials and omission of the materials.

(iii)The Director shall appoint a separate legal team within their domain to indoctrinate the investigating officer about the legal principles formulated by the Hon'ble Supreme Court time to time and ensure the suitability of the registration of the case in order to avoid registration of innocuous cases.

(iv)The Director shall take appropriate measures to equip the investigating officer with the scientific advancement.



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NCC : Yes /No

Index : Yes /No

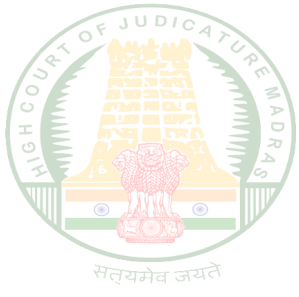
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Note : Issue order copy on 29.04.2025

To

- 1.The II Additional District Judge for CBI Cases,
Madurai.
2. The II Additional District and Sessions Judge for CBI Cases,
Madurai.
3. The Special Public Prosecutor for CBI Cases,
Madurai Bench of Madras High Court, Madurai.
4. The Inspector of Police,
Central Bureau of Investigation,
Anti-Corruption Branch,
Shastri Bhavan, Chennai-600 006.
5. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN,J.

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and
CrI.M.P(MD).No.6966 of 2019

28.04.2025