BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	22.07.2024
Pronounced On	:	04.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A(MD)No.47 of 2019

S.Ayyamani .. Appellant

Vs.

The Inspector of Police,
CBI:EOW:Chennai,
RC 11 (E)/2009. .. Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the records relating to the case in C.C.No.7 of 2010, on the file of the II Additional District Court for CBI Cases, Madurai and set aside the conviction and sentence dated 05.02.2019 imposed on the appellant.

For Appellant :Mr.B.Kumar
Senior Counsel
For Respondent :Mr.Pooranachari
Senior Special Public Prosecutor

JUDGMENT

The appellant A1 in the C.C.No.7 of 2010, on the file of the II Additional District Court for CBI Cases, Madurai has filed this appeal before this Court, challenging the judgment dated 05.02.2019 whereby, the learned trial Judge convicted the appellant for the following offences:

S. No	*Offences under Section*	*Punishment (Imprisonment and fine)*
1	120-B r/w 409 of IPC	Undergo Rigorous Imprisonment of 10 years and to pay a fine of Rs. 25,000/- in default to undergo Simple Imprisonment for One year
2	120-B r/w 420 of IPC	Undergo Rigorous Imprisonment of 7 years and to pay a fine of Rs. 25,000/- in default to undergo Simple Imprisonment for One year
3	120-B r/w 420 r/w 109 of IPC	Undergo Rigorous Imprisonment of 7 years and to pay a fine of Rs. 25,000/- in default to undergo Simple Imprisonment for One year
4	120-B r/w 467 of IPC	Undergo Rigorous Imprisonment of 10 years and to pay a fine of Rs. 25,000/- in default to undergo Simple Imprisonment for One year

S. No	*Offences under Section*	*Punishment (Imprisonment and fine)*
5	120-B r/w 468 of IPC	Undergo Rigorous Imprisonment of 7 years and to pay a fine of Rs. 20,000/- in default to undergo Simple Imprisonment for One year
6	120-B r/w 471 of IPC	Undergo Rigorous Imprisonment of 10 years and to pay a fine of Rs. 25,000/- in default to undergo Simple Imprisonment for One year
7	120-B IPC r/w 13(2) r/w 13(1) (c) of Prevention of Corruption Act, 1988	Undergo Rigorous Imprisonment of 7 years and to pay a fine of Rs. 25,000/- in default to undergo Simple Imprisonment for One year
8	120-B of IPC r/w 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988	Undergo Rigorous Imprisonment of 7 years and to pay a fine of Rs. 25,000/- in default to undergo Simple Imprisonment for One year
9	409 of IPC	Undergo Rigorous Imprisonment of 10 years and to pay a fine of Rs. 25,000/- in default to undergo Simple Imprisonment for One year
10	420 of IPC	Undergo Rigorous Imprisonment of 7 years and to pay a fine of Rs. 25,000/- in default to undergo Simple Imprisonment for One year
11	467 of IPC	Undergo Rigorous Imprisonment of 10 years and to pay a fine of Rs. 25,000/- in default to undergo Simple Imprisonment for One year

S. No	Offences under Section	Punishment (Imprisonment and fine)
12	468 of IPC	Undergo Rigorous Imprisonment of 7 years and to pay a fine of Rs. 20,000/- in default to undergo Simple Imprisonment for One year
13	471 of IPC	Undergo Rigorous Imprisonment of 10 years and to pay a fine of Rs. 25,000/- in default to undergo Simple Imprisonment for One year
14	13(2) r/w 13(1)(c) of Prevention of Corruption Act, 1988	Undergo Rigorous Imprisonment of 7 years and to pay a fine of Rs. 25,000/- in default to undergo Simple Imprisonment for One year
15	13(2) r/w 13(1)(d) Prevention of Corruption Act, 1988	Undergo Rigorous Imprisonment of 7 years and to pay a fine of Rs. 25,000/- in default to undergo Simple Imprisonment for One year
	Total Fine	**Rs.3,65,000/-**

2. <u>Brief facts of the case:</u>

Sree Gokulam Chit and Finance Co.Pvt.Ltd., Chennai made fixed deposit of Rs.6,00,00,000/- (Six Crores Only) in Indian Bank, Kadayanallur Branch, Tirunelveli, wherein, the appellant was working as a manager. He, A2/Dr.K.Venkateswaran(Deceased), A3/Smt.Maya Ram and the remaining accused conspired together to cheat the bank and defraud the bank amount by availing a loan of Rs.3,96,00,000/- (Three Crores Ninety Six lakhs only) on the basis of the forged F-93 (third party letter of pledge of securities) of Sree Gokulam Chit funds with forgery of the signature of the authorised representative of Sree Gokulam Chit funds and obtained the loan and misappropriated the said amount and thereby caused wrongful loss to the bank and hence, the CBI registered the case against A1 and other accused for the offences under Sections 120-B r/w 409 of IPC, 120-B r/w 420 of IPC, 120-B r/w 420 r/w 109 of IPC, 120-B r/w 467 of IPC, 120-B r/w 468 of IPC, 120-B r/w 471 of IPC, 120-B of IPC r/w Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, 120-B of IPC r/w Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 409, 420, 467, 468, 471, 13(2) r/w 13(1)(c) of Prevention of Corruption Act, 1988, and 13(2) r/w 13(1)(d) of Prevention of Corruption Act. Thereafter, CBI conducted investigation and filed the final report before the II Additional District Court for CBI Cases, Madurai, against seven accused and the same was taken on file in C.C.No.7 of 2010 and the Court summoned the appellant and furnished the copies under Section

207 Cr.P.C., and framed necessary charges and questioned the accused. The accused denied the charges and stood for trial. The prosecution, to prove the charges, examined PW-1 to PW-23 and exhibited Ex-P1 to Ex-P89.

3. The learned Trial Judge, questioned the accused under Section 313 Cr.P.C., by putting the incriminating materials available against him and the accused denied the same as false and gave different explanation. Thereafter, the case was posted for examination of the defence witnesses. The accused neither examined any witness nor marked any documents.

4. After considering the explanation and evidence on record the learned trial Judge convicted the accused for the above said offenses. During the course of the trial, A2 died before framing charges and the remaining convicted accused A3, A4 also died after the judgment and the learned trial Judge acquitted the remaining accused.

5. The learned counsel for the appellant submitted that he was the manager of the bank. He granted loan on the basis of the document furnished by A3. It is not the duty of this officer to verify the genuineness of the said documents. If each and every document is viewed with a suspicious eye, then the bank can not run. Moreover, A2 was a famous Doctor in the said locality. He had good reputation. In the said circumstances, he granted loan on the basis of the documents furnished by him. Apart from that, the same were verified by the loan department of the said bank. According to the finding of the learned trial Judge, A2 forged the said F-93. In the said circumstances, without any connecting material to prove the conspiracy between A1 and A2, and also in the absence of material to prove the conspiracy between the accused, and in the absence of any material to show that he appropriated the said amount with A2, the charge under Section120(b) of IPC and the other offences are not legally sustainable. Hence, he seeks for setting aside the conviction judgment passed against him and he relied the following judgments :-

Sl.No.	Judgments
1	2016 (7) SCC 797 U.Subhadramma & others Vs State of Andhra Pradesh and another.
2	2008 (13) SCC 703 Aneeta Hada Vs Godfather Travels & Tours Private Limited.
3	2012 (5) SCC 661 Aneeta Hada Vs Godfather Travels & Tours Private Limited (FB).
4	2017 (8) SCC 1 State of Jharkand Vs Lallu Prasad Yadav
5	2011 (2) MWN (Cr) 47 J.Duraimunusamy and others Vs State
6	AIR 1949 Mad 9 Seraje Narayanana Bhatta & others in Re.
7	2018 (7) SCC 581 Sheila Sebastian and R.Jawaharaj and another
8	2003 (12) SCC 670 L.Chandraiah Vs State of A.P. and another.
9	1984 (supp) SCC 207 Jethsur Surangbhai Vs State of Guajarat

5.1. According to the learned senior Counsel, A2 died on 18.11.2013. Hence, the case was dismissed as charge abated as against A2 on 21.01.2014. Thereafter, the charges were framed in the year 2016. In the said circumstances, the framing of charges against dead person and finding of the learned trial Judge that A2 committed forgery is against the law laid down by the Hon'ble Supreme Court in the case ***of U.Subhadramma v. State of A.P.,*** reported in ***(2016) 7 SCC 797***. He also further submitted that as per the the Judgment of the Hon'ble Supreme Court in the case of ***Aneeta Hada v. Godfather Travels And Tours (P) Ltd.***, reported in ***(2008) 13 SCC 703***, the decision of the Hon'ble Justice ***S.B.SINHA*** was approved by the Larger Bench judgment in the case of ***Aneeta Hada v. Godfather Travels & Tours (P) Ltd.***, reported in ***(2012) 5 SCC 661***. The finding of guilt could not be made against the dead person. The conviction cannot be granted against a non-existent person. He also argued that as per ***Aneeta Hada*** case, unless the company is heard and evidence against company is adduced, the conviction cannot be maintained against the other persons also. He mainly relied this proposition that whenever, there is an accusation against any person, he must be heard to disprove the accusation. Unless, the charge is framed against him, no finding can be given against dead person/A2. He stated that the conviction against the dead person is nullity and hence, on the basis of the said finding, conviction by the leaned trial Judge under Section 120(B) of IPC against appellant is not legally maintainable.

5.2.Apart from that, the learned Senior counsel submitted that according to the prosecution, the signature of the P.W.10, P.W.13, P.W.14, P.W.15 and P.W.17 was forged. To prove the forgery, the specimen signature of the second accused was not taken in accordance with the law and same was not sent to the hand writing expert's opinion. As per Section 73 or 45 Indian Evidence Act, the comparison can be made only with the admitted signature. Here, there is no clear version relating to the admitted signature. In the said circumstances, the finding and conviction given by the learned trial Judge, on the basis of the handwriting expert's opinion without any corroborative evidence, under Section 468 of IPC, is not legally sustainable. Hence, he seeks for the acquittal.

5.3. According to the learned senior counsel, six loans were granted. The said six loans are spread over various dates. In the six loans, all the parties were not the same persons. Hence, separate charge and the separate trial ought to have been conducted for each offences. Therefore, joint trial is bad in law, on the ground of mis-joinder of charges. For which, he relied the Judgment of the Hon'ble Supreme Court in the case of ***State of Jharkhand v. Lalu Prasad yadav***, reported in ***(2017) 8 SCC 1*** and also he relied the judgment of ***2011 (2) Mad Weekly Notes (Crl.) 47***. Apart from that, he also relied Full Bench Judgment of this Court reported in ***AIR 1949 Mad 9***. On the basis of the above precedents, the learned Senior Counsel submitted that separate occurrences spread over various periods are to be tried separately against separate persons. In the back drop of the said illegalities, retrial is also not possible in this case, on the account of the death of the remaining accused. Hence, on the basis of following principle of law laid down by the Hon'ble Supreme Court reported in ***2016 (7) SCC 797,*** there is no scope for retrial in this case on the ground that many of the accused are dead and there is no possibility of conducting trial against only the remaining accused. Moreover, for the offense under Section 120(b) of IPC, two persons must be tried for the cases, but, in this case, there was no such element. Hence, he seeks for acquittal.

5.4. The learned Senior Counsel further submitted that in the impugned judgment, the learned trial judge gave a finding in four or five paragraphs. In all the five paragraphs, he has not even discussed the evidence in an elaborate manner to convict the accused. He simply recorded the provisions and rendered finding of conviction only on surmise. In the said circumstances, the finding of the learned trial Judge is without reasoning and not on the basis of proper appreciation of the evidence. Hence, he seeks for acquittal. The learned trial judge did not make any discussion about the ingredients under Sections 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act. In the said circumstances, the learned trial Judge did not consider the evidence and the other legal aspect argued by the learned counsel for accused and hence, he seeks for acquittal. Apart from that, the learned Senior Counsel submitted that the incriminating material, assumed by the learned trial Judge was not put to the accused while questioning under Section 313 Cr.P.C., and hence, the trial is vitiated.

5.5.The learned Senior counsel further submitted that the finding of the learned trial Judge under section 109 of IPC is not maintainable. In this case, there is no positive Act on the part of this accused. According to the learned Senior Counsel, intentional aiding, a positive Act is absent conspicuously in this case, for which, he relied the judgment of the Hon'ble Supreme Court reported in ***2020 (7) SCC 722*** Paragraph Nos.56, 57, 58, 60, 61. According to the investigating agency intentional Act was done by A2, ie., the forgery of F-93. In the said circumstances, after his demise, the charge against the abetment of the offence is legally not maintainable. Hence, he seeks for acquittal.

5.6. Apart from that, the learned Senior Counsel further submitted that the ingredient under Section 467 IPC is not made out, for which, he relied the judgment of the Supreme Court reported in ***2018 (7) SCC 581***, namely, ***Sheila Sebastian versus R. Javagaraj***. On the basis of the judgment, he stated that, unless there is clear evidence to show that A1 forged signature of the authorised representative of Sree Gokulam Chit funds, conviction for the above said charged offence is not maintainable. The case of the prosecution is that, the loan amount was fraudulently obtained by forging the signature of the Sree Gokulam Chit fund authorised representative. In that event, unless, a complaint emanates from that person, the complaint by the bank officer about the forgery is not maintainable. In the said circumstances, he seeks for acquittal.

5.7. The learned Senior counsel further submitted that the learned trial Judge gave a finding that A1 violated the Rules of the bank and the charges are also in similar line. In the said circumstances, neither the investigating agency collected any rules nor the prosecution proved any rules. Without any rules, the finding of the learned trial Judge that A1 violated the rule is misconceived one and hence, he seeks for acquittal. The learned Senior Counsel further submitted that the petitioner was working in the department without any other charges or any other proceedings before this case.

Even in this case, allegation is made without any materials. According to the learned Senior Counsel the fixed deposit of all the above witnesses existed in the bank. There is no dispute over it. The loan amount granted was around 60% of the above said fixed deposit amount. Hence, there was no scope for defrauding the bank. In the said circumstances, if there was any default of payment, the authority has jurisdiction to invoke the recovery proceedings against the borrower. In the said circumstances, on assumptions and presumptions, the conviction was rendered by the Court below against the appellant. In the said circumstances, he seeks for acquittal.

5.8.The specific case of the prosecution is that A2 forged the signature and seal of the company, namely, Gokulam Chit Funds Finance Company, Kodambakkam. The investigating officer admitted in his evidence, that he has not secured the seal and sent for analysis and he has also not collected any banking procedure and rules. In all aspects, the prosecution miserably failed to prove the case. But the learned trial Judge has given a cryptic judgment devoting only four paragraphs without discussing any evidence and also law. In the said circumstances he seeks for acquittal.

6. Submission of the learned special public prosecutor for CBI :-

6.1. The submission of the learned senior counsel on the basis of the judgment of the Hon'ble Supreme Court reported in ***2016 (7) SCC 797,*** is misconceived and the same is not applicable to the present case. The issue of continuation of the trial against the dead person is specifically addressed by the Hon'ble Supreme Court in the case of ***state of Karnataka Vs Selvi J.Jeyalalitha and others*** and another three judge Bench of Hon'ble Supreme Court in the case of ***State of Tamil Nadu Vs Nirmala*** in ***Manu/SC/1448/2017***. The Hon'ble Supreme Court clearly laid down the law that the death of the main accused does not result in abatement of trial. Therefore, the learned special public prosecutor for CBI seeks to reject the argument of the learned senior counsel for the appellant.

6.2. He would further submit that F-93 had been forged by the deceased A3 and on the basis of the said forged F-93, A1 namely the appellant branch manager of the bank facilitated granting loan and therefore the prosecution clearly proved the conspiracy. It is duty of A2 to not only verify the genuineness of F-93, but he also has a duty to confirm with the concerned person relating to the F-93 and get approval from him to grant loan on the basis of the F-93. The omission of said procedure clearly proves the conspiracy between A3 and A1. The prosecution clearly proved the above said forgery and the grant of loan on the basis of the forged document through various documents namely Ex.P12 to Ex.P17, Ex.P.20 to Ex.P.24, Ex.P28, Ex.P30, Ex.P32 and also the corresponding evidence PW17, PW18, PW19, PW22, PW8 and PW9. Therefore the learned trial judge correctly convicted the appellant.

6.3. The argument of the learned senior counsel that CBI committed error in filing the consolidated final report without filing a separate final report for each transaction caused prejudice and miscarriage of justice is misconceived one. If a separate final report is filed and separate trial is conducted, the appellant would get the punishment in each trial. Apart from that there is a common conspiracy on the part of the A1, A2 and A3 to defraud the bank amount on the basis of the forgery of F-93. All the beneficiaries are A1 to A3. Therefore the learned trial judge correctly accepted the consolidated final report filed by CBI and trial was conducted. The learned special public prosecutor would further submit that defrauding of the bank amount and the forgery of F-93 with active connivance of the appellant, was proved and therefore the sentence of imprisonment is not liable to be reduced.

7.Discussion on the plea of abatement of charge:

The appellant was the Branch manager of the Indian Bank, Kadayanallur Branch, Tirunelveli and he and the other accused are said to have defrauded bank amount of Rs.3,96,00,000/-. He was arrayed as A1 in the C.C.No. 7 of 2010 on the file of the II Additional

District Court For CBI, Madurai along with the following accused:

1. S. Ayyamani.
2. Dr. K. Venkateswaran (Died)
   (Died on 18.11.2013; Charge against him was abated as per order of this court dated:23.01.2014)
3. Smt. Maya Ram.
4. Smt. Uma Maheswari.
5. Rathinasamy Ashokan.
6. P. Nandan.
7. M.J. Venkataraman.
   (Died on 14.12.2017; Charge against him was abated as per order of this court dated: 02.03.2018)

7.1. A2 doctor Venkateswaran was running a nursing home in the name of "ALA Memorial Nursing Home, Tenkasi". A3 was running one "Maya consultancy" and she contacted A4 to arrange the loan. A1, A2, A3 and A4 conspired to withdraw the amount of the Sree Gokulam Chits and Finance Company Pvt Ltd., illegally and fraudulently created F-93 with forged entry of the competent officer of the Sree Gokulam Chits and Finance Company Pvt Ltd., authorized to give loan on the basis of the fixed deposit made in the said bank. In the said process remaining accused acted as middle men. According to the prosecution A2 deceased doctor forged the signature of the competent persons of the Sree Gokulam Chits and

Finance Company Pvt Ltd., and applied for loan and A1 granted loan on the basis of the documents submitted by him without getting the concurrence from the competent officer of the Sree Gokulam Chits and Finance Company Pvt Ltd. The prosecution collected the document to prove the forgery of the said F-93 with manipulation of the signature of the officer of Sree Gokulam Chits and Finance Company Pvt Ltd., and also proper final report was filed with adequate materials to prove the forgery of the said document. The said document was acted upon by the appellant and loan amount was credited in the account of A2 and the same was withdrawn and misappropriated. Therefore, the learned trial judge framed the charges and posted for the trial. At this stage A2 died on 18.11.2013 and the learned trial judge passed the order on 23.01.2014 that the charge framed against the said persons stands abated. Thereafter, the trial was continued and the learned trial judge has considered the entire evidence and convicted the appellant. The learned trial judge has rendered a finding that the prosecution proved that A2 forged the signature of the competent officer of the

Sree Gokulam Chits and Finance Company Pvt Ltd., in F-93. On the basis of the said forged F-93, appellant had sanctioned the loan and allowed A2 to withdraw the amount. Therefore, the learned trial judge convicted the appellant as stated above.

7.2.Now the learned senior counsel primarily submitted that the convicting the appellant on the basis of the finding that the prosecution proved the case of forgery of the signature of the competent officer of Sree Gokulam Chits and Finance Company Pvt Ltd., in the F-93 and hence charge against the appellant is proved, is not legally valid. The learned senior counsel strenuously contended that finding against dead person, namely, A2 is not legally sustainable one. According to the senior counsel as per the ***2016 (7) SCC 797***, the finding against A2 is illegal and hence the decision of the learned trial judge against that person is not legally valid. Therefore, the conviction imposed against the appellant on the basis of the said forged F-93 cannot be sustained.

7.3. In the considerable opinion of this court the said contention is a misconceived one. In the said judgment of the Hon'ble Supreme Court in the ***2016 (7) SCC 797,*** the learned District judge had proceeded with the attachment of the proceedings under section 3 of the criminal law amendment Ordinance, 1944 against the accused who was actually dead. The said attachment proceedings was based on the conviction passed against the said accused person after his death. Therefore, the Hon'ble Supreme Court has observed that continuance of the attachment proceedings against the accused who was already dead after framing of charges is illegal. In this case, the factual situation is different. The charges were framed against the said A2. The learned judge proceeded trial against the appellant alone and no conviction was passed against A2. The learned trial judge only made an observation that the said person also committed forgery of the F-93. The learned senior counsel in the said circumstances made further submission based on the judgment of Hon'ble Supreme Court ***2008 (13) SCC 703*** and ***2012 (5) SCC 661*** that the said finding is illegal without hearing the said deceased accused, is misconceived. This court is not inclined to accept the said argument. In the said judgment, which arose out of section 138 of Negotiable Instrument Act, there was submission relating to non arraying of the company, while prosecuting the director, which is fatal. One of the observations of the Hon'ble Supreme Court in the said decision is that without hearing the company, the liability cannot be fixed on the director. Since, Directors discharged the duty on behalf of the company.

7.4. Claiming of lack of opportunity of hearing to dead person, to disprove the case of the prosecution against the appellant is unknown to criminal trial. When the accused dies during the pendency of the trial, under the Code of Criminal Procedure, there is no legal impediment to try the case against the remaining accused. There is no abatement of trial. Abatement of accusation is against the Code of Criminal Procedure. If the accused dies with accusation of charges, before trial he dies with stigma of accusation. If he dies after proof of allegation and conviction, he dies with stigma of conviction. If he dies after acquittal of charges, he dies with erasement of accusation and affirmation of the presumption of the innocence. Accusation never dies. Therefore, legislature consciously omitted to bring any provision, as in the case of C.P.C.

7.5.Apart from that, subsequent legal development after the delivery of the judgment of the Hon'ble Supreme Court in ***2016 (7) SCC 797***, is otherwise. The Hon'ble Supreme Court in the case of ***state of Karnataka Vs Selvi J.Jayalalitha and others*** reported in ***2016 (7) SCC 797*** has held different view. In the said case the specific contention was that after the death of the main accused, the conviction cannot be passed against the remaining accused. The Hon'ble Supreme Court has not accepted the said principle. In the said case , Selvi J.Jayalalitha was the chief minister of the Tamil Nadu. She and the other accused conspired together to accumulate income disproportionate to the income of the Selvi J.Jayalalitha chief minister. The case of the prosecution was that ill gotten money of Selvi J.Jayalalitha chief minister was accumulated in the name of the remaining accused who were not the public servants. After the death of the said Selvi J.Jayalalitha chief minister, the argument was advanced by many eminent senior advocates to set aside the conviction against the remaining accused. The said contention was not accepted by the Hon'ble Supreme Court. Further the latest three judges bench of Supreme Court in the case of ***state of Tamil Nadu Vs Nirmala*** in ***Manu/SC/1448/2017*** has not accepted the similar contention of the accused and declined to approve the decision of this court that the charge against the remaining accused automatically abated on the death of the main accused during the course of the trial. The Hon'ble Three judges bench approved the decision of the judgment of ***state of Karnataka Vs Selvi J.Jayalalitha and others*** reported in ***2016 (7) SCC 797***. Therefore, this Court finds no substance in the contention of the learned Senior counsel that the learned trial Judge committed error in rendering finding of forgery of the signature of the authorised representative of the Sree Gokulam Chit funds by A2. In view of the development of law, this Court is unable to accept the argument of the learned senior counsel that the trial court's finding that A2 (deceased) committed forgery of the document, is illegal. Once charges are framed against number of persons, they become accused/offenders and during the continuance of the trial, even if any accused died, the court has power to proceed with the trial and in the course of the trial, there was no bar to record a finding on the role of the deceased person in the conspired criminal activities. Therefore, as per the law laid down by the Hon'ble Three Judges Bench that the death of the main accused does not result in abatement of trial, this court is unable to accept the main submission made by the learned senior counsel that the finding of the learned trial judge against A2 is illegal.

8. Discussion on merits:

In this case deceased A3 presented the F-93. On the basis of the F-93 the appellant without following the procedure, granted loan. It is the specific case of the prosecution that Sree Gokulam Chits and Finance Company Pvt Ltd., made a fixed deposit in A1's branch. As per the bank procedure, on the basis of the fixed deposits loan could be granted and the said fixed deposit amount could be treated as security. But before granting such loan, the bank manager, namely, A1 has a duty to verify the genuineness of the said F-93. Not only the duty to verify the F-93, it is also duty to ask the competent person before granting loan. In this case the bank manager has not followed any of the procedure. He flouted the entire procedure and granted loan on the basis of the F-93 submitted by the A2. Therefore, there was a clear conspiracy between A1, A2 and A3. In Ex.P27 there was a clear instruction regarding the same. PW17 clearly deposed that the Sree Gokulam Chits and Finance Company Pvt Ltd., has not given any instruction to A1 for sanctioning loan against the deposits. He denied the signature in the various documents namely Ex.P12 to Ex.P17 and Ex.P20 to P24, Ex.P.28, Ex.P30 and Ex.P.32. On the basis of the said forged signature the loan was granted. The said evidence of PW17 corroborated with the evidence of the remaining officials PW18 and PW19 and the evidence of PW17, PW18 and PW19 are cogent and they clearly deposed about the forgery and fraudulent withdrawal of the loan amount given on the basis of the F-93. PW22 clearly deposed about the grant of loan on the strength of the forged document. PW8 and PW9 deposed that A2 made the forged rubber stamp in the name of the Sree Gokulam Chits and Finance Company Pvt Ltd. PW9 is the Assistant of the said A2 and he was asked by A2 to get the rubber stamp from PW8 in the name of the Sree Gokulam Chits and Finance Company Pvt Ltd. The prosecution proved the forgery of the signature through the hand writing expert.

8.1. The Learned senior counsel submitted that no evidence is available on record that the handwriting of the admitted signature was taken as per the rules and hence the said opinion is liable to be rejected. This court finds no merit in the contention. Merely, because the said procedure was not followed, can not be a ground to acquit the accused, when PW17, PW18 and PW19 had denied the signature.

8.2. The learned senior counsel's further contention that the appellant had no knowledge about the forgery of the F-93 cannot be accepted on the ground that it is duty of the appellant to get the consent in the F-93 after confirming from the original party. It is specifically referred in the Ex.P17 that the appellant had a duty to verify the same by contacting the original party ie., from the competent person from Sree Gokulam Chit funds before acting on the basis of F-93.

8.3. As regards the learned counsel's submission that the charges were framed contrary to the provision of the section 216 of the Cr.P.C, it is well settled principle that the conviction cannot be set aside merely on the basis of the error in charge unless appellant establishes miscarriage of justice. In this case, the learned trial judge framed the charges for the grant of loan of Rs.3,96,00,000/- and number of forged Forms. If the senior counsel's argument is accepted, then conviction and sentence of imprisonment would be more than the sentence of imprisonment imposed in this case. If separate trial had been conducted for each transaction, the accused should have suffered more sentence of imprisonment. Therefore, no prejudice was caused to the appellant. Apart from that they never raised this issue before the learned trial judge and hence as per section 19 of the Prevention of Corruption Act, 1988 and 464 of Cr.P.C. this court finds no miscarriage of justice due to the clubbing of all the transactions in the single trial. In the considerable opinion of this court conducting single trial was more beneficial to the appellant for the reason that single imprisonment alone had been given.

8.4. The learned senior counsel submitted that the maximum punishment has been imposed and hence, he seeks reduction. The appellant was terminated from the service and is aged about 70 years, he and his wife are suffering from various ailments. The appellant also complied the condition imposed in Crl.M.P.(MD).No. 1273 of 2019 and deposited a sum of Rs.5,00,000/-. The learned Special Public Prosecutor appearing for CBI would submit that 3.96

crores of the Bank amount was defrauded by all the accused. No amount was recovered. Therefore, lenient view cannot be taken in this case. It is true that there is wrongful loss of 3.96 crores and no amount was recovered. But, considering the mitigating circumstances, that the appellant is aged about 74 years and suffering from various ailments and he was terminated from service and he also deposited a sum of Rs.5,00,000/- as a condition imposed by this Court while granting suspension of sentence, this Court inclines to reduce the sentence of imprisonment on condition to deposit a further sum of Rs.20,00,000/- (Twenty Lakhs Only) in addition to the amount already deposited, namely, Rs.5,00,000/- (Five Lakhs Only) within a period of one month from the date of receipt of a copy of this order as compensation payable to the Branch Manager, Indian Bank, Kadayanallur Branch, Tirunelveli District on the following terms:

S. No	*Offences under Section*	*Punishment of the Trial Court (Imprisonment and fine)*	*Modified punishment of this Court*
1	120-B r/w 409 of IPC	Undergo Rigorous Imprisonment of 10 years and to pay a fine of Rs. 25,000/- in default to undergo Simple Imprisonment for One year	Undergo Rigorous Imprisonment of 1 year and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for One year
2	120-B r/w 420 of IPC	Undergo Rigorous Imprisonment of 7 years and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for One year	Undergo Rigorous Imprisonment of 1 year and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for One year
3	120-B r/w 420 r/w 109 of IPC	Undergo Rigorous Imprisonment of 7 years and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for One year	Undergo Rigorous Imprisonment of 1 year and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for One year
4	120-B r/w 467 of IPC	Undergo Rigorous Imprisonment of 10 years and to pay a fine of Rs. 25,000/- in default to undergo Simple Imprisonment for One year	Undergo Rigorous Imprisonment of 1 year and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for One year
5	120-B r/w 468 of IPC	Undergo Rigorous Imprisonment of 7 years and to pay a fine of Rs.20,000/- in default to undergo Simple Imprisonment for One year	Undergo Rigorous Imprisonment of 1 year and to pay a fine of Rs.20,000/- in default to undergo Simple Imprisonment for One year
6	120-B r/w 471 of IPC	Undergo Rigorous Imprisonment of 10 years and to pay a fine of Rs. 25,000/- in default to undergo Simple Imprisonment for One year	Undergo Rigorous Imprisonment of 1 year and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for One year

S. No	*Offences under Section*	*Punishment of the Trial Court (Imprisonment and fine)*	*Modified punishment of this Court*
7	120-B IPC r/w 13(2) r/w 13(1) (c) of Prevention of Corruption Act, 1988	Undergo Rigorous Imprisonment of 7 years and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for One year	Undergo Rigorous Imprisonment of 1 year and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for One year
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9	409 of IPC	Undergo Rigorous Imprisonment of 10 years and to pay a fine of Rs. 25,000/- in default to undergo Simple Imprisonment for One year	Undergo Rigorous Imprisonment of 3 years and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for One year
10	420 of IPC	Undergo Rigorous Imprisonment of 7 years and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for One year	Undergo Rigorous Imprisonment of 3 years and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for One year
11	467 of IPC	Undergo Rigorous Imprisonment of 10 years and to pay a fine of Rs. 25,000/- in default to undergo Simple Imprisonment for One year	**Undergo Rigorous Imprisonment of 1 year and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for One year**
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S. No	Offences under Section	Punishment of the Trial Court (Imprisonment and fine)	Modified punishment of this Court
13	471 of IPC	Undergo Rigorous Imprisonment of 10 years and to pay a fine of Rs. 25,000/- in default to undergo Simple Imprisonment for One year	Undergo Rigorous Imprisonment of 1 year and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for One year
14	13(2) r/w 13(1)(c) of Prevention of Corruption Act, 1988	Undergo Rigorous Imprisonment of 7 years and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for One year	Undergo Rigorous Imprisonment of 1 year and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for One year
15	13(2) r/w 13(1)(d) Prevention of Corruption Act, 1988	Undergo Rigorous Imprisonment of 7 years and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for One year	Undergo Rigorous Imprisonment of 1 year and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for One year
	Total Fine	**Rs.3,65,000/-**	**Rs.3,65,000/-**
All the Sentence of imprisonment shall run concurrently. The period already undergone by the appellant shall be set off against the terms of imprisonment awarded to him under Section 428 of Cr.P.C.			

9. Accordingly the Criminal Appeal is party allowed on the following terms:

9.1.The conviction passed against the appellant in C.C.No.7 of 2010, on the file of the learned II Additional District Judge for CBI Cases Madurai, dated 05.02.2019, is hereby confirmed.

9.2.The sentence of imprisonment imposed against the appellant in C.C.No.7 of 2010 on the file of the learned II Additional District Judge for CBI Cases Madurai, dated 05.02.2019, is hereby reduced *as stated below* on condition to deposit a further sum of Rs. 20,00,000/- (Twenty Lakhs Only) in addition to the amount already deposited, namely, Rs.5,00,000/-(Five Lakhs Only) within a period of one month from the date of receipt of a copy of this order as compensation payable to the Branch Manager, Indian Bank, Kadayanallur Branch, Tirunelveli District, otherwise, the sentence of imprisonment imposed by the trial Court shall automatically be restored.

S. No	*Offences under Section*	*Punishment of the Trial Court (Imprisonment and fine)*	*Modified punishment of this Court*
1	120-B r/w 409 of IPC	Undergo Rigorous Imprisonment of 10 years and to pay a fine of Rs. 25,000/- in default to undergo Simple Imprisonment for One year	Undergo Rigorous Imprisonment of 1 year and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for One year
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4	120-B r/w 467 of IPC	Undergo Rigorous Imprisonment of 10 years and to pay a fine of Rs. 25,000/- in default to undergo Simple Imprisonment for One year	Undergo Rigorous Imprisonment of 1 year and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for One year
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7	120-B IPC r/w 13(2) r/w 13(1) (c) of Prevention of Corruption Act, 1988	Undergo Rigorous Imprisonment of 7 years and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for One year	Undergo Rigorous Imprisonment of 1 year and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for One year
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	Total Fine	**Rs.3,65,000/-**	**Rs.3,65,000/-**

9.3.Direction to pay the fine amount in the trial Court judgment is hereby confirmed.

9.4. All the Sentence of imprisonment shall run concurrently. The period already undergone by the appellant shall be set off against the terms of imprisonment awarded to him under Section 428 of Cr.P.C.

9.5. The bail bond executed by the appellant is hereby cancelled and the learned trial judge is directed to secure the accused to undergo the remaining part of sentence of imprisonment.

04.03.2025

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

To

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

2. The Inspector of Police,
   CBI:EOW:Chennai.

3. The Additional Public Prosecutor,
   Madurai Bench of Madras High Court,
   Madurai.

4. The Section Officer,
   Criminal Section(Records),
   Madurai Bench of Madras High Court, Madurai.

K.K.RAMAKRISHNAN, J.

sbn

Predelivery Judgment made in
Crl.A(MD)No.47 of 2019

04.03.2025