BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	15.07.2024
Pronounced on	:	04.03.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).No.69 of 2018

T.Peter Dhas ... Appellant

Vs.

The State Represented by
The Inspector of Police,
SPE:CBI:ACB:Chennai,
RC 40(A) /2009 ... Respondent

PRAYER: This Criminal Appeal is filed under Section 374 of Cr.P.C. to call for the entire records pertaining to the judgment and conviction delivered by the II Additional District Court for CBI Cases, Madurai in C.C.No.3 of 2011 vide his judgment dated 31.01.2018 and set aside the same and consequently acquit the appellant honourably from all the charges framed against him in the said case.

For Appellant : Mr.V.Kathirvelu, Senior Counsel for Mr.R.J.Karthick

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

JUDGMENT

The appellant is the 2nd accused in C.C.No. 3 of 2011 on the file of the II Additional District Court for CBI Cases, Madurai and he has filed this appeal challenging the following conviction and sentence imposed against him by virtue of the impugned judgment dated 31.01.2018.

Crl.A. (MD).No.	***Rank of the Accused and Name***	***Charges proved under sections***	***Punishment (imprisonment and fine)***
69/2018	A-2 T.Peter Dhas C.C.No. 3/2011	u/s. 120 – B r/w. 420 of I.P.C.	Rigorous imprisonment for 7 years and to pay a fine of Rs.50,000/- in default to undergo simple imprisonment for six months
		u/s. 120 – B r/w. 409 of I.P.C.	Rigorous imprisonment for 10 years and to pay a fine of Rs.50,000/- in default to undergo simple imprisonment for six months
		u/s. 420 of I.P.C.	Rigorous imprisonment for 7 years and to pay a fine of Rs.50,000/- in default to undergo simple imprisonment for six months
		u/s. 409 of I.P.C.	Rigorous imprisonment for 10 years and to pay a fine of Rs.50,000/- in default to undergo simple imprisonment for six months
		The sentence of imprisonment shall run concurrently	

2.Brief facts of the case:

2.1. The appellant herein and other three accused conspired together to cheat Pandyan Grama Bank and defrauded the bank fund of Rs. 6,19,93,533/-, therefore the CBI registered the case in RC 40(A)/2009 under section 120 (b), 468, r/w. 471, 420, 409, 477 (A), 201 of I.P.C r/w. 13 (2) r/w. 13 (1) (d) Prevention of Corruption Act 1988. After the completion of the investigation, the CBI filed the final report against the four accused under the above said sections before the Special Court for CBI, II Additional District Court, Madurai. A1 was the branch manager of the Pandyan Grama Bank of both Sri Venkteswarapuram Branch and Marthandam Branch. A2/ appellant was the president of the N.G.O., A3 and A4 were working in the said bank as officers. The Special Court took the said final report on file in C.C.No. 3 of 2011. After taking on file, summons were issued to the accused and copies under section 207 of Cr.P.C. were served upon them and charges were framed and questioned. They pleaded not guilty and they stood for trial.

2.2. The Crux of the allegation in the final report is that the accused defrauded the amount allotted to various self help groups without following the various norms and failed to remit the loan amount collected from the various self help groups in their respective accounts and swindled the amount in the guise of taking insurance policy on the said loan and thereby loss of Rs.6,19,93,533/- had been caused. During the pendency of trial A1 died. The prosecution in order to prove the case examined PW1 to PW16 and marked Ex.P1 to P693. The court below questioned the accused under section 313 of Cr.P.C. by putting the incriminating material available against them. The accused denied them as false and they stated that false case was foisted against them. On the side of the defence no oral evidence led in rather only one document was marked as Ex.D1. The learned trial judge considering the evidence on record and the arguments advanced on both sides convicted the appellant under the above said offence by the impugned judgment dated 31.01.2018. The learned trial judge acquitted the appellant under section 120 (b), r/w. 468, 468 r/w. 471 and 477 (A) and 13 (2) r/w. 13 (2) of the prevention of the corruption Act and 468, 468 r/w. 471, 477 (A), 201 of I.P.C. The learned trial judge also acquitted A3 and A4 from the entire charges. Aggrieved over the same, the appellant filed this appeal challenging the conviction and sentence imposed against him.

3. Thiru. V.Kathirvelu the learned senior counsel appearing for the appellant made the following submission :-

3.1. The appellant was the president of NGO and he only facilitated the deserving women belonging to fisherman community to get the benefit under the special scheme and most of the self help groups had repaid the amount. Some of the groups have not repaid the amount and for the said purpose the bank has got independent procedure to recover the said amount against the appellant on the basis of the undertaking given by them. Without initiating the recovery proceedings for the due amount, registration of the FIR and continuation of the trial and conviction passed vide the impugned judgment amounts to abuse of process of law. More particularly, the learned trial judge has acquitted the appellant of the charge under Sections 120 (b), r/w. 468, 468 r/w. 471 and 477 (A) and 13 (2) r/w. 13 (1)(d) of the Prevention of Corruption Act, and 468, 468 r/w. 471, 477 (A), 201 of I.P.C. finding that there was no manipulation of the record, falsification of the documents. Therefore, the conviction under Section 120 (b) r/w. 420 of I.P.C, 120 (b) r/w. 409 of I.P.C., 420 of I.P.C., 409 of I.P.C is not legally maintainable.

3.2. The learned trial judge has committed error in convicting the appellant under Section 120 (b) r/w. 420 of I.P.C, 120 (b) r/w. 409 of I.P.C., after the death of the A1 during the pendency of the trial.

3.3. The learned trial judge failed to consider that every beneficiary has accepted the receipt of the loan amount and hence the question of the cheating would not arise, for which he relied on the judgment of this court reported in ***AIR 1940 Madras 329*** and Crl.A.No. 463 of 2022 ***Vijay Kumar Ghai and others Vs The State of West Bengal and others***. According to the learned senior counsel, there was no evidence available an record to convict the appellant under section 420 of I.P.C. i.e., according to the senior counsel no material is available to presume intention of deception to cheat or defraud the complainant bank right from the inception. Therefore, he seeks acquittal.

3.4. There was no complaint either by the self help group or public. Hence, the complaint by the bank officials, without resorting to recovery proceedings on the basis of the undertaking given by him and the responsible group member of the corresponding default self help group, is not legally maintainable.

3.5. The learned senior counsel reading through the voluminous records (around 38 volumes of typed set of papers) made a submission that no incriminating material is available to constitute the criminal offence.

None of the witness have deposed about the conversion of the loan amount for the benefit of the appellant and that he wrongfully retained the amount of the self help group, and therefore conviction either under section 409 of I.P.C or 420 of I.P.C. is not made out.

3.6. A1 Bank Manager had violated the procedure and sanctioned the loan to the self help group through the account of A2 and A2 retransferred the said amount to the individual group. There is some violation of procedure on the part of A1. The said violation of procedure does not create offence either under section 420 or 409 of I.P.C. Therefore, the conviction under section 120 (b) r/w. 420 of I.P.C., 120 (b) r/w. 409 of I.P.C. is not legally correct.

3.7. The learned trial judge failed to consider that the evidence of PW1 would not show any abnormalities or irregularities at the time of the grant of loan to 805 self help groups and the learned Judge erroneously convicted the appellant.

3.8. According to the prosecution PW3 has conducted inspection and submitted the report. The said report does not contain the pre-inspection report. Further, number of transfer vouchers clearly proved that loan amounts credited in his account were transferred to the individual self help groups account and there is no dispute in this aspect. Therefore, no offence either under section 420 or 409 of I.P.C., is made out.

3.9. The prosecution examined some of the beneficiaries namely PW13, PW14 and PW15. Their specific evidence is that they received the amount and repaid the same in the office of A2 and to prove such claim they have not produced any document. Therefore their case of repayment in the office of A2 has not been supported by any document and hence he seeks for the acquittal.

3.10. The learned senior Counsel further reiterated his submission that the appellant was the facilitator of the NGO and he intended to serve the needy people by giving undertaking letter to the bank for the amount received by the individual self help groups. Except the said fact no evidence is available to prove that the appellant either misappropriated the amount or diverted the fund. Therefore the learned trial judge is not correct in convicting the appellant. Hence he seeks to acquit the appellant.

4. Thiru.Muthusaravanan, the learned Special Public Prosecutor for CBI made the following submissions:-

4.1. As per the scheme, A1 Bank manager is duty bound to disburse the loan to each individual self help group under the direct linkage scheme, after verifying the functioning of self help groups, upon verification of the resolution copy for the formation of the self help groups by interviewing each group. In the said process the bankers can find out whether the NGO is genuine or not. A1 is also duty bound to ensure regular repayment by the members of loan account. In this case, there was no such follow up action. Hence prosecution clearly proved the conspiracy between A1 and A2.

4.2. From the documents collected by the CBI i.e., more than 693 documents, there is no material to show that A1 and A2 assessed the saving mobilization capacity of each individual groups before granting loan. As per the terms, the quantum of loan advanced to the SHGs by the branch of the bank should be proportionate to the savings mobilised by the group. Without following this practice, huge amount was credited in the account of A2. Before allowing A2 to act as facilitator, article of agreements should be verified and obtained. In this case, A2 had not complied the said requirement and therefore the conspiracy is clearly proved.

4.3. A1 had not followed both pre-sanction and post sanction procedure and credited the loan amount to the tune of more than Rs.6 Crores in the account of A2 which is a strong circumstance to presume their intention to cheat and defraud the bank amount.

4.4. As per the scheme, once loan was sanctioned in the name of the individual self help group and if they committed default, further loan can not be sanctioned for the said group. But in this case A1 granted loan to more than 40 self help groups in Sri Venkteswarapuram Branch and without repayment of said amount, further loan was granted to the said 40 groups through the branch at Marthandam after the transfer of A1 to the Marthandam Branch from the Sri Venkteswarapuram Branch. The said amount was also credited in A2's account and the same was utilized towards the repayment of the loan of the self help groups accounts in the Sri Venkteswarapuram Branch. Therefore, there was a illegal conversion of the amount and hence offence under section 420, 409 are clearly made out.

4.5. The learned special public prosecutor also submitted that A2 has admitted the receipt of the loan amount in his account and all the transaction made in the account. Therefore, it is not necessary for the prosecution to examine all members of the self help groups. Prosecution examined four witnesses and all the four witnesses in a universal voice chorus deposed that they had repaid the entire amount in the office of A2 and the same was correctly believed and relied by the learned trial judge. He had also read the copious records and evidence and showed the incriminating materials available against A2 to sustain the conviction and sentence of imprisonment imposed against him. Therefore he seeks to confirm the conviction and sentence imposed against A2.

4.6. This court considered the rival submission and perused the records and the precedents relied upon by them.

5. **Discussion**:

Only question that arises in the appeal is w*hether the conviction and sentence imposed against the appellant as stated above is in accordance with law or not?*

6. The government to enhance the economic condition of people announced the scheme. As per the scheme, a group of poor people not exceeding 20 members would join together and form a self help group

(herein after referred as "SHG") and mobilize own savings and rotate the amount to meet the credit needs of the members. They open the savings bank account in the name of the "SHG" and deposit the mobilized savings and grant loan to the members from the own savings and collect the due amount. In that process, they are free to use the service of the NGO who would offer helps in conducting meetings and maintenance of accounts. Each group opens the bank account jointly operated by president, secretary and treasurer or by the secretary and treasurer as decided by the group members. Each group shall maintain cash register, pass book for deposits/ loans, cash receipts and vouchers. For that purpose, a resolution copy for the permission of the group, authorization letter from the group members to operate the bank account by the above said persons have been made by the "SHG". With the said resolution copy they shall open the account in the unique name of "SHG". The bank as a promoter and financier shall create linkage with each "SHG". The banker could attend the meeting and interact with members and also the NGO. The NGO helps in group formation and conducting the meeting of the "SHG" in order to make easy access of "SHG" with the bank. The banker should have good relationship with a genuine NGO. The government in order to enhance the economic condition of the poor people, had introduced a scheme to disburse loan to each member of the "SHG" through allotment of the fund under "NABARD". The "NABARD" shall choose the bank and deposit the amount for disbursing the loan to the eligible "SHG". The bank considering the savings of the "SHG" and progress report of the "SHG" shall disburse the loan by acting as a promoter and financier. It is open to the bank to finance the "SHG" either through direct linkage or indirect linkage. In the case of the direct linkage the bankers could directly grant loan to the "SHG". In the case of the indirect linkage, the bank could finance through the sponsoring NGO by following the procedure stated in annexure 5 and 6.

7. As per the above "NABARD" scheme, the Pandyan Grama Bank, Virudhunagar Circle was authorized to disburse the loan to the eligible "SHG" through their branch situated in various places of Tamil Nadu. The circle head office at Virudhunagar also issued circular dated 23.01.2002 to all the branches to comply the requirement stated in the scheme to provide the loan to "SHG" through the NGO. In the said circular also, head office reiterated the requirement of the compliance of the procedure stated in the above said annexure and reiterated number of mandatory requirements in the case of the indirect linkage. They also prescribed specific form and fulfilment of the required mandatory conditions.

8. A1 was the manager of the Srivenkatesapuram Branch Pandya Grama Bank during the period of 2004 to 2008. A3 and A4 were the Subordinate officers of the said branch. A2/ appellant herein is the managing director of the NGO Kanyakumari District Women's collective. They conspired together to cheat the Pandyan Grama bank, Srivenkatespuram Branch and defraud the said scheme amount by obtaining loan in the name of various "SHG" and failed to disburse the entire loan amount to each individual of "SHG", collected the repayment amount from the various "SHG" and failed to remit the same in the name of corresponding "SHG" in the Srivenkatespuram Branch and as a squeal, there was total non payment of loan amount of Rs. 6,19,93,533/-(Six crore nineteen lakhs nighty three thousand five hundred and thirty three) in the account of 754 Self Help Groups. A1 was transferred to "Marthandam Branch". A2 had obtained 51 loans in the said "Marthandam Branch" with the active connivance of A1 and credited the said amount in his savings bank account and diverted part of the said loan amount to make the repayment of the loan amount of the various Self Help Groups in Srivenkatespuram Branch. Srivenkatespuram Branch is situated at 150 kms away from Marthandam Branch. Among the 51 loans granted in the name of the 51 SHG's. 42 SHG's had already committed default in repayment of

loan. A1 and A2 obtained fresh loan in the name of the said 42 defaulted SHGs' which was not permissible as per the scheme. Therefore, there was astronomical non recovery of loan amount both in the Srivenkatespuram Branch and Marthandam Branch. Hence, PW3, Senior Manager of the Marthandam Branch was appointed as an enquiry officer to find out the cause for the non payment of the said loan amount. He collected numerous documents and found that there was material violations during the grant of the loan. He submitted the report under Ex.P.8 along with the particulars of violations in granting loan under Ex.P.9. The said report disclosed cognizable offence and hence complaint was made to the CBI. CBI registered the case and collected volumes of records and completed the investigation and filed the final report under section 120 (b), 468, r/w. 471, 420, 409, 477 (A), 201 of I.P.C r/w. 13 (2) r/w. 13 (1) (d) Prevention of Corruption Act 1988 against A1 to A4. The learned special judge, II Additional District Judge for CBI cases, Madurai has taken final report on file in C.C.No. 3 of 2011 and conducted the trial and acquitted A3 and A4 and convicted A2 for the above stated offence. A1 died during the pendency of the trial after framing of the charges and prior to commencement of examination of witnesses.

9. A2 as observed above was running NGOs' in the name of **"Kanyakumari Women's Collective"** and also **"Neithal foundation"**. He had not maintained any records to run the said organizations. He obtained various loans in Srivenkataspuram Branch for the welfare of the fishermen in Kanyakumari District by forming SHG with many members and obtained loan on various dates without proper documents and loan documentation. A1 granted the loan in violation of the procedure under the said scheme. A2 disbursed the loan to the individual SHG's after deducting the portion of the amount under the guise of the loan processing charges and payment for the LIC premium. As per the scheme there was no such requirement to pay the loan process charges. But he deducted the said amount. Even though he received the amount under the caption of insurence premium, he never paid any amount. The various Self Help Groups had repaid the entire loan amount to A2. A2 did not make payment of the said loan amount in the corresponding SHG account and made them as defaulters in Srivenkatespuram Branch. The default account comes to around 754. In the meantime A1 was transferred to Marthandam Branch from Srivenkatespuram Branch. A2 had obtained the loan in the name of the 51 Self Help Groups in the Marthandam Branch. Among the 51 Self Help Groups, 42 SHGs are defaulters in the Srivenkatespuram Branch. As

per the scheme, A1 had no authority to grant loan to the said 42 defaulters. But, both conspired and swindled Rs. 74,04,370/-.(Seventy four lakhs four thousand three hundred seventy only). According to the prosecution, only a portion of the loan amount sanctioned to the said 51 SHGs' is said to have been credited in various SHG's loan account. Therefore, the learned trial judge has correctly looked into the material documents and evidence and arrived at a finding that A2 has committed offence under section 120 (b) r/w. 420 of I.P.C, 120 (b) r/w. 409 of I.P.C., 420 of I.P.C., 409 of I.P.C. This court finds no infirmity in the said finding. The prosecution has clearly proved the above said charges through exhibits P1 to P692.

10.1.It is sufficient to cull out the substance of the voluminous documents to arrive at a finding about the guilt of A2. A2 was the managing director of the NGO namely the "Kanyakumari Women's Collective" and "Neithal foundation". He had not produced any document to show that it is either registered under the co-operative societies Act, or under society registration Act or under any trust act. He has not produced any document to show that the said NGO is a genuine one. He had not submitted loan documents with proper documentation, sponsorship letter of the NGO, resolution of SHG's financial particulars. A1 granted loan with the said material defects and credited the amount in his savings account (A/c.No. 7080 Srivenkatespuram Branch) of A2 on various dates. Out of the said amount Rs.18,40,000/- was credited for the payment of the insurance premium of each loan. A2 neither made the payments towards LIC premium nor transferred the said amount to the credit of each SHG. P.W.3 in his detailed deposition on 18.09.2017 while marking Ex.P.201 to Ex.P.692 narrated the sequence of events which clearly proved the grant of loan by A1 in favour of A2 in utter disregard to the procedures and conditions. P.W.3 further deposed about the credit of the loan amount in the account of A2 and the said evidence was put under Section 313 of Cr.P.C., A2 also admitted the said transaction. There was no material, cross examination on the side of A2 to disbelieve his version. He further specifically deposed that there was a transfer of the amount of Rs.18,40,000/- for making the payment of LIC premium and no record was found to show that A2 had indeed paid the premium. Further, P.W.13,P.W. 14 and P.W.15 deposed that more than Rs.10,000/- was collected from each group, apart from the amount towards insurance premium. The following evidence would prove this fact: -

P.W.13:-

"ஒரு குழுவிற்கு ரூ.15,0000 கடன்தாரர்கள் அதில்

ஒரு உறுப்பினருக்கு ரூ.10,000 வீதம் வண்டிச் செலவு போக மீதத்தை பாக்கி பணம் முழுவதையும் கடனாக பெற்றேன்.

அதற்கு நாங்கள் Peterdhas (A2) இடம் கடனை கொடுத்துவிட்டோம் என்றும் எங்களுக்கும் வங்கிக்கும் சம்மந்தமில்லை என்றும் ஆதலால் நாங்கள் கட்ட வேண்டிய அவசியம் இல்லை என்றும் கூறினோம்.

P.W.14:-

Peter Dhas A2 சொன்ன நபரிடம் தான் நாங்கள் கடன் தொகையை கட்டினோம் அசலும் வட்டியும் சேர்ந்து நாங்கள் கடன்களைக கட்டிவிட்டோம்.

அதன்பிறகு Peter Dhas A2 ஐ தொடர்பு கொண்டோம் அதற்கு Peter Dhas A2 கடனை நீங்கள் கட்டியது உண்மை தான் என்றும் ஒரு சில குழுக்கள் கடன் கட்டாததால் நாங்கள் அந்த தொகையை பிரித்து கட்டிவிட்டோம் என்று எங்களிடம் கூறினார் மேலும் Peter Dhas A2 ஆறு மாத காலத்திற்குள் பிரச்சனை நிவர்த்தி செய்யப்படும் என்றும் எங்களுக்கு எந்த பிரச்சனையும் வராது என்று கூறினார்.

கடன் தொகை சுய உதவி குழுக்களுக்கு வழங்கப்பட்ட சமயத்திலேயே அத்தொகைக்கு உண்டான Insurance Policy தொகை மற்றும் Processions Fee ஆகியவை எடுத்துக்கொள்ளப்பட்டது.

10.1. There was no cross examination in this aspect. This would show that the prosecution clearly proved the receipt of more than Rs. 10,000 in the loan account of each SHG by A2 without authority and the failure to remit the insurance premium amount.

10.2. In the absence of cross examination on a particular fact either by denial or suggestion, it would amount to admission of the said fact and the same is fortified by the three Judge Bench of the Hon'ble Supreme Court in Arvind Singh Vs State of Maharashtr reported in 2021 11 SCC 1 following portion of the judgment of the Hon'ble Supreme Court :

> *"The system of adminsitration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted."*

10.3. The unchallenged evidence of the above said P.W.13, P.W14 and P.W.15 would clearly prove the failure to repay the collected amount from the SHG into their account.

11. PW3 also specifically deposed about the various material defects in granting the loan in the name of A2 without proper documentation and the non-compliance of the procedure stated in annexure 5 and 6 of the scheme and there was no cross examination in this aspect also. His report under Ex.P8 and defects mentioned in the Ex.P9, had never been controverted by the appellant either through the cross examination or by adducing evidence.

12.The conduct of A2 in approaching A1 in his transferred place Marthandam situated far away from Srivenkatespuram Branch and obtaining loan in the name of 42 defaulted Self Help Groups and remitting portion of the said loan amount towards the repayment of the some other SHG's loan account, clearly prove the conspiracy between A1 and A2 to defraud the bank amount and also clear conversion of the loan amount. PW13, 14 and 15 cogently deposed about the deduction of Rs.15,000/- in their individual SHG's account and the repayment of the entire loan amount in the office of A2 and his failure to repay the said amount in the loan account. The said evidence are cogent and also trustworthy. Even though they were subjected to incisive cross examination, nothing was elicited to disbelieve the version.

13. One other circumstance is also seen to have emanated from the different answers given by A2 during his examination under section 313 of Cr.P.C. He has specifically admitted that various loan amount of SHG was transferred in the account number 7080 in Srivenkatespuram Branch, Account No. 1 of Marthandam Branch and the fictitious account No. 1111 of Marthandam Branch. His case is that the SHGS had not repaid the amount. He gave the undertaking letter to repay the said amount along with loan application. Therefore, he is not liable to be prosecuted. This court declines to accept the same. Here the case is not one of mere non payment. He swindled the huge loan amount under the guise of the NGO. He and A1 from the inception with intention to cheat the bank, made the application with material defects and obtained the loan amount and transferred the amount with deduction of more than 10,000/- in each SHG's account for the loan amount of Rs.1,50,0000/- and received the repayment from each SHG and failed to credit it in the corresponding SHG's account. Therefore, the circumstances and oral evidence and documentary evidence clearly proved the offence under section both 120 (b) r/w. 420 and 420 of I.P.C. A2 collected LIC premium amount and never paid the said amount. A1 is duty bound to verify the end user of the loan amount i.e., he is duty bound to verify the transfer of the entire loan amount in the individual SHG's

account.

13.1. Apart from that A1 granted loan in the Marthandam Branch in the name of 41 SHG's groups and amount was credited into the account of A2 and a portion of the amount was also transferred towards the payment of loan account of some other SHGS, without crediting in the corresponding account of the correct SHGs. Therefore there is a clear case of conversion of the loan amount and hence this court finds that the prosecution clearly proved the charge under section 120 (b) r/w. 409 of I.P.C. and 409 of I.P.C. Hence, this court holds that the learned trial judge correctly convicted the appellant under section 120 (b) r/w. 420 of I.P.C, 120 (b) r/w. 409 of I.P.C., 420 of I.P.C., 409 of I.P.C.

14. PW3 conducted a detailed enquiry and found that a number of material irregularities were committed by A1 Manager in connivance with A2 in sanctioning the loan to various SHG's and thereby caused loss to the bank to the tune of Rs.6,19,93,533 and in his report he has clearly stated that 18.40 lakhs collected from the SHGS as insurance premium was neither remitted to the insurance company nor in the account of the individual SHG's. In this report the following material irregularities have been observed:-

-42-

Ex.P.8

1
26/12/07

(A4 sheets) (1)

Ex.P.8
PW3
29.10.15

D-4

(843)

MONITORING OF SHG LOANS

SRIVENKATESAPURAM BRANCH

1. NAME OF THE OFFICIAL :B.SANTHANAKUMAR
2. DESIGNATION : SENIOR MANAGER
3. DATE OF INSPECTION : 01TO 04.10.07 (1,3,4.10.07)
4. NAME & ADDRESS OF THE SHG:

   List enclosed

5. DISTANCE FROM THE BANK BRANCH :KANYAKUMARI DISTRICT
6. WHETHER FUNCTIONING IN OUR SERVICE AREA OR NOT: No
7. NAME & ADDRESS OF THE NGO SPONSORED:

   KANYAKUMARI DISTRICT WOMENS' COLLECTIVE
   13/2, 1ST FLOOR, KESARI STREET
   NAGERCOIL – 629001

   MANAGING TRUSTEE: Mr.T.PETER DOSS
   CELL: 94432-94198

8. DETAILS OF OVERDUE:

SL.No.	NAME OF THE NGO	NO. OF A/Cs	PRESENT OUTSTANDING	OVERDUE
1	(NGO-KKWC)	518		1.01
2	(OTHERS)	20		0.04
	TOTAL	628	68654192	1.05 Cr.

REAONS FOR OVERDUE

- There is no record for the visits made by the Branch officials to the groups and the branch is fully depends on the NGO for field visits and recovery.
- No follow up and the branch has accommodated the NGO by violating our systems and procedures. A special report annexed herein.

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(2)

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ENFORCEABILITY OF DOCUMENTS

1. RL DPN and other documents kept blank – SHG 130/04 to 202/04, 242 to 245/05
2. Exceeding discretion – SHG 180 & 181/07
3. photo/Ration card Xerox for all members of SHG not collected – 25/07 to 123/07
4. Copy of resolution reflecting bank loan/Insurance loan in minutes book not available with documents
5. NGO not furnished the names of groups village wize with name & address of contact persons and coordinator monitoring the groups.
6. Annexure II, IV, IX, Rating sheet not available with the documents – 25/07 to 123/07, 37/05 to 62/05.
7. Sponsorship letter not obtained from the NGO for all the loan a/cs.
8. In DPN 'Rupees in figures not filled up – SHG 48/07
9. xerox copy Resolution & Balance sheet collected – SHG 37/5 to 40, 52, 53, 57 to 59/05.
10. Manager not signed in the documents wherever necessary – shg 37 to 62/05, 250/06.
11. No pre & post sanction report. Station seal not affixed in all DPNs..

OTHER IRREGULARITIES:

While scrutinizing the SHG documents the undersigned observed that some major irregularities in the loans sanctioned to the Self Help Groups which are reported to be functioning at various places in Kanyakumari District.

MISUSE OF LOAN COMPONENT UNDER THE GUISE OF INSURANCE IN COLLUSION WITH THE NGO

Area Office, Thoothukudi has sanctioned SHG loans to 92 groups vide sanction endorsement No.SHG/370 dated 6.3.07 to the tune of Rs.2.08 crores including an insurance loan amount of Rs.18.40 lacs (Rs.20000/- each) and another 54 groups for Rs.33.35 lacs which includes Rs.10.80 lacs of insurance loan amount, as per the branch proposal dated 3.3.07.

On 9.3.07 and 14.3.07 branch has debited SHG loan head and credited the loan amount of Rs.2.08 crores to sundry creditors account and subsequently disbursed the loan amount of Rs.1,89,60,000 and transferred the insurance premia loan of Rs.18.40 lacs to the respective SB account.

On 20.6.07, the branch debited the savings bank account of 19 individual groups by Rs.20000/- each and 26 groups by Rs.40000/- each and credited the amount to the SB account No.7080 of Mr.Peterdoss, Director, Kanyakumari

District womens' collective. (Savings bank transaction log dated 20.6.07 enclosed) There is no record for having remitted the insurance amount to the Insurance company. The present manager also confirmed that no record.

As per the list of outstanding SB accounts enclosed, still there are 109 SB accounts (Ledger 50- Nagercoil) shows an outstanding of Rs.20000/- and above.

On 20.6.07 the branch closed the SHG loan accounts of 10 groups by transferring an amount of Rs.534119/- from SB 7080 (copy of vouchers enclosed) and again on 14.7.07 transferred an amount of Rs.2214900/- to various SHG loan accounts as part payment but the accounts are relating to the year 2004, 2005, 2006 & 2007 (SHG Loan transaction log enclosed).

FAILED TO REMIT THE MONEY COLLECTED FROM THE GROUP

On 4.1.07, the then branch manager Mr.Donald Edward Samuel collected Rs.65000/- from one Vennila SHG and remitted the money into the group SB a/c No.30366 and then transferred the money to Mr.Peter doss SB A/c No.7080 on 20.6.07, though a loan amount of Rs.65214/- outstanding in the loan account No.645/2006. (Loan extract and SB Credit vouchers enclosed).

MONEY DEPOSITED IN FICTITIOUS NAME

On 28.3.07, the then manager Mr.Donald Edward Samuel has deposited a sum of Rs.12.80 lacs and deposited the money under SDR No.52/07 to 56/07 in various names viz.
52/07 & 53/07 Kanyakumari Womens' collective Rs.500000/- each
54/07 S.Madasamy s/o Sudalayandi, Peikulam Rs.100000/-
55/07 S.Murugan s/o Sudalayandi, Peikulam Rs.100000/-
56/07 M.Donald Edward Samuel, SM, PGB, S.V.Puram Rs.80000/-

Except SDR 56/07 (renewed) all other accounts were closed by transfer and credited to SB A/c No.7080 of Mr.Peter doss, KKWC, Nagercoil. The SDR receipts of these accounts are not available with the closed documents.
No denomination recorded in the SDR Receipt
No signature in the SDR remittance chalan of SDR 52 to 55/07
Application/specimen card not available for verification

SANCTIONED LOANS BY EXCEEDING DISCRETION AND ACCOMMODATED THE NGO

On 30.3.07, branch has sanctioned 2 SHG loans to the groups (NGO-Kanyakumari womens' collective) by name Carrot SHG and Roja SHG for Rs.65000/- & Rs.75000/- respectively and transfer the amount to their respective SB account.

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After lapse of 3 months, the branch on 20.6.07 transferred this amount of Rs,140000/- (Rs.65000 + Rs.75000) to the SB a/c No.7080 of Mr.Peterdoss, NGO and in turn this amount has been utilized for crediting the other loan accounts.

Branch has not obtained Annexure I & III, VIII, IX..
Rating sheet kept blank. Copy of the loan documents are enclosed.

The Area Office, Thoothukudi has earlier sanctioned SHG loans to this NGO and also the sanctioning power to other districts is vested with higher layer of authority only. Contrary to this, the branch sanctioned these two loans.

SUPPRESSION OF FACT IN DISCLOSING THE OVERDUE POSITION

The branch has reported the overdue position under SHG is only Rs.4.52 lacs but it works out to Rs.1.05 crores. **During this period an amount of Rs.14 lacs credited in various accounts as per the lists enclosed and another 14 lacs is expected within 2 days.**

On enquiry with the then Manager Mr.Donald Edward Samuel- now attached with our Marthandam branch, over phone, he stated that only a few members have agreed for insurance and so remitted a part amount and the balance amount credited to the respective groups. We tried to contact Mr.T.Peterdosss, Director, over phone but no response.

The foregoing irregularities appears to be doubtful of recovery of dues from the groups. A thorough investigation on these groups would unearth truth.

The present manager should closely follow up these accounts and collect the money from the NGO/groups. Area Office should monitor the progress periodically and report to HO then and there.

(B.SANTHANAKUMAR)

15. To substantiate the said report, the prosecution had produced volumes of documents. There was no letter of authority for each loan. All the letter of authorities are in blanks. For better appreciation, this court has extracted one of the form submitted along with each loan:

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From

முல்லை மகளிர் சுய உதவிக்குழு
மேல முட்டம்,
முட்டம்-629 202
கன்னியாகுமரி மாவட்டம்,

To

The Manager,
PANDYAN GRAMA BANK,
SRI VENKATESAPURAM (PEIKULAM)
TUTICORIN DIST. PIN - 628 613.

Sir,

LETTER OF AUTHORITY

I /we hereby authorise you to transfer a Sum of Rs. .... (Rupees...only) per month towards the instalment on SL / SSI / DL No. .... to the debit of my/our SB / CD a/c No : ....being maintained with you. I/We also authorise you to debit the interest and other connected expenditures then and there.

This letter of authority is irrevocable.

Thanking you,

Yours faithfully,

முல்லை மகளிர் சுய உதவிக் குழுவிற்காக

Place :

Date :

தலைவர் செயலாளர்

16. A2 had not annexed his NGO resolutions along with all loan forms and there was also no pre inspection report of the functioning of the individual SHG, to ascertain their repaying capacity. Even the agreement is blank. For better appreciation this court has extracted one of the forms submitted along with the loan application:

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NOW THEREFORE THIS AGREEMENT WITNESSETH THAT :-

1. Each member of the SHG shall save a sum of Rs...(Rupees ....only or such sum as may be decided by the Group. On weekly / Fortnightly / Monthly basis which shall be deposited with the authorised member of the group.

2. Each member shall strive for the success of the SHG and shall not act in any manner detrimental to the business interests of the SHG.

3. The SHG members shall be jointly and severally liable for all the debts contracted by the SHG.

4. All assets and goods acquired by the SHG shall be in the joint ownership of all the members of the SHG and shall ordinarily be in the constructive custody of such member as may be authorised by the Group and shall be kept at the place of business at.. ....which shall not be changed without consent of the SHG members.

5. The SHG members hereby duly elect and appoint.

Shri/Smt/Kum/...as...

Shri/Smt/Kum/...as...

Shri/Smt/Kum/...as...

(by whatever name designated) to look after and manage the day affairs of the SHG's activities and also act in their name and on their behalf in all matters relating thereto. The authorised representatives, may however, be removed at any time by majority vote of the members and new representatives elected.

6. Each of the SHG members hereby agrees to abide by and ratify all such act, deeds and things as the authorised representatives may do in the interest of the said activities.

7. The authorised representatives shall take decisions in the day to day working of the SHG and each representative shall actively involve herself or himself and co-operate inlooking after the day-to-day affairs of the SHG activities in particular to attend to the following activities.

Every member of the SHG hereby authorises the representatives to apply for the loan on behalf of the SHG and execute necessary agreements/documents/revival documents including acknowledgment of debt and confirmation of balance on behalf of the SHG for the purpose. The authorised representative may collect loan amounts from the bank on behalf of the SHG, deposit the same in the Saving A/c of the SHG for on lending to members in accordance with the decision of the SHG and also deposit recovery of loan instalments from members in the loan accounts of SHG with the bank.

அல்லி மகளிர் சுய உதவிக்குழுவிற்காக

அந்தோணிஅம்மாள் — தலைவர்

செயலாளர்

8. **The SHG members hereby specifically authorise the representatives :**

(i) To open Savings, Fixed Deposits and other accounts in (..) Bank approved by the SHG and operate the same under the joint signature of any two of the following authorised representatives.

Sri/Smt/Kum...

Sri/Smt/Kum...

Sri/Smt/Kum...

(ii) To keep or cause to be kept proper books of accounts of the savings, made by the SHG members loans granted to them and the recoveries made from them and render every year the full accounts to the SHG members for their approval and adoption.

(iii) To receive all payments due to the SHG and issue requisite receipts or acknowledgments for and on behalf of the SHG

(iv) To institute and defend on behalf of the SHG member any legal proceedings and safeguard the interest of each member of the said SHG and for this purpose engage or disengage any lawyer or advocate of agent and incur the necessary legal expenses in connection therewith.

9. In the event of death of any of the members of the SHG, his/her legal heirs shall be entitled for the benefits and be liable for the obligations of the deceased member under this agreement.

10. It is agreed that no new person shall be inducted as a member of the SHG without consent of all the existing members.

IN WITNESS WHEREOF, the aforesaid members of the SHG have set their respective hands hereunto at the place..........................and on..........................day of..........................Month..................Year first herein appearing.

SPECIAL COURT FOR C.B.I. CASES
18 JAN 20..
MADURAI.

Name of Member SHG	Signature/s / Thumb impression
1. அந்தோணியம்மாள்	அந்தோனி அம்மாள்
2. சலஜா	சலஜா
3. தங்கம்	S. Thangam
4. கிறிஸ்டி அனம்மாள்	கிறிஸ்புஷ்பம்மாள்
5. M. செல்வம்	M. செல்வம்
6. செல்வி	P செல்வி
7. தென்றல்	ந. செல்வி
8. ஜ. செல்வம்	செல்வம்
9. P. ரோஸ்மேரி	R. ரோஸ்மேரி (ரோஸ்மேரி)
10. புஷ்பம்	புஷ்பம்.

அல்லி மகளிர் சுய உதவிக்குழுவிற்காக

அந்தோணிஅம்மாள்
தலைவர்

சலஜா
செயலாளர்

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11.	ராஜமணி	C. Rajamony
12.	காஸ்மீர்த்தாள்	காஸ்மீர்த்தாள்
13.	ஜாண் மேரி	R. John Mary.
14.	சகாய ரெஜி	சகாயரெஜி
15.	விஜயா	K. விஜயா
16.	விலம்மாள்	விலம்மாள்
17.	செல்வினம்மாள்	செல்வினம்மாள்
18.	தவம்மாள்.	பூவம்மாள்
19.	கென்சி	கென்சி
20.	தங்கம்மாள்.	தங்கம்மாள்

WITNESSES

அல்லி மகளிர் சுய உதவிக்குழுவிற்காக

1. அந்தோணி அம்மா — தலைவர்   கலா — செயலாளர்

2.

(Note : The SHG shall not consist more than 20 persons)

17. The prosecution also produced account details of A2 in the account No. 7080 Srivenkatespuram Branch, Account No. 1 of Marthandam Branch and the fictitious account No. 1111 of Marthandam Branch. From the transaction in the said accounts, it is clear that there was a clear diversion of the loan amount. Ex.P673 to Ex.P89 are pay in slips in the account No. 1 of Marthandam operated by A2. The prosecution proved all the transactions under the various exhibits including Ex.P652, P654, P660, P665, P666 etc., This court perused all the records along with the

evidence of the bank officials namely PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11, PW12 and finds that the prosecution clearly proved the charges i.e., A1 and A2 conspired together to cheat the bank and defrauded the funds of the bank by granting loan in the name of various SHG without proper pre sanction loan verification and other material formalities as required under the scheme and sanctioned the loan in the name of the various SHGs'. Illegally collected Rs.10,000/- from the SHGs' as insurance premium and failed to remit the repayment made by the individual SHG's towards the loan account in Srivenkatespuram Branch and subsequently obtained loan in the Marthandam Branch after the transfer of A1 to that place, without disclosing the default committed by the 42 SHGs' and diverted the said fund for the other purpose of settling the earlier defaults. In view of the above discussion, the judgment relied by the learned Senior counsel in the case of Sathischandra Ratanlal Shah vs. State of Gujarat and another in Crl.A.No.9 of 2019 is not applicable to the present case. Even in the said judgment, in paragraph No.15 it is stated about those breaches which are accompanied by fraudulent, dishonest or deceptive inducements, which resulted in involuntary and in-efficient transfers, under Section 415 of IPC. In this case, after failure to make payment of the collected amount from various SHG's groups in

Srivenkadeswaram Branch, A1 was transferred to the Marthandam Branch. In the Marthandam Branch, A1 granted loan in the name of the same SHG groups, which committed default in making the repayment in the Srivenkatesapuram Branch and transferred the loan amount of Rs. 95,17,000/- in the new account of A2. Therefore, both fraudulent and dishonest intention at the inception is clearly made out from the entire circumstances of the case. The Hon'ble Supreme Court in the case of ***Bashirbhai Mohamedbhai vs. State of Bombay*** reported in ***AIR 1960 SC 979*** has held that making of false representation is one of the ingredients for an offence of cheating and also the Hon'ble Three Judges Bench of the Supreme Court in the case of ***Shivanarayan Kabra vs. The State of Madras*** reported in ***AIR 1967 SC 986*** has held as follows:

> *The appellant knew fully well that he had no right to do forward business and that he was not a member of any recognised association and that he could not lawfully advertise to P.W.2 for investment in forward contracts.* ***It is not necessary that a false pretence should be made in express words by the appellant. It may be inferred from all the circumstances including the conduct of the appellant in obtaining the property*** *and in Ex.P34 (a) the appellant stated something which was not true and*

concealed from P.W.2 the fact that he was not a member of any recognised association and that he was not entitled to carry on the forward contract business, it is clear that P.W.2 could not have parted with the sum of Rs.12,000/- but for the inducement contained in Ex.P34 and the representation of the appellant that he could lawfully carry on forward contract business.

17.1. In the present case, false pretence can be legally inferred from the conduct of the appellant in diverting loan amount of various SHG and obtaining fresh loan from Marthandam Branch in the name of SHGS' that had already committed default of earlier loan in the S.V. Puram Branch and siphoning off the said amount also. A2 NGO has no authority to utilise the various loan amount of SHGs. Even he has not taken any steps to deposit the collected amount from each SHG groups. The offence is completed, when misappropriation of amount has been made dishonestly. Therefore prosecution proved the case beyond reasonable doubt and this appeal lacks merit and hence liable to be dismissed.

17.2. In view of the above discussion, this Court concurs with the finding of the learned trial judge that the appellant has committed offence under section 120 (b) r/w. 420 of I.P.C, 120 (b) r/w. 409 of I.P.C., 420 of I.P.C., 409 of I.P.C. and considering the huge loss and also the fact that no payment was made either during the pendency of the trial or appeal, this Court has no reason to interfere with the punishment imposed by the learned trial Judge.

18. Accordingly, this Criminal Appeal is dismissed by confirming the conviction and sentence imposed in C.C.No. 3 of 2011 on the file of the II Additional District Court for CBI Cases, Madurai. 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 for CBI Cases,
   Madurai District.

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

3. The Special Public Prosecutor for CBI Cases,
   Madurai Bench of Madras High Court, Madurai.

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

K.K.RAMAKRISHNAN,J.

sbn

Pre-delivery judgment made in
CRL.A(MD).No.69 of 2018

04.03.2025