(2010) 01 MAD CK 0117

In the Madras High Court

Case No : Criminal A. (MD) No''s. 43 and 84 of 2004

Nallappa Gopalswamy and R.V. Prasanna Venkatesan S. Ganapathy	APPELLANT
Vs	
State	RESPONDENT

Date of Decision : 28-01-2010

Acts Referred:
- Criminal Procedure Code, 1973 (CrPC) — Section 293, 293(4), 313
- Evidence Act, 1872 — Section 47
- Penal Code, 1860 (IPC) — Section 120B, 409, 420, 467, 468
- Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2010) 01 MAD CK 0117

Hon'ble Judges : C.T. Selvam, J

Bench : Single Bench

Advocate : K. Chellapandian for G. Kasindhadurai, for A-1, N. Natarajan for C. Muthusaravanan, Ad. for A-3 and A-4, for the Appellant; Rozario Sundarraj, Spl. PP for CBI Cases, for the Respondent

Final Decision : Dismissed

Judgement

C.T. Selvam, J.—These appeals arise against the Judgment passed by the Learned Principal Special Judge for CBI Cases, Madurai in C.C.

No. 8 of 2000 dated 17.08.2004. All the accused were charged for offences under Sections 120B r/w 409, 420, 467, 468 and 471 IPC and

Section 13(2) r/w 13(1)(c) & (d) of Provention and Corruption Act, 1988 and specific charges u/s 13(2) r/w 13(1)(c) & (1)(d) r/w 13(1)(d) of

PC Act, 1988; 409, 467, 468 and 471 r/w 467 IPC against the first accused and u/s 420 IPC against the third and fourth accused were framed.

On completion of trial, the lower court has entered a finding as below:

Accused Charges

Sl. No.

A-1 to undergo RI for 2 years and to pay a fine of Rs. 2000/- in default to undergo

RI for 3 months for each of the 7 offences under Sections 120B r/w 409, 420,

467, 468 and 471 IPC and Section 13(2) r/w 13(1)(c) & (d) of PC Act, 1988; 13(2)

r/w 13(1)(c) & 13(2) r/w 13(1)(d) r/w 15 of PC Act, 1988; 409, 467, 468 and 471

r/w 467 IPC.

A-3 to undergo RI for 2 years and to pay a fine of Rs. 2000/- in default to undergo

RI for 3 months for each of the offences under sections 120B r/w 409, 420,

467, 468 and 471 IPC and Section 13(2) r/w 13(1)(c) & (d) of PC Act, 1988; and

420 IPC.

A-4 to pay a fine of Rs. 5000/- for each of the offences under sections 120B r/w

409, 420, 467, 468 and 471 IPC and Section 13(2) r/w 13(1)(c) & (d) of PC Act,

1988; and 420 IPC.

2. The prosecution case has succinctly been spelled out by the lower court and the same reads as follows:

The first accused was working as Branch Manager, State Bank of India, Rock Fort City Branch (hereinafter referred to as RFC Branch). The

second accused is the proprietor of Computer Wings. He is Managing Trustee of NRD Education Trust which runs Bharat Niketan Engineering

College and Angala Amman College of Engineering and Technology. The third accused Prasanna Venkatesan, Son of the second accused Ramani

Iyer is the Managing Trustee of ADS Educational Trust. The fourth accused an associate of the second accused is the proprietor of SRSR Book

House, Trichy. PW-1, Sri. S. Ravichander has been working as Assistant Manager (Accounts) in SBI, Labbhaikudikadu Branch, PW-5

Vasudevan has been working as Assistant Manager (Cash) in SBI, RFC Branch. PW-2 and PW-5 are the joint custodian of security forms, TDR

forms and draft forms in RFC branch. On 25.07.1997 PW-1 issued STDR Security forms (Ex. P-1) from his branch to the first accused where

first accused worked as Accountant till A-1 assumed Branch Manager of SBI, RFC Branch. The RFC branch is an erstwhile branch of Cochin branch. It is not authorised to transact FCNR business. For the receipt Ex. P-1 forms the first accused gave the acknowledgment (Exh. P-3) by

forging the signature of PW-1 and 5 to SBI, Labbhaikudikadu Branch. For issuing FCNR deposits the first accused has used the security forms

procured by the first accused from SBI, Labbhaikudikadu Branch which he has kept in his sole custody. The customers were neither aware of the

conversion of their US$ into Indian rupees nor were they ever made aware that RFC Branch was not authorised to handle FCNB business. Sri.

A.Z. Shah, B.Z. Shah and S.Z. Shah NRIs in London sent a demand draft for Rs. 1,64,46,098.26 to the SBI RFC Branch for keeping in NRE

deposit for 12 months on 19.05.1998 and Exh. P-5 is the DD issued by the HDFC Bank, on receipt, this DD Exh. P-5 was sent to Mumbai for

collection on 01.06.1998. The amount was paid on 10.06.1998 Exh. P-8 is the copy of the short credit deposit register. The SBI, RFC Branch

issued FDR for Rs. 1,09,46,098.26 under Exh. P-16 in favour of A.Z. Shah. The first accused issued a debit slip (Exh. P-9) for Rs. 30 lakhs by

debiting IBIT account in favour of NRD trust (the second accused''s trust) on 10.06.1998 and Exh. P-11 is the corresponding cheque for Rs. 30

lakhs issued by the SBI, RFC Branch in favour of NRD Education Educational Trust. The first accused credited Rs. 12,50,000/- to the account

NRE 48 of Lakshman Bhatia from out of the A.Z. Shah''s amount. The first accused again remitted a sum of Rs. 12,50,000/- from out the amount

of A.Z. Shah to the credit of Jaffar Ali''s account (NRE 37). The pay-in-slip are Exh. P-19, P-20. For the remaining amount the RFC Branch

issued deposit receipt under Exh. P-16. However, the first accused issued parallel deposit receipt for Rs. 1,64,46,098.26 under the Exh. P-13

from the deposit receipt book (P-1) procured by him from SBI, Labbhaikudikadu Branch which had been kept in his personal custody. This

parallel receipt was sent to the depositor A.Z. Shah.

3. The first accused however, fabricated Exh. P-201 letter in the name of A.Z. Shah and on the basis of this letter he closed the deposit in the

name A.Z. Shah on premature basis and paid Rs. 62 lakhs to the third accused under Exh. P-22 and Rs. 15 lakhs was credited to the account

NRE 37 of Jaffar Ali under Exh. P-27. On maturity of the deposit A.Z. Shah requested by his letter Exh. P-223 dated 1.6.1999 to remit the maturity value of their deposit and forward the same to the Bank of Baroda, Mumbai. As requested by him the maturity value of Rs. 1,82,42,127/-

was transferred to the account of A.Z. Shah to the Bank of Baroda, Mumbai. The first accused opened NRE Account No. 50 in the name of A.Z.

Shah and remitted a sum of Rs. 29,46,098.26 without the knowledge of the depositor namely, A.Z. Shah. Exh. P-28 is the pay in slip for the

payment of Rs. 29,46,098.26 to the account of A.Z. Shah. The first accused thus diverted the amount payable to A.Z. Shah to third parties like

Evershine Travels, Ramani Iyer Group account and thereby caused loss to the bank. Sri. Lakshman Bhatia and Kavitha Lakshman Bhatia, Non

Resident Indians in at Dubai opened an account with SBI, RFC Branch on 21.4.1997 under Exh. P-30. Their Account No. is 3/135. The

specimen signature of Lakshman Bhatia is Exh. P-232 series. They sent US $ 99980 for making deposit for the period of one year to SBI, RFC

branch. Exh. P-124 is the message sent by them. The SBI, RFC branch is not entitled to deal in foreign exchange conversion. In Trichy SBI,

Kailasapuram Branch and Trichy main branch have been authorised to handle foreign currency. PW-9 Sri. Narayanasamy was working as Deputy

Manager, SBI I.B. Division in Kailasapuram branch during the relevant time. On the basis of Exh. P-124 inward remittance US $ 99980 was

converted into Indian rupees at the instance of the first accused. Exh. P-137 is the Inward remittance register maintained by the Kailasapuram

branch. Exh. P-138 dated 21.04.1997 is credit slip for Rs. 35,70,286/- issued by the SBI, Kailasapuram branch in favour of SBI, RFC branch.

Out of this Rs. 35,70,286/- a sum of Rs. 34,20,000/- was deposited in the name of Lakhman Bhatia and Kavitha Bhatia and RFC branch issued

Exh. P-32 deposit receipts. For the remaining amount Rs. 1,50,286/- bankers cheque (Exh. P-35) was issued in the name of Lakshman Bhatia on

the basis application (Exh. P-36) for bankers cheque.

4. A current account was opened in the name of Lakshman Bhatia and Kavitha Bhatia by the first accused under Exh. P-73. Ledger copy is Exh.

P-75. A sundry loan of Rs. 22 lakhs was sanctioned against the STDR Exh. P-32 in SL No. 13/4. Exh. P. 37 to 41 are the loan documents. From

out of this amount Rs. 5 lakhs was credited to the account of ARS Agencies under Exh. P-43. Another sum of Rs. 5 lakhs paid to the credit of

Kurinji Comforts under Exh. P-44. For the balance amount of Rs. 12 lakhs bankers cheque in favour of City Union Bank Ltd., Trichy was issued

under Exh. P-42. Subsequently, another loan of Rs. 30 lakhs was sanctioned in the name of Lakshman Bhatia under SL No. 13/18. Exh. P. 46 to

48 are the loan documents. From the funds of loan under SL 13/18 the loan number SL 13/4 was closed. The remaining balance of Rs. 8 lakhs

was paid to the credit of Evershine Travels under Exh. P-49 pay in slip. Another loan amount of Rs. 34 lakhs was availed in the name of

Lakshman Bhatia under SL No. 13/25 on 16.10.1997 by the first accused. This amount was used to discharge the loan SL 13/8. A sum of Rs.

30,69,430/- was paid to the credit of SL 13/8. The balance sum of Rs. 3,30,570/- was remitted to the account No. 130 of Evershine Air Travels

under Exh. P-52. Sri. Hiro N. Devjani (PW-11) NRI in Maldies opened an NRI account with SBI, RFC Branch. Account opening form is Exh.

P-534. He invested a sum of Rs. 78,59,342.50 for one year under NRNR deposit. The first accused issued Exh. P-54 deposit receipt for Rs. 26

lakhs. He issued Exh. P-60 deposit receipt for another Rs. 26 lakhs. The first accused sanctioned a loan of Rs. 20 lakhs in the name of Devjani

against this NRNR deposit (Exh. P-60) in SL No. 14/2. Exh. P- 52 to 59 are the documents pertaining to the loan. The first accused sanctioned

another loan of Rs. 20 lakhs in the name of Devjani under loan number SL 14/3. Exhs. P-61 to 65 are the documents. The first accused forged the

signature of Devjani. This loan amount of Rs. 20 lakhs under SL 14/2 was remitted to discharge the loan availed in SL 13/25 in the name of

Lakshman Bhatia. Out of the loan amount availed under SL 14/3 Rs. 16,37,935/- was remitted to discharge the loan availed in the name of

Lakshman Bhatia in SL 13/25. The balance amount Rs. 3,62,065/- was remitted to the account of Devjani under Exh. P-68. Exh. P-69 is the

ledger copy of account No. 414 of Devjani. From this account the first accused has withdrawn Rs. 3,00,000/- by forging the signature of Devjani

under Exh. P-70. The SBI, RFC Branch repatriated the amount payable under Exh. P-71 & 72 as per the directions issued by the Zonal Office

under Exh. P-144 by debiting the protested bills account of the bank.

5. Sri. Jafar Ali (PW-11) is a Non Resident Indian based in Riyadh (UAE). He is an NRE account holder with SBI, RFC branch. His account

number is NRE 37. His Account opening form is Exh. P-81. Exh. P-84 is the ledger extract for the NRE account 37. He received cheque book

containing numbers 653651 to 653675 on 9.7.1997. Exh. P-85 is the cheque book register. The first accused received a cheque book containing

number 653901 to 653925 (Exh. P-123) in the name of PW-11 under Exh. P-85 cheque book register. Initially PW-11 Jaffar Ali remited Rs.

1,00,000/-. Subsequently, he remitted Rs. 5,00,000/- and Rs. 1,00,000/- to the credit of his account. Other than the above Rs. 7,00,000/- he had

not deposited any amount as noted in Exh. P-84 ledger. Rs. 3,00,000/- was remitted to the credit of his account on 15.07.1998 under Exh. P-27.

A sum of Rs. 25 lakhs was credited to PW-11''s account transferred from the funds of Lakshman Bhatia NRE 48 on 23.06.1998 under Exh. P-

79. The first accused forged the signature of PW-11 on Exh. P-86, 87, 90,91, 94,95,96 and 97 and drew the amount from his account. A sum of

Rs. 10/- (Rs. 5 lakhs each) was paid to the account of Computer Wings from the account of Jaffar Ali under Exh. P-90, 91. This Rs. 10 lakhs was

paid to the account of Jaffar Ali to the second accused P. Ramani Iyer by Exh. P-86. Rs. 17 lakhs was paid to NRD Educational Trust (A2) under

Exh. P-87 from Jaffar Ali''s account. PW-11 Jaffar Ali sent letter (Exh. P- 140) on 10.08.1998 from Riyadh that his balance should be Rs. 6 lakhs

and something and not as stated by the bank. According to the bank the balance is only Rs. 2,04,551/-. On the basis of this letter the SBI RFC

Branch has adjusted in this account and subsequently he withdrew the entire amount under the cheques Exh. P-119, 120 and 121. The fourth

accused opened an account with SBI, RFC branch under Exh. P-112 account opening form. His account No. 397. The ledger copy of the

account has been marked as Exh. P-130. He is a close associate of the second accused. On 23.05.1998 the first accused negotiated a bill drawn

by SRSR Books (A4) on Bharat Niketan Engineering College Andipatti for Rs. 9,09,748/- which was paid on 30.06.1998. The SRSR Books

drew a bill dated 3.6.1998 drawn on Muruga Polytechnic for Rs. 5,87,837.50(Exh. P-210). Exh. P-176 is the invoice. Exh. P-177 is the way bill

issued by the TVS. The value of the books as per invoice is Rs. 5,87,837.50. The alleged order placed by Muruga Polytechnic for the supply of

books has been marked as Exh. P-180. The cash bill was to be collected through Nedungadi Bank, Ulundurpet as per the letters issued by the fourth accused under Exh. P-209, 209. The Nedungadi Bank, Ulundurpet returned the bills since the invoice bill remain unpaid at their end. Exh.

P-178, 179 are the letters addressed by the Nedungadi Bank. Again SRSR books drew a bill on NRD Educational Trust for Rs. 9,11,799/-

under Exh. P-187 bill. The value of the books as per invoice dated 29.06.1998 is Rs. 9,11,799/-. The bills were returned by the SBI, Madurai

branch since the consignee/drawee could not be located when sent through the professional couriers. The Professional Courier also returned the

same since they are not able to locate the address of the consignee. Exh. P-189 is the courier receipt. Exh. P-190 is the letter written by the bank

Manager. Exh. P-187 is the bill. These books were sent through the Southern Railway under railway way bill Exh. P-196. Since the consignee

failed to take delivery the Southern Railway issued notice under Exh. P-181 to the fourth accused SRSR books. Exh. P-182 is the

acknowledgment. As per Railway Rules the parcel was opened and inventory was prepared in the presence of PW-31 Sri. Philip Jayakumar,

Inspector of Police RPF at Madurai Junction during 1998. The inventory is Exh. P-183 and the signature of PW-31 found therein is Exh. P-

183A. The books were kept in the Railway Book Bank in Madurai under the control of PW-27 Sri. Sundar, Assistant Commercial Manager of

Southern Railway, since 1998.

6. The first accused by his letter Exh. P-133 dated 7.4.1998 requested the SBI, Kailsapuram Branch for transferring a sum of US $ 1.05915 to

Halib Bank, Dubai for the credit of the account of Sri. Lakshman Bhatia and Kavitha Bhatia. He requested the Kailasapuram branch to debit RFC

branch through branch clearing general account for the amounts involved in this transaction. PW-8 Sri. Subramanian the then Deputy Manager

(Foreign Exchange) SBI, Kailasapuram branch in charge of foreign exchange (conversion) processed Exh. P-133 and the amount was sent as

requested by the first accused. Exh. P-131 is the copy of telex message sent by them in respect of Exh. P-133. Exh. P-135 is the copy of TT

issued register of the Kailasapuram branch. Exh. P-136 is the office copy of the list of other originating debits. The SBI RFC branch un-

responded this outward remittance due to lack of sufficient funds in the corresponding account. Subsequently this amount was responded by the branch by debiting protested bills account. On receipt of complaint about the irregularity in the SBI RFC branch PW-12 Sri. Mohammed Abu

Kalam, the then Chief Manager, General Banking, Zonal Office, Region-I enquired into the matter and found irregularity and recommended further

investigation into the matter. His report is Exh. P-143. Subsequently, PW-7 Sri K.S. Raman the then AGM (Vigilance) in Local Head Office,

Chennai took up the matter and enquired into the matter. He submitted his report under Exh. P-132. PW-18 Sri. Ramachandra Rao was the Chief

General Manager, SBI Local Head Office, comprising the whole Tamilnadu on consideration of Exh. P-132 report found a prima facie case and

hence as per the instructions of CVC he preferred a complaint under Exh. P-170 to the CBI, BS &FC Bangalore. The Superintendent of Police,

CBI registered a case in FC 8(E)/98 of BS 7 FC Bangalore. Exh. P-170 is the FIR. PW-33 Sri. D''Silva Dy. SP was incharge of this case during

8/2/99 to 27/8/1999. He took up investigation in this case. He searched the residential premises of the accused 1, 2,3 and searched office

premises of the accused 3 & 4. Search lists have been marked as Exh. P-193, 194, 195, 197, 198 and 199. He collected the relevant documents

in this case and examined the witnesses. After him PW-33 Sri. T.V. Joy, Inspector took up further investigation on 27.8.1999 and examined the

witnesses. He collected the specimen signatures and admitted signatures of first accused, second accused and PW-2 and PW-5 and sent the

documents to Government Examiner of Questioned documents. The opinion of the GEGD is Exh. P-229, 230. After completing the investigation

and after obtaining sanction for prosecuting the accused under Exh. P-191 from PW-28 Sri. K.C. Raut PW-34 laid charge sheet against the

accused.

7. When further examined u/s 313 Cr.P.C with reference to the incriminating circumstances appearing against them in the prosecution evidence the

first accused has stated that all his acts were aimed at the further development of the bank business only; that his acts did not carry any criminal

intention, that he has not misappropriated any amount, on the contrary, by his acts, the bank has improved a lot that there could not be any loss to

the bank and the bank has already filed recovery proceedings before the Debt Recovery Tribunal, that the amount has been debited to the protested bills account which is not once for all loss to the bank, that an amount of Rs. 7,75 lakhs has already been recovered and that there was

no loss to the bank. He filed a written statement of defence to that effect. The fourth accused denied the allegations levelled by the prosecution

against him and he has further stated that he has repaid the amount payable to the bank drawn by him. He has also filed written statement of

defence to that effect. On the side of the accused DW-1 was examined and Exhs. D-1 to D-4 were marked. DW-1 has stated that he canvassed

NRI deposits for the first accused during 1997-98. The first accused paid commission for the deposit he had canvassed for him in cash. Exh. D-1

to D-3 are the legal notices issued by the bank to the accused. Exh. D-4 is the letter written by the first accused.

8. Heard the senior counsel Mr. K. Chellapandian, learned Counsel for the appellant in Crl. A. No. 43 of 2004 and the senior counsel Mr. N.

Natarajan, learned Counsel for the appellant in Crl. A. No. 84 of 2004 and Mr. Rozario Sundarraj, the learned Special Public Prosecutor for CBI

Cases and perused the entire materials on record.

9. The accusation against the first accused/ appellant in C.A. No. 43/2004 is that besides issue of a parallel deposit receipt under Exh. P-13 from

the RFC Branch, a branch not authorised to deal with foreign exchange, the first accused is said to have fabricated and forged letters of

depositors, as also security documents towards manipulating and misusing the funds of Non-resident Indian depositors. This has been done in

respect of the accounts of Sri. A.Z. Shah, Sri. B.Z. Shah, Sri. Lakshman Bhatia, Kavitha Bhatia, Sri. Hiro N. Devjani and Sri. Jaffer Ali. The

manner in which this has been done and the evidence in respect thereof again stands well recorded by the lower court. The same reads as under:

PW-1 Sri Ravichandran was working as Accountant at SBI, Labbhaikudikadu Branch during the relevant time. Prior to his assignment as Branch

Manager the first accused was working as Accountant at SBI, Labbhaikudikadu Branch. PW-1 succeeded the first accused. He has handed over

the security forms Exh. P-1 from Labbhaikudikadu Branch containing STDR Receipt No. 023251 to 023300 to the first accused. The first

accused has issued Exh. P-3 acknowledgement purported to have been signed by the PW-2 Sri. Vijayanarayanan, Assistant Manager (Accounts) and PW-5 Sri. Vasudevan, Assistant Manager (Cash) of RFC branch. It is not in dispute that PW-2 & 5 were the joint custodians of the security

forms. They have categorically stated that the signature found in Exh. P-3 are not their signature. There is no valid reason to reject their evidence.

PW-2 identified the handwriting and signature of the first accused. Their evidence clearly shows that Exh. P-3 was forged by the first accused. Sri.

A.Z. Shah, B.Z. Shah deposited a sum of Rs. 1,64,46,098.25 under NRNR deposit with RFC Branch. Exh. P-6 is the letter dated 19.05.1998

signed by the said persons to RFC branch. They enclosed Exh. P-5 Demand Draft issued by the HDFC bank. The DD was received by the RFC

branch on 1/6/1998. Exh. P-7 is the copy of the register maintained at RFC branch. Entry regarding the receipt of Exh. P- 5 has been made under

Sl. No. 5 in Exh. P-7. Exh. P-8 is the certified copy of Short Term Deposit Register. It shows that the amount was received on 12.6.1998.

Further under Exh. P-9 on 10.6.1998 itself Rs. 30 lakhs was debited from the account A.Z. Shah by debiting IDBI account. It is seen from the

evidence of PW-2 that it was prepared by the first accused himself. This Rs. 30 lakhs was paid to the second accused''s NRD Educational Trust

by means of a bankers cheque under Exh. P-11 dated 10.6.1998 in favour of NRD Educational Trust. It is the evidence of PW-2 that the first

accused prepared Exh. P-10 on 12.6.1998. A sum of Rs. 1,34,46,098.26 is taken from the funds of A.Z. Shah. Exh. P-14 is the corresponding

debit slip. From out of this amount Rs. 12.50 lakhs was credited to the account NRE 37 of PW-11 Jaffar Ali with RFC branch under Exh. P-20

pay-in-slip. Another sum of Rs. 12.50 lakhs from out of the said amount was credited to the account NRE 38 of Lakshman Bhatia with RFC

branch under Exh. P-19. The remaining amount Rs. 1,09,46,098.26 invested as NRNR STDR in favour of A.Z. Shah under Exh. P-16 by the

SBI, RFC branch. However, the first accused issued parallel Exh. P-13 STDR receipt procured from the SBI, Labbhaikudikadu Branch on behalf

of the RFC branch for the said A.Z. Shah.

10. PW-6 Sri. Balakrishnan was working as Typist-cum-clerk incharge of processing demand loans, purchase of DDs and issue of STDR in RFC

branch during the relevant time. His evidence indicates that the first accused prepared Exh. P-13 parallel receipt for the amount deposited by A.Z.

Shah and this was procured from the Labbhaikudikadu Branch, Exh. P-1 STDR book. It is seen from the evidence that Exh. P-16 receipt was

closed on premature basis. It is alleged by the prosecution that the first accused prepared Exh. 201 letter purportedly signed by A.Z. Shah. It is

seen from the evidence of PW-6 and PW-2 that Exh. P-16 was closed on pre-mature basis by the first accused himself. He has made entries to

that effect on Exh. P-16. As per this Exh. P-201 letter a sum of Rs. 62 lakhs was transferred from A.Z. Shah to the account of the third accused

under Exh. P-22 on 15.7.1998. A sum of Rs. 15 lakhs was transferred to the account of Evershine Travels under Exh. P-26 pay-in-slip. The

balance amount of Rs. 3 lakhs was transferred to Account NRE 37 of Jaffar Ali under Exh. P-27. It is seen from the evidence of PW-2 that the

first accused has made entries in Exh. P-26 and 27 pay-in-slips. The remaining amount was deposited in the name of A.Z. Shah by the first

accused in NRE A/c.50 under Exh. P-28. Exh. P-29 is the ledger copy of the NRE 50. Sri. Lakshman Bhatia and Kavitha Bhatia, non-resident

Indians in Dubai opened an account with SBI, RFC Branch under Exh. P-30 on 21.04.1997. The evidence of PW-7 Sri. K.S. Raman, AGM

(Vigilance) Local Head Office during the relevant time makes it clear that the RFC branch was not authorised to deal in foreign exchange

conversion. It can be done only with the consent of the depositor and it can be done only through the authorised branches. In Trichy, SBI Trichy

Main Branch and Kailasapuram Branch are authorised to deal in foreign currency. PW-8 Sri. Subramaniam was the Deputy Manager (Foreign

Exchange), SBI, Kailasapuram Branch from 1997. PW-9 Sri Narayanasamy was working as a Deputy Manager, IB Division in SBI,

Kailasapuram branch during the relevant time. Exh. P-124 is the message from Lakshman Bhatia for issue of FCNR deposit and reinvestment for

US $ 99980. Exh. P-124 was brought to SBI, Kailasapuram branch by the first accused. Exh. P-137 is the inward remittance register copy

maintained in Kailasapuram branch. At the instance of the first accused PW-9 processed the deposit of Lakshman Bhatia and converted into

Indian Rupees and issued Exh. P-139 credit slip for Rs. 35,70,286/- . SBI, RFC branch issued STDR Exh. P-32 for Rs. 34,20,000/- in favour of

Lakshman Bhatia and Kavitha Bhatia. For the remaining amount of Rs. 1,50,286/- banker cheque under Exh. P-35 in favour of Lakshman Bhatia on the basis of the letter Exh. P-36 for banker cheque. It is seen from the evidence of PW-2 that Exh. P-36 was prepared by the first accused.

11. Sundry Loan 13/4 for Rs. 22 lakhs was raised against the deposit Exh. P-32. Exh. P-37 to 41 are the loan documents. These documents Exh.

P-37 to 39 were purported to have been signed by Lakshman Bhatia. However, the case of the prosecution is the signature of Lakshman Bhatia

was forged on these documents by the first accused. This loan closed on 16.10.1997 as per Exh. P-47. It is from Exh. P-46 to 48 another loan of

Rs. 30 lakhs was raised in the name of Lakshman Bhatia. From out of this Rs. 30 lakhs Rs. 22 lakhs was transferred to the A/c of Sundry loan

13/4 and Rs. 8 lakhs was paid to the account of Evershine Travels under Exh. P-49. The endorsement to this effect was made on Exh. P-46 debit

slip by the first accused. An NRE account in the name of Lakshman Bhatia was opened by the third accused. Exh. P-73 is the account opening

form. Exh. P-75 is the ledger copy of the Lakshman Bhatia NRE 48. On 19.05.1998 a sum of Rs. 29,69,873/- was credited to this account under

Exh. P-74 subsequently in June 1998 a sum of Rs. 9,50,000/- was credited to this account. On 17.06.1998 a sum of Rs. 9,50,000/- was

withdrawn from this account under Exh. P-76. On 23.06.1998 a sum of Rs. 25 lakhs was withdrawn from this account under Exh. P-79. On

06.7.1998 a sum of Rs. 7 lakhs was withdrawn from this account under Exh. P-80. Again a loan of Rs. 34 lakhs was raised in the name of

Lakshman Bhatia under SL 13/25 as per Exh. P-50, 51. From out of this amount Rs. 30,69,430/- was paid to discharge the loan No. SL 13/18.

The remaining amount of Rs. 3,30,570/- was credited to the Evershine Travels under Exh. P-52. First accused under Exh. P-133 letter dated

7.4.1998 requested Kailasapuram branch to transfer a sum of US $ 1.05915 for the credit of the account to Halib Bank, Dubai for Lakshman

Bhatia and Kavitha LakshmanBhatia. The first accused in this letter requested the Kailasapuram branch to debit RFC branch through branch

clearing general account for the amount mentioned in Exh. P-133. PW-8 Sri. K. Subramaniam Deputy Manager (foreign exchange)during the

relevant time processed Exh. P-133. Exh. P-135 is the TT register. It contains the transaction in respect of P-133. This outward remittance was

not responded by SBI, RFC branch due to lack of funds in the corresponding accounts. PW-13 joined RFC branch as Manager on 3.8.1998. He settled Rs. 42,16,017/- payable under Exh. P-133 to Kailasapuram by debiting protested bill account as per the instructions issued by the Zonal

office under Exh. P-144.

12. PW-10 Sri. Hiro N. Devjani residing in Maldives opened an account with RFC branch under Exh. P-53. He deposited Rs. 78,59,342.50 for

one year. It is seen from the evidence of PW-2 and 6 that the first accused issued Exh. P-71, 72 deposit receipts for Rs. 26 lakhs each. Exh. P-54

and 60 receipts were prepared by PW-6. It is seen from the evidence of PW-10 Exh. P-71 and 72 are the parallel receipts prepared and signed

by the first accused for Rs. 26 lakhs each. Therefore, it is clear that Exh. P-71 and 72 receipts issued from the STDR book, Exh. P-1 obtained

from Labbhaikudikadu Branch. A loan of Rs. 20 lakhs raised in the name of PW-10 in SL 14/2 against the STDT Exh. P-60. Exh. P-55 to 57 are

the loan documents purported to have been issued by PW-10. This Rs. 20 lakhs was paid to close the loan availed in SL 13/25 in the name of

Lakshman Bhatia. Again a sum of Rs. 20 lakhs was raised in the name of PW-10 Sri Devjani. Exh. P- 61 to 63 are the loan documents purported

to have been executed by PW-10. From out of this amount of Rs. 20 lakhs, Rs. 16,37,935/- was used to discharge the loan in SL 13/25 and

balance amount of Rs. 3,62,065/- was paid to the credit of Account 43 under Exh. P-68. The entire amount payable for SL 13/25 was closed.

Exh. P-67 is the demand loan pay-in-slip. Exh. P-69 is the ledger copy of the account. From this account, Rs. 3 lakhs was withdrawn under Exh.

P-70. It is seen from the evidence of PW-10 Sri. Devjani that his signature was forged in Exh. P- 70 and loan documents. He has clearly stated

that he has not raised any loan against deposit. He addressed a letter under Exh. P-228 to the General manager, SBI Zonal Office that he has not

availed any loan. PW-13 Manager repatriated the amount due under Exh. P. 71 and 72 issued in favour of PW-11 as per the instructions

contained in Exh. P-144 approval of the Zonal Office. PW-11 Sri. Jaffar Ali residing in Riyadh opened an account with RFC branch. His account

opening form has been marked Ex. P. 81. Account number is 37. It is seen from his evidence that he has deposited a total sum of Rs. 7 lakhs. Exh.

P-84 is the ledger extract for the account No. 37. He has received a cheque book containing numbers 653651 to 653675 on 9.4.1997. However, a cheque containing numbers 653901 to 653925 was also issued in his name and it was received by the first accused himself under Exh. P-123. In

the cheque book register Exh. P-85 the first accused has signed on behalf of PW-11. Under Exh. P-79 debit slip a sum of Rs. 25 lakhs was

transferred to the account of PW-11 from the account of Lakshman Bhatia. Under Exh. P-27 a sum of Rs. 3 lakhs was transferred to the account

of Jaffar Ali. A sum of Rs. 10 lakhs was withdrawn by the second accused Ramani Iyer under Exh. P-86. Under Exh. P-87 cheque a sum of Rs.

17 lakhs was withdrawn from this account by the NRD Educational Trust, the second accused. Further, amounts were withdrawn from the

account PW-11 Jafar Ali under cheques Exh. P-86, 87, 90, 91, 94, 95, 96,97,98 and 99. It is clearly stated by PW-11 that the signature found in

the above cheques are not his signatures. He had issued Exh. P-119, 120 and 121 and had withdrawn the entire amount. It is seen from the

evidence of PW-11 Jaffar Ali that his signature was forged and his account was misused by the first accused. He has no axe to grind against the

accused. Therefore, his evidence cannot be rejected. It is clear that the first accused by his wrongful acts has credited sums belonging to NRI

depositors into accounts of other persons thereby causing them pecuniary advantage. Similarly by his deceitful act, the first accused willfully has

exposed the NRI deposit holders to risk of loss and thereby acted fraudulently. Hence, offences both under Sections 13(2) r/w 13(1)(c) & 13(2)

r/w 13(1) of PC Act, would stand attracted in his case.

13. It was argued by the learned senior counsel appearing for the appellants in C.A. No. 84/2004 that the complainant bank was dealing with the

funds of the NRI depositors only through agents and that none in the bank had so much as seen such NRI depositors. In this regard, the evidence

of PW-30, who was a Chartered Accountant and who had spoken of Mr. A.Z. Shah being a family friend, of his being in Kenya, of Sri. A.Z.

Shah investing a sum of Rs. 1.64 crores on his advice with the complainant bank for which PW. 30 had sent the DD to the bank and that such

investment was made through the agent of PW-30 was referred to. It was particularly submitted that under Exh. P-201, pre-mature closure of the

deposit of Sri. A.Z. Shah has been requested under the hand of Sri. A.Z. Shah. Learned senior counsel also referred to the evidence of PW-7, the

Assistant General Manager (Vigilance) in the bank who had spoken to the first accused having put in 27 years of unblemished service and to the

fact that the controller had inspected the branch of the first accused in March/ April 1998 and submitted a report which did not point out any lapse

on the part of the first accused. However, it is seen that the documentary evidence of manipulation of accounts of NRI depositors and interplay

therein have been blatantly indulged upon by the first accused in his capacity as the Branch Manager of the complainant bank. PW-30, has in chief

spoken to knowledge of the signature and handwriting of Sri. A.Z. Shah and his brothers. He has deposed that the signature purported to be that

of Sri. A.Z. Shah, was not so. The defence has not so much as suggested that such witness was not familiar with either the handwriting or signature

of Sri. A.Z. Shah. The evidence of such witness, becomes relevant u/s 47 of the Evidence Act.

14. Further, PW-10 and PW-11 also have been examined regarding their NRI deposits and they have clearly deposed to the wrong doings in their

accounts and have also denied signatures purported to be theirs. It is seen that comparative signatures have been obtained from the deposit holders

and the same had been examined by the handwriting experts. The related exhibits are Exhs. P-229, P-230 and P-234. These exhibits have been

marked through the Investigating Officer PW-34. The said exhibits have been certified by the Government examiner of questioned documents.

Section 293 of the Cr.P.C permits use of, as evidence, the exhibits and report under the hand of a Government Scientific expert to whom the

section applies. Section 293 Cr.P.C reads as follows:

293. Reports of certain Government scientific experts-k (1) Any document purporting to be a report under the hand of a Government scientific

expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any

proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to

appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and

can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely,

(a) Any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) The Chief Controller of Explosives;]

(c) The Director of the Finger Print Bureau;

(d) The Director, Haffkeive Institute, Bombay;

(e) The Director[Deputy Director or Assistant Director] of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) The Serologist to the Government.

(g) Any other Government Scientific Expert specified by notification by the Central Government for this purpose.]

15. u/s 293(4)(c) it would be the report of the Director of Finger Print Bureau which may be read as evidence. The Government Examiner would

not be a person whose report can be acted upon u/s 293 Cr.P.C. Even so ,this lapse of the prosecution would not aid the first accused/appellant in

C.A. No. 43/2004 given the overwhelming evidence against him.

16. Given the above there is absolutely no necessity to doubt the prosecution so far as the first accused/ appellant in C.A. No. 43/2004 is

concerned. His conviction for offences under Sections 120B r/w 409, 420, 467, 468 and 471 IPC and Section 13(2) r/w 13(1)(c) & (d) of PC

Act, 1988; 13(2) r/w 13(1)(c) & 13(2) r/w 13(1)(d) r/w 15 of PC Act, 1988; 409, 467, 468 and 471 r/w 467 IPC are well founded. We will

revert hereunder to the question of sentence as against the first accused/ appellant in C.A. No. 43/2004.

17. The accused 3 and 4/ appellants in C.A. No. 84/2004 stand convicted by the lower court since it was of the view that they were parties to the

wrongful conduct of the first accused and were the beneficiaries of such conduct. The defence of the third accused/ first appellant in C.A. No.

84/2004 is that he having been in availment of a loan from the Bank of India had towards discharge, approached the complainant State Bank of

India, Rock Fort City Branch, for grant of loan towards clearing his loan with the Bank of India and on due sanction thereof had provided security as required by the complainant bank and had availed of the loan to the tune of Rs. 62 lakhs. There was absolutely no wrong that could be alleged

against him. In support of his contention, the evidence of PW-18 Chief General Manager of the State Bank of India was referred to. Such witness,

who had lodged the complaint based on the report of PW-7 under Exh. P-132 on 23.11.1998 had stated that he had not informed anything about

the third and fourth accused in his complaint. PW-7, who prepared the report Exh. P-132 is the Assistant General Manager (Vigilance) and the

Enquiry Officer of the State Bank of India. He would state that the Zonal office of the bank was aware of the credit facility afforded to the third

accused and that the value of security for the loan availed of by the third accused was to the tune of Rs. 2.25 crores. PW-2, the Assistant Manager

of the State Bank of India, RFC Branch would confirm that there were no rules which prohibited any customer from obtaining a loan from one

bank to discharge a loan owed to another and that the routine procedure was adhered to in the grant of facility of the appellants. The only wrong

doing he would speak of was the forgery i.e. that committed by the first accused and would state that neither the third accused nor the fourth

accused had any connection with the preparation of forged documents by the first accused.

18. As regards the fourth accused/the second appellant in C.A. No. 84/2004 the wrong doings attributed was that he had discounted two bills

with the complainant bank and obtained funds thereon with the aid of the first accused with the full knowledge that the bills discounted by him

would not be honoured. As regards one of such bills viz. Exh. P-210 for Rs. 5,87,837.50 drawn on the Principal, Muruga Polytechnic, Mellur

Post, Kallakurichi Taluk, PW-21 who is the Chairman of such Polytechnic has been examined to prove the wrongful conduct of the fourth

accused. His evidence is rather wanting in that while he admits that the letter which contained the order for supply of books by the fourth accused,

were under the letter heads of his institution, he would depose that the same was handed over to the second accused for a different purpose. Such

letter is under the hand of the Principal of the said Muruga Polytechnic, who has not been examined. In respect of one other bill viz., P-187 for Rs.

9,11,799/- it is seen that the same has been not realised since the addressee/ drawee could not be served for want of full address. It also is seen that the books purchased under such bill have been consigned through the Southern Railway and as the drawee has not taken delivery, the same

was held by the Southern Railway. Through Exh. P-183, the inventory prepared by the Railway, it is shown that the quantity of the books did not

tally with the invoice Exh. P- 185. This Court is of the considered view that the above circumstance would not lead to the inference that the fourth

accused wrongly has conducted himself and in concert with the first accused. It is not denied that in the original complaint no wrong doing on the

part of the fourth accused was spoken about or that the entire sums due from him have been recovered. The search of the premises of the third

and fourth accused have not led to seizure of incriminatory documents. It is admitted that this accused also had nothing to do with the forgery

committed in the case. Immediately on deduction of the malpractice, the third and fourth accused had come forward under letters of undertaking to

repay the amounts due with higher rate of interest. PW-7, Assistant General Manager (Vigilance) and the Enquiry Officer also had spoken to the

fact that the third parties i.e. namely the appellants, having agreed to pay the amount due with higher rate of interest, when they were informed of

the irregularities. Exh. P-202 is the letter dated 29.06.1998 to the complainant Bank requesting a term loan of Rs. 65 lakhs to discharge the loan

due to Bank of India and on agreeing to provide collateral security therefor. Exh. P-163 is the letter of the third accused to the Bank of India

regarding clearing the loan due to them and seeking release of the documents held by them. Under Exh. P-164, the payment of monies due to the

Bank of India stands proved. Further proof thereof is available under Exh. P-165, 166 and 167, the ledger accounts of the Bank of India. PW-16,

the Deputy Manager of the Bank of India also had admitted that the amount was paid to close the loan owing to them. The deposit of title deeds of

the collateral security held by the bank is Exh. P-224. The fact of payment of a sum of Rs. 62 lakhs by the accused to the Bank is not denied by

PW-12, the Assistant General Manager of the complainant bank.

19. Given the prosecution case that the funds of the NRI Account holders has been manipulated by the first accused and put to the use and benefit

of the third and fourth accused, there would be an inclination to presume that the third and fourth accused were acting in concert with the first accused. However, in the circumstances of the present case where the third accused had duly applied for and obtained loan from the complainant

Bank and towards clearance of the dues owed to the Bank of India, where it is shown that the loan availed from the complainant Bank duly has

been utilised towards repayment of the dues to the Bank of India, where it is shown that the Controlling Office of the complainant Bank was well

aware of the loan to the third accused and where the witnesses admit that apart from the forgery there was no other irregularity as also that the

other accused were not even aware of the forgery and connected wrong doings, this Court is of the view that the benefit of doubt would have to

be accorded to the accused. Why the first accused has utilised the funds of the NRI Account holders towards the loans availed of by these

accused is within the personal knowledge of the first accused and it would not be for these accused to explain the same. It is to be remembered

that the manipulation of accounts indulged in by the first accused did not stop with the accounts of these appellants but also extended to the

accounts of other customers of the bank.

20. Reverting to the question of sentence as regards the first accused/ appellant in C.A. No. 43/2004, as pointed out by the learned senior counsel

it has been admitted by PW-7 that the first accused had put in 27 years of unblemished service and has pleaded before Court informing that he had

acted foolishly only with the intention of improving the business and income of the bank and the concerned branch held deposits of about Rs. 2

crores when the first accused took over it and under his service the deposit figure rose to Rs. 18 crores. Though, this in itself cannot be a

justification for the criminal acts committed by him, this Court, considering the age of the accused and the repercussion that this conviction would

have on his service benefits, would reduce the substantial sentence of imprisonment alone to a period of one year in respect of each of the

offences, without altering the fine imposed upon him.

21. In the result, the Criminal Appeal No. 43/2004 shall stand dismissed and the judgment of conviction passed in C.C. No. 8/2000, Principal

Sessions Court, CBI Cases, Madurai, as regards the first accused shall stand confirmed. However, the substantial sentence of rigorous

imprisonment alone in respect of the 7 offences shall be reduced to a period of one year in respect of each offence. The sentences concurrently

shall run. Crl. A. No. 84/2004 stands allowed. The fine amount paid by the appellants in Crl. A. No. 84/2004 if any, shall be refunded.

