

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1688 OF 2008

N.V. Subba Rao

.... Appellant(s)

Versus

State, through Inspector of Police,
CBI/SPE, Visakhapatnam, A.P.

.... Respondent(s)

WITH

CRIMINAL APPEAL NO. 1700 OF 2008

J U D G M E N T

P.Sathasivam,J.

1) These appeals are directed against the common final judgment and order dated 29.01.2008 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Appeal Nos. 602 and 617 of 2001 respectively whereby the High Court while dismissing the appeals confirmed the order of conviction passed by the trial Court but

reduced the sentence of rigorous imprisonment (RI) of two years to one year.

2) **Brief facts:**

(a) According to the prosecution, basing on reliable information, on 23.03.1995, the Inspector of Police, Special CBI, Visakhapatnam registered an FIR in Crime No. RC.03 (A)/95-VSP against Shri N.V. Subba Rao (A-1), the then Branch Manager, Central Bank of India (in short 'the Bank'), Guntur, A.P and Shri Attur Prabhakar Hegde (A-2), Proprietor of A.P. Enterprises, Guntur, A.P. for the commission of offence punishable under Section 120-B read with Section 420 IPC and Sections 420, 468 and 471 read with Section 468 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (in short 'the P.C. Act.') alleging that A-1 abused his official position as a public servant and entered into a criminal conspiracy with A-2 and defrauded the Bank to the tune of Rs. 1.168 crores by sanctioning temporary over drafts and term loans to various individuals sponsored by A-2.

(b) After completion of the investigation, the CBI, on 08.05.2000, filed charge sheet against both the accused persons in the Court of the Special Judge for CBI Cases at Visakhapatnam which was numbered as CC No. 8 of 1998. In the said charge sheet, it has been alleged that A-1 while functioning as Branch Manager was instructed by his Controlling Officers to disburse loans to the employees of Railways and other organisations only after obtaining an undertaking from their employers (borrowers) that the monthly installment of repayment of loan will be deducted from their salaries as primary security and also to obtain a mortgage on the plots sold to the borrowers through M/s A.P. Enterprises. A-1 fraudulently and dishonestly disbursed 494 loans of Rs. 10,000/- each to various railway employees amounting to Rs. 49,40,000/- and credited the proceeds to the account of A-2 without obtaining the requisite undertaking from the employers and without proper security of monthly installments to be deducted from their salaries. Out of the above mentioned 494 borrowers, 45 persons have been identified by the prosecution. It also came to light that A-2,

after having received the proceeds of the above 45 borrowers, fraudulently and dishonestly did not get 45 plots registered in their names nor the borrowers get the loan amount from the Bank.

(c) The Special Judge for CBI cases, Visakhapatnam, by judgment and order dated 30.04.2001, sentenced A-1 and A-2 to undergo RI for a period of one year for the offence under Section 120-B of the Indian Penal Code, 1860 (in short 'the IPC') and to undergo RI for a period of 2 years alongwith a fine of Rs.5,000/-, in default, to further undergo simple imprisonment for 3 months for the offence punishable under Section 420 of the IPC. Further, A-1 was sentenced to undergo RI for 1 year alongwith a fine of Rs.2,000/-, in default, to further undergo simple imprisonment for 2 months for the offence punishable under Section 13(1)(d) read with Section 13(2) of the P.C. Act and also ordered that the sentences shall run concurrently.

(d) Against the said conviction and sentence, A-1 and A-2 filed Criminal Appeal Nos. 602 and 617 of 2001 respectively before the High Court of Andhra Pradesh at Hyderabad. By

impugned judgment and order dated 29.01.2008, the High Court while dismissing the appeals confirmed the conviction passed by the trial Court but reduced the sentence of rigorous imprisonment (RI) of 2 years imposed under Section 420 of the IPC to 1 year considering the age of the accused.

(e) Being aggrieved, A-1 and A-2 preferred these appeals by way of special leave and leave was granted on 20.10.2008.

3) Heard Mr. Mukul Gupta, learned senior counsel for A-1 and Mr. Y. Raja Gopala Rao, learned counsel for A-2 and Mr. Sidharth Luthra, learned Additional Solicitor General for the respondent-CBI

4) For convenience, hereinafter, we will refer the appellant in Criminal Appeal No. 1688 of 2008 as A-1 and the appellant in Criminal Appeal No. 1700 of 2008 as A-2.

Discussion:

5) A-1 joined the service of Central Bank of India in the year 1953 and served as the Branch Manager, Guntur during the period 1989-1991. At the relevant time, A-2 was the proprietor of M/s A.P. Enterprises, Guntur. According to the prosecution, A-1 being a public servant and Branch Manager

of the Central Bank of India, Guntur, entered into a criminal conspiracy with A-2 in order to defraud the Bank. Pursuant to the same, A-2 floated a Scheme mooted by him in the year 1990 and a formal proposal was sent to the Bank for approval of the same on 14.09.1990. This proposal was to be backed by A-2 by arranging Foreign Currency Non-Resident (FCNR) Deposits for the Bank and in return for the sanction of loans to the employees of central and state government for purchase of house sites through M/s A.P. Enterprises and A-2 also offered to (a) procure approval from the competent authorities responsible for disbursing salaries to the employees/borrowers to ensure that the amount so lent would be deducted from their salary and (b) equitable mortgage of the proposed land to be executed. Based on these conditions, the amount of loan to individual purchasers for purchase of land would be transferred to A-2.

6) It is further seen that the proposal of September, 1990 was forwarded by A-1 to the Zonal Office proposing the Scheme for 109 borrowers containing a mechanism whereby a sum of Rs. 10,000/- to 25,000/- would be lent by the Bank to

the Central Government employees (South Central Railway) to purchase plots of land (approx. 200 sq. yards) from A-2 which is evident from Exh. P-3. It is also the case of the prosecution that A-1, in furtherance of criminal conspiracy, dishonestly disbursed the loan and credited the proceeds of the loan to the account of A-2. Further, A-2 failed to register the plots in the name of almost 50% of the purchasers/borrowers despite having received the proceeds and thereby causing wrongful loss to the Bank as well as to the purchasers. Though the loan transaction relate to several persons, the charge in the case on hand is limited to 45 railway employees/borrowers wherein it was alleged that there was no transfer of land, hence, no equitable mortgage was created, putting the bank to a loss of Rs. 4,50,000/-.

7) It is the defence of A-1 that the initial proposal made by him was approved by the higher authorities, hence, there could not be any criminal action since the approval by the appropriate authority absolves him of all the liabilities/responsibilities in disbursement of monies of which he was the custodian on behalf of the Bank. It is also his

claim that whether failure to prosecute higher officials is justifiable and also whether his acts which were done with the prior approval of the higher authorities will constitute a criminal offence. According to him, at the most, it may amount to dereliction of duty. It is also his stand that, in any event, the Bank authorities themselves agreed to provide a loan to the extent of 40% of the deposits mobilized by A-2 in the form of FCNR.

8) It is highlighted by A-2 that as per the understanding, FCNR Deposits were provided to the Bank to the tune of Rs. 8 crores for a period of 3 years on which the Bank earned enormous interest. It is also highlighted that at the relevant time, the Bank had no deposits at all and the interest they have to be paid which is in banking terms called as “call money” was up to 70% to 75%. It was further projected that when the Bank was in need of money that too in the form of FCNR because of financial crisis, it was A-2 who took a lot of pains and provided such deposits to the tune of more than Rs. 8 crores. It is also highlighted by A-2 that after the sanction of the loans, the loanees, who were all central government

employees were selected by the Bank officials after verifying their genuineness, salary certificates or otherwise etc.

9) It is seen that A-2 has purchased 60 acres of land at Gorentla Village, near Guntur and other places which fact was known to the employees and approximately 463 plots were registered in the name of respective loanees/borrowers. It is the stand of A-2 that the said loanees handed over the Registered Sale Deeds to the Bank for creating equitable mortgages. A-2 further contended that he could not execute any further registered sale deeds due to non release of 40% of the loan amount against the FCNR Deposits arranged by him to the Bank as agreed. It is also highlighted by A-2 that all the plots were approved by the authorities and there were no encumbrance on the house sites procured by him. The Bank also took security from the employees not only in the form of Registered Sale Deeds, but also from two employees, who have signed the relevant documents, as lands are being sold at the rate prevailing during the year 2000. Inasmuch as the Bank itself got the decree for the entire loan amount including interest, A-2 never cheated the Bank or anybody in this regard

and he had no intention to cheat the bank or the purchasers of the plots who had availed the loans from the Bank.

10) It is further seen that on receipt of a proposal for sanctioning of loans from A-2 and opening an account in his name at Naaz Centre, Guntur Branch, A-1 on 08.12.1990 has sent a letter to the Regional Office, Vijayawada recommending the proposal of M/s A.P. Enterprises wherein the following facilities were sought for, viz., (a) sanction of Over Draft facility of Rs. 12 lakhs; (b) sanctioning of term loans to the prospective buyers of plots to the extent of 40% of the FCNR Deposits to be made as assured by A-2. The proposal was recommended stating that the loans were fully secured against collateral security and temporary over draft facility secured against equitable mortgage of the landed property by the guarantors. The Financial Report dated 08.12.1990 along with the proposal was prepared by A-1. On the basis of the proposal, when certain clarifications were sought for by the Zonal Officer, A-1 sent a letter dated 22.12.1990 to the Zonal Office stating: (i) the value of the land was Rs. 90,000/- per acre; (ii) take home salary of the employees was Rs. 1,000 and

2,500/- at Guntur and Visakhapatnam respectively and (iii) letters of undertaking has already been obtained from government employees. Finally, on 22.12.1990, a letter was sent to the Chief Managing Director, Central Office, Mumbai for the consideration of A-2's proposal. It is seen from the prosecution evidence that the proposal was forwarded on the recommendation of the Branch Manager (A-1) mainly on the basis of the availability of FCNR Deposits. However, Exh. P-139 shows that on 09.01.1991, a letter was issued by Central Office to the Zonal Office of the Bank with reference to the letter dated 22.12.1990 stating that the proposal is declined due to funds constraint. Subsequently, i.e., on 07.02.1991, sanction for term loans varying between Rs. 10,000/- to 25,000/- each to 1,000 beneficiaries subject to the additional terms and conditions was granted. As per the additional terms and conditions, a letter of undertaking from every government employees has to be obtained.

11) It is pointed out by the prosecution that on 30.04.1991, A-1 had written a letter to the Railway Senior Divisional Personnel Officer to deduct monthly installments from the

salary of employees who have availed the loans and remit the same to the Bank which is evident from Exh. P-1. In reply to the above, vide letter dated 30.04.1991, the Senior Divisional Personnel Officer had stated that there is no provision to recover any amount without the employee's consent and that salary may be credited to the Bank if desired by the employee, provided a bank account is opened in his name and a consent is received from the employee. A perusal of the above shows that the condition of sanction of loan even as per the view of the Zonal Office on which A-1 relied was not met before the disbursement of amounts.

12) The prosecution, in support of the charges leveled against A-1 and A-2, have examined in all 55 witnesses, however, the defence did not lead any evidence. E.R. Somayajulu, Branch Manager was examined as PW-1, P. Sreenivasulu, Senior Personnel Officer, S.C. Railway was examined as PW-2, K. V. Subba Rao, the Manager, Central Bank of India, Regional Office was examined as PW-3, K.A.L.N. Sharma, Manager, RMV Extension Branch, Bangalore was examined as PW-4, Namburi Madhavi, Typist and Accountant

of A-2 was examined as PW-5, S.K. Galeeb, Broker was examined as PW-6, Gunti Subba Rao, another Broker was examined as PW-7, Vulchi Venkayamma, Landlady of PW-5 was examined as PW-8, P. Sesha Rao, the Manager, Central Bank of India was examined as PW-9, the Railway Employees were examined as PWs. 10-46 and PWs. 48-52, one Mr. R. Laxmana Rao, Assistant General Manager, Regional Office was examined as PW-47, T.M. Kumar, ex-Army Company Hawaldar worked with A-2 was examined as PW-53, P.S. Nair, Inspector of Police was examined as PW-54 and S.B. Shankar, Inspector of Police was examined as PW-55.

13) Now, let us consider the **incriminating circumstances** against A-1 and A-2.

Undertaking letters:

As per the additional terms and conditions for sanction of loans to government employees, a letter of undertaking from every government employee has to be obtained. In the case on hand, as per the evidence of P. Sesha Rao (PW-9) – the Manager, Central Bank of India, for a total of 957 borrowers, only 122 undertaking letters had been obtained. PW-1,

Branch Manager, Central Bank of India, in his evidence has stated that loans can be sanctioned only after obtaining undertaking letters of the employer or the disbursement officer of the employee. He stated in his examination that out of 957 loanee employees there were only 122 undertaking letters from the employers. It is also brought to our notice that Shri K.A.L.N. Sharma (PW-4), who at the relevant time worked as Accountant in Guntur Branch has proved Exh.97 which shows that A-1 falsely recorded that letter of undertaking from government employees has already been obtained. In addition to the same, the contents of the document (Exh. 97) have also been proved by Shri R. Laxmana Rao (PW-47), Assistant General Manager, Regional Office.

14) The prosecution has also highlighted the correspondence between A-1 as the Branch Manager and the Senior Divisional Personnel Officer, Railways which was proved by P. Sreenivasulu (PW-2), Senior Personnel Officer, South Central Railway which establishes that there is no provision to recover the loan amount without the employees consent and salary can be credited to the bank if desired by the employee

provided bank account is opened and consent is received from the employee. It is demonstrated before us that there is no authorization for deduction of salary and A-1 had no authority to accept term loan applications after April 30, 1991. However, applications were accepted and monies were disbursed even after April 30, 1991 vide Exh.P-55, Exh.P-60, Exh.P-62, Exh.P-63, Exh.P-64, Exh.P-67, Exh.P-69, Exh.P-71, Exh.P-72, Exh.P-76, Exh.P-79, Exhs. P-83 to P-95.

15) In respect of 45 borrowers identified by the prosecution, there is no certificate of authorization on record given by the Senior Divisional Personnel Officer (DPO) to deduct the salary and remit the same to the bank. Even though A-1 claims that all the transactions were genuine, onus shifts on him to show that he had complied with all the requirements/conditions. In fact, A-1 knows all the procedures and released the amounts to the credit of A-2 without fulfilling the requirements/conditions. We have already stated that A-1 was the custodian of the Branch and he has to take the entire responsibility.

16) It is the claim of A-1 that all the loans had been sanctioned only after obtaining undertaking letters of the employers/disbursement officers of the employees. The above assertion is found to be wrong in view of the evidence of PWs 1 and 9. It is also demonstrated before us that certain undertaking letters obtained by A-1 reveal that they were not obtained from the competent authorities. The documents, viz., Exhs. P-110-137 have been proved by PW-2, Senior DPO, Railways, who asserted in his examination in chief that only the Senior D.P.O. is the competent authority to give authorization to any bank for remittance of loan instalments from salaries of employees. In other words, if any officer subordinate to Senior D.P.O. issues any authorization, it would not bind South Central Railways. A perusal of Ex.P-113 shows that the undertaking letter in the instant case has been obtained from the Chief Traction Foreman, S.C. Railways, who is not the competent authority to deduct the salary from the employees account.

17) Learned Additional Solicitor General -Mr. Sidharth Luthra took us through the evidence of railway employees,viz.,

PWs 10-46 and 48-52 wherein they admitted that they have not given any undertaking for deduction of salary in lieu of the loan for the purpose of purchase of house plots. It is also highlighted that A-1 in his statement under Section 313 of the Code of Criminal Procedure, 1973 (in short 'the Code') has accepted that Exhs. P-53 to 95 are the respective loan applications of 43 loanees out of 957 loanees and were signed by him. He also stated that he obtained undertaking letters from all the loanees on the registration of sale deeds for the plots in their names. When such is the position, the statement made by A-1 that he had obtained undertaking letters from all the loanees is factually incorrect. As a matter of fact, the trial Court and the High Court, after verification of the oral and documentary evidence, has noted that only 122 undertaking letters have been obtained out of 957 loanees. The above factual details show that A-1 failed to obtain undertaking letters and misrepresented about the same to the higher authorities of the Bank. We have already noted and it was also brought to our notice that obtaining of the undertaking letters was one of the important pre-requisite for

sanctioning of the loans. The claim of A-1 that it is only mere dereliction of duty cannot be accepted but as rightly argued by the counsel for the CBI, it was a dishonest representation with intention to cheat causing wrongful loss to the bank and the borrowers/purchasers of the plot and obtaining the undertaking letters was one of the pre-condition for sanctioning of loans, which A-1 has not fulfilled.

Pre-inspection:

18) PW-1, in his examination has asserted that as per the Manual of Instructions of the Central Bank of India, a pre-inspection report is necessary for disbursement of any loan. He also asserted that inspection of immovable property is necessary before disbursement. While elaborating the same in his evidence, he highlighted that it is necessary to verify the title deeds and these have to be obtained by the Branch Manager as security for the loan by way of the equitable mortgage. In addition to the evidence of PW-1, the prosecution has pressed into service, the evidence of PW-3. In his examination, PW-3 has stated that as per the instructions of A-1, he verified the names of the persons shown in the list

given by A-1 with muster rolls available at South Central Railway, Guntur Section.

19) It is relevant to note the evidence of PWs 6 and 7, who were the brokers of the house plots, who have stated in their examination in chief that the lands in question were rain fed lands before forming into plots. To strengthen the above evidence, PW-53 who is an employee of A-2, has stated that before demarcation into house plots, there were ginger and chilly crops being raised by A-2. It is further seen from his evidence that at one point of time when bank officials visited the plots on complaints being received by them for non-allotment of the same, A-2 destroyed the crops on the land and placed survey stones. This factual information shows that the land which was sold to the Bank and the borrowers was (a) agricultural land; (b) land for which permission was never granted; and (c) rain fed lands and the conduct of destroying the crops to mislead officials leads to dishonest intention.

20) Some of the employees who availed loans deposed before the Court that they have not even visited the office of A-1 and

they have signed the term loan applications on the railway platform or at the office of A-2.

21) From the above materials in the form of evidence, it is clear that pre-inspection, which is a mandatory requirement according to the Manual of Instructions of the Central Bank of India, was not carried out by A-1. A-1 being a Branch Manager cannot delegate the responsibility of pre-inspection and reports thereon to anyone and he was permitted to sanction loans and disburse the amounts only after his satisfaction. About the relationship of A-1 and A-2, PW-5 an employee of A-2 stated in her deposition that A-1 visited the office of A-2 many a times. In fact, this has been admitted by A-1 in his 313 statement that he visited the office of A-2 though for inspection only.

22) It is useful to refer that similar statements were made by A-2 that A-1 has not obtained security for the loans disbursed by him. With respect to the above, PW-3 in his examination has stated that loans were sanctioned by A-1 of Rs.10,000/- to each borrower for a total 957 employees Ex. P 53-95 which are 43 loan applications out of 957 loanees were proved by

PW-4. In his evidence, PW-4 has asserted that A-1 sanctioned each of the applications of Rs.10,000/- and he duly signed the same to that effect. PW-9 in his evidence stated that out of 957 only 463 plots were allotted and registered and handed over by obtaining equitable mortgage. It is further seen from his evidence that the remaining 494 plots were not registered and, therefore, no collateral security for recovery was created. We have already mentioned that the prosecution has identified 45 loanees out of 494 in whose cases A-1 failed to obtain equitable mortgage. In this regard, it is useful to refer the statement made by A-1 under Section 313 of the Code wherein he admitted that he was obtaining equitable mortgage and as no sale deeds were present for 494 loanees, hence, getting equitable mortgage does not arise. He also explained that A-2 did not get the sale deeds on account of the default of the Bank in not financing 40% of the FCNR deposits.

23) A perusal of the evidence of PWs 1 and 9 clearly shows that pre-inspection report is necessary and out of 957 loanees only 463 plots were registered and handed over to the respective employees by obtaining the equitable mortgage.

Insofar as 494 loanees in whose names plots were not registered, no collateral security for recovery of loans was created in favour of the bank.

No Bank Accounts opened for the loanees:

24) The evidence of PW-3 shows that for all the 957 loanees, no Savings Bank accounts were opened at the bank except for few. It is brought to our notice that the letter (Exh. P-2) from Senior D.P.O Railways to A-1 shows that only after employees consent to the amount being deducted, it can be credited to the bank provided that a bank account is opened for the respective employee. It is the responsibility of A-1 and in fact he did not ensure that bank accounts were opened for the employees which would ensure crediting of installments into the bank account. In view of the materials available, the prosecution has rightly established that A-1 has willfully evaded his duty of opening bank accounts leaving the Bank without any recourse to receive monthly installments.

25) PW-4, who was working as an Accountant in the Central Bank of India during the period from August, 1988 to November, 1991, has deposed that all the applications for

advance and their letters and term loan agreements including sanction and disbursement covered by debit vouchers (Exhs. P-5 and P-6) were processed in a single day and the proceeds were credited to the account of A-2 by credit vouchers on the same day which fact is evident from Exhs. P-7 and P-8.

Proceeds of loan credited to the account of A-2

26) It is the claim of A-1 that the amount of loan for purchase of immovable property was credited to the account of vendor, namely, A-2 since all the 45 witnesses had authorised A-1 and the prosecution has not examined any other person other than those 45 persons to prove that no authority was given to A-1. PW-3, officer of Central Bank of India, in his examination has deposed that the amounts sanctioned by the Bank to various employees for the purchase of house site were credited to the account of A-2. PW-9, in his evidence, has stated that the amounts of loans for purchase of house sites sanctioned to 957 employees by Central Bank of India, Guntur were all credited to the O.D. account of A-2. The above statement of officer of the Bank is also strengthened by the evidence of Namburi Madhavi - PW-5, Typist and Accountant

of A-2 at the relevant time, who has stated in her statement that M/s A.P. Enterprises received in all Rs.97,50,000/- from Central Bank of India, Guntur Branch to their credit through transfer by debiting from the loan accounts. This aspect has been accepted by A-1 in his statement under Section 313 of the Code. It is pointed out by the prosecution that though the entire amount has been credited to the account of A-2, the security for 494 plots has not been obtained. The stand of A-2 that his failure to allot 494 plots was because of the default of the Bank in not releasing 40% of FCNR deposit is not acceptable as the materials placed by the prosecution shows that he has received the entire amount of 957 loan proceeds, though the present case is limited to 45 loanees identified by the prosecution.

27) The materials placed by the prosecution clearly establish that A-2 received monies from the Bank corresponding to the loans supposedly drawn by the Railway employees. These amounts were intended for the purpose of purchase of plots. However, it is shown to us that these amounts were transferred to the account of A-2 by a multitude of cheques to

other persons and businesses. In this regard, it is relevant to note that PW-3, who was the Manager of Central Bank of India, Bangalore, in his deposition has stated that the account copy of A-2 shows withdrawal of amounts against cheques. A-2 issued several cheques which were for cash in his own name and several other persons including telegraph transfer. In respect of above claim, the prosecution has marked several documents, viz., Exhs P-10 to P-47.

Decrees obtained:

28) Though it is claimed by A-1 that several decrees have been obtained, it is evident from the evidence of PW-9 that suits were decreed against 956 loanees, out of which 494 decrees are simple money decrees and 462 decrees are mortgage decrees. Further, it makes it clear that 126 loanees created equitable mortgage and expressed willingness for sale of plots and credit of the proceeds to their respective loan accounts, which was approved by the Regional office. It is further seen that 30 borrowers sold their plots towards discharge of their loan accounts and only one loanee liquidated the loan. The prosecution established that the

bank suffered a loss of interest, despite suits filed were decreed for non-payment of the decretal amounts. In such a situation, it is relevant to mention a decision of this Court in ***K.G. Premshanker vs. Inspector of Police & Anr.*** (2002) 8 SCC 87 and ***R. Venkatkrishnan vs. CBI*** (2009) 11 SCC 737 wherein it was held that the claim in the suit cannot override the criminal prosecution.

Payments made to A-1 by A-2:

29) Regarding payments made to A-1 by A-2, PW-5-Accountant & Typist of A-2, deposed before the Court that Exh. P-104 contains information of particulars recorded as per directions of A-2. A perusal of the same shows the details regarding various payments made by A-2 to A-1 on different dates and in different names. It shows that on 06.03.1991, a sum of Rs.25,000/- was paid by way of cash to N. Subba Rao (A-1). Again on 07.04.1991, another sum of Rs.25,000.- was paid by cash to the same person. On 14.05.1991, a sum of Rs. 35,000/- was paid by way of cash to N.S. Rao and again on 28.05.1991, a sum of Rs.20,000/- was paid by way of cash to N.S. Rao (Both N. Subba Rao and N.S. Rao denotes the

same person, i.e. A-1). PW-5 has also stated that she was asked by A-2 to preserve the document (Ex. P-104) which was accordingly preserved by her at her house. The statement of PW-5 coupled with the entries in Ex. P-104 makes it clear that A-1 is liable to be prosecuted under Section 13(1)(d) read with Section 13(2) of the P.C. Act and is rightly convicted by the Courts below.

30) Regarding the value of the land, it is seen that A-1 without any enquiry, allowed A-2 to represent higher value which was subsequently discovered by the evidence of PW-6 to be Rs.35,000/- to Rs.50,000/- which is much lesser to the value of Rs.90,000/- as quoted. On the other hand, the evidence of PW-6 - broker of house plots, in his chief-examination has also stated that the value of lands is Rs.35,000/- to Rs. 50,000/- per acre. A-2, in his statement under Section 313 of the Code has stated that the value of the land is Rs.80,000/- to Rs.90,000/- per acre and not Rs.35,000/- to Rs.50,000/- per acre. The above details also establish the joint role played by A-1 and A-2 and their

connivance. It also establishes the active collusion of A-1 and A-2 in cheating the bank and the borrowers.

31) Though A-2 has claimed that as requested by the authorities of the Central Bank of India, he has provided FCNR deposits to the Bank, in fact, provided FCNR deposits to a tune of more than Rs. 8 crores for a period of 3 years for which the Bank earned enormous interests. In view of the fact that the land was not approved by the authorities concerned, neither transferred in the name of the loanees nor mortgaged in favour of the Bank though entire sanctioned loan amount had been credited to his account, we are satisfied that the evidence led in by the prosecution establishes the active collusion of A-1 and A-2 in cheating the bank and the borrowers. Further, it cannot be claimed by A-2 that he has no fraudulent and dishonest intention to cheat the bank. In view of the statement by A-1 under Section 313 of the Code that he remitted the amount of all the loanees into the account of A-2 and of the fact that A-2 has admitted the same, i.e., he received the amount @ Rs. 10,000/- and not making the house plots ready to the remaining employees for the purpose

of allocation and execution of the sale deed approached the Bank for release of the loan amounts with the connivance of A-1 which, as rightly pointed out, show that both were having the intention to cheat the bank at every stage.

32) By relying on the decision of this Court in **M. Narsinga Rao** vs. **State of A.P.**, (2001) 1 SCC 691, learned counsel for A-1 contended that the entire case against A-1 is based on presumptions and in none of the three charges there is a scope for presumption. It is settled principle that for the purpose of reaching one conclusion, the Court can rely on a factual presumption. In the case on hand, from those proved facts, the Court can legitimately draw a presumption that in connivance with A-2, A-1 caused monetary loss to the Bank by sanctioning loans without following the established procedure which we have discussed in the earlier part of our order.

33) Learned counsel for A-1 relied on another decision of **T. Subramanian** vs. **State of T.N.**, (2006) 1 SCC 401, wherein it was held that the accused is not required to establish his defence by proving beyond reasonable doubt as the prosecution can establish the same by preponderance of

probability. In the case on hand, we have already noted that the prosecution has established its charges beyond reasonable doubt by placing acceptable materials.

34) By drawing our attention to a decision of this Court in ***State Bank of Hyderabad & Anr. Vs. P. Kata Rao***, (2008) 15 SCC 657, learned counsel for A-1 submitted that on the same facts both civil and criminal actions are not permissible. According to him, since A-1 has already been dismissed from service, criminal prosecution is not warranted on the same set of facts. We have gone through the factual details in the above decision. The case relates to initiation of departmental enquiry after acquittal in criminal prosecution. It is not in dispute that on the same set of facts, the delinquent shall not be proceeded in a departmental proceeding and in a criminal case simultaneously. When there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of. However, each cause must be determined on its own facts. On going through the factual details in the said decision, we

are of the opinion that the same is not helpful to the case of A-1.

35) Relying on another decision of this Court in ***State of Madhya Pradesh vs. Sheetla Sahai & Ors.***, (2009) 8 SCC 617, learned counsel for A-1 submitted that the prosecution has not established conspiracy among the accused. Criminal conspiracy has been defined under Section 120-A of IPC. It is an independent offence, hence, the prosecution for the purpose of bringing the charge of criminal conspiracy read with the provisions of the P.C. Act was required to establish the offence by applying the same legal principles which are otherwise applicable for the purpose of bringing a criminal misconduct on the part of the accused. In order to establish the guilt what is necessary is to show the meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means. Conspiracy is hatched in secrecy and for proving the said offence substantial direct evidence may not be possible to be obtained. An offence of criminal conspiracy can also be proved by circumstantial evidence.

36) We have already referred to the evidence led in by the prosecution, particularly, the evidence of Typist of A-2 which shows several meetings between A-1 and A-2, acceptance of money by A-1 from A-2 on many occasions, transfer of sanctioned loans to the credit of the account of A-2 etc.

37) Insofar as the charge under Section 13(1)(d) read with Section 13(2) of the P.C. Act is concerned, the ingredients of that offence are, viz., (a) that the accused should be a public servant; (b) that he should use some corrupt or illegal means or otherwise abuse his position as a public servant; (c) he should not have obtained a valuable thing or pecuniary advantage; and (d) for himself or any other person and we have already noted the materials placed by the prosecution to substantiate for the above-said offence.

38) It is also contended that there are proved irregularities or deficiencies in conducting investigation, hence, the conviction ought to be set aside. It is held by this Court in a number of decisions including in the case of **Kashinath Mondal** vs. **State of West Bengal**, (2012) 7 SCC 699 that irregularities or

deficiencies in conducting investigation by the prosecution is not always fatal to the prosecution case. It was held that if there is sufficient evidence to establish the substratum of the prosecution case then irregularities which occur due to remissness of the investigating agency, which do not affect the substratum of the prosecution case, should not weigh with the Court.

39) Finally, it was pointed out by learned counsel for A-1 that the statement or answers to the questions under Section 313 of the Code cannot be the basis for conviction of the accused. We have already noted that the prosecution has not only relied on the answers given by the accused but also placed acceptable oral and documentary evidence to substantiate the charge. We hold that the statement under Section 313 of the Code can be relevant consideration for the courts to examine, particularly, when the prosecution has been able to establish the chain of events.

40) Based on the acceptable materials placed by the prosecution, the trial Court and the High Court rightly recorded their findings and convicted A-1 and A-2 for the

offence punishable under Section 120B and 420 of IPC and further A-1 under Section 13(1)(d) read with Section 13(2) of the P.C. Act. In view of the concurrent findings recorded by both the courts based on acceptable evidence in the form of oral and documentary evidence, we are of the opinion that it is not a fit case where we should exercise discretionary jurisdiction under Article 136 of the Constitution of India, consequently, both the appeals fail and are accordingly dismissed.

.....J.
(P. SATHASIVAM)

.....J.
(RANJAN GOGOI)

NEW DELHI;
DECEMBER 3, 2012.