

Delhi District Court

Cbi vs (1) Prabhat Sitaram Kudwa on 28 October, 2013

Author: Sh. P.S.Teji

IN THE COURT OF SHRI P.S. TEJI : DISTRICT & SESSIONS
JUDGE (EAST) : SPECIAL JUDGE (CBI), KARKARDOOMA
COURTS, DELHI.

AC No.05/2009

Unique Case ID No.02402R0088442009

FIR No.RC DAI 2006 A 0045

U/s 120-B read with Section 420/468/471 IPC

and under Section 13(2) r/w Sec. 13(1)(d) of PC Act, 1988.

CBI	Versus	(1)	Prabhat Sitaram Kudwa S/o Late Sh. S.A. Kudwa R/o A-8, Awadh Apartment, Vipul Khand-I, Gomati Nagar, Lucknow (UP)
		(2)	Prashant Laxman Mahale S/o Late Sh. Laxman Mahale R/o Flat No.B-6, Mahalasa Niwas, II Floor, Devashree Enclave, Sangolda, Porvorim, Goa.
		(3)	Janardan Prasad Tiwari S/o Sh. Sharda Prasad R/o RC-18, Sangam Vihar, Manak Pur, Khora Colony, Ghaziabad, U.P.

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Date of Institution

: 20.03.2009

Date of judgment reserved

: 08.10.2013

Date of judgment

: 23.10.2013

JUDGMENT

Three accused persons, namely, Prabhat Sitaram Kudwa, Prashant Laxman Mahale and Janardan Prasad Tiwari have been sent to face trial by the Anti Corruption Branch of the CBI, for the offences punishable under sections 120B read with Section 420/468/471 IPC and under Section 13(2) r/w Sec. 13(1)(d) of PC Act, 1988.

2 At the time of commission of the offence, accused Prabhat Sitaram Kudwa was posted as Sr. Manager, whereas accused Prashant Laxman Mahale was posted as Officer of Corporation Bank, Vasundhara Enclave Branch, New Delhi. Accused Janardan Prasad Tiwari is the private person.

3 Briefly stating, the facts of the present case are that a written complaint dated 31.10.2006 Ex.PW1/A was made by Sh. K.V. Raghav Kamath, DGM, Corporation Bank to the CBI to the effect that during the period 02.04.2004 to 29.09.2004, accused Prabhat Sitaram Kudwa was working as Branch Manager, Corporation Bank, Vasundhra Enclave Branch who sanctioned and disbursed 13 Home loans amounting to Rs.86.58 lacs and one loan under Corp. Meditech Scheme for Rs.15 lacs for purchasing medical equipments. It was alleged that the said loans were disbursed by accused Prabhat Sitaram Kudwa by violating banking laws without proper verification of properties. Apart from other loans, it was alleged that Corp Home Loan No.200/2004 for Rs.5 lacs was sanctioned to accused Janardan Prasad Tiwari towards purchase of flat no.103 (LIG), Ground Floor, Plot No.IIA/148, Vaishali, Ghaziabad. It was alleged that during verification it was revealed that no such flat existed and thus the agreement to sell and other documents furnished by the loanee were false and fabricated. It was also alleged that accused Prabhat Sitaram Kudwa sanctioned the loan amount of Rs.5 lacs in favour of the loanee without pre-sanction verification and physical inspection. It is also alleged that accused Prabhat Sitaram Kudwa released the payment of Rs.5 lacs as loan.

4 On the basis of complaint Ex.PW1/A, FIR Ex.PW7/A was registered and its investigation was entrusted to Inspector Sushil Kumar (PW7). During the course of investigation, he seized various documents including certified extracts of manual of instruction on housing loan Ex.PW1/F which was seized vide seizure memo Ex.PW1/B. He seized loan file Ex.PW1/G vide seizure memo Ex.PW1/C. Vide letter Ex.PW1/D, IO received Account Opening form Ex.PW1/H and original statement of account Ex.PW1/J in respect of SB Account No.5066 in the name of accused Janardan Prasad Tiwari with Corporation Bank, Vasundhra Enclave. 5 The loan amount was disbursed to accused Janardan Prasad Tiwari vide debit/credit vouchers Ex.PW1/K1 to K8 which were seized by the IO vide seizure memo Ex.PW1/E. During the course of investigation vide letter Ex.PW2/B, copy of the sale deed Ex.PW2/A in respect to the property in question was handed over to the CBI by the bank officials. Investigation revealed that flat No.A103, Ground Floor, Plot No.148, Sector1A, Vaishali was purchased by PW4 Vipin Kumar from Radhey Shyam Singh, proprietor of R.D. Developers for Rs.4 lacs after obtaining loan from ICICI bank and PW4 has proved documents Ex.PW4/B and Ex.PW4/C showing his above address which were seized by the CBI vide seizure memo Ex.PW4/A.

6 Specimen signatures of accused Janardan Prasad Tiwari were obtained on sheets Ex.PW5/E and same along with admitted and disputed signatures were sent to GEQD, Shimla vide letter Ex.PW5/A of the CBI. Vide letter Ex.PW5/D of GEQD, opinion report Ex.PW5/B along with detailed reasons Ex.PW5/C was sent to CBI.

7 Sanction for prosecution of accused Prashant Laxman Mahale was accorded by Sh. Thomas George (PW6), the then Assistant General Manager, Personnel Administration Division, Corporation Bank, Head Office, Manglore vide sanction order Ex.PW6/A. No sanction for prosecution of accused Prabhat Sitaram Kudwa was obtained as he was already dismissed from service. 8 After completion of the investigation, the challan was put up in the court where accused persons were supplied with the copies of the charge-sheet and the documents of the CBI. 9 The charge under sections 120B r/w 420, 468, 471 IPC and 13(2) read with 13(1)(d) of P.C. Act was framed against all the accused persons. Separate charges under Section 420 IPC and under Section

13(2) read with 13(1)(d) of P.C. Act were framed against accused Prabhat Sitaram Kudwa. Separate charge under Sections 420, 468, 471 IPC and under Section 13(2) read with 13(1)

(d) of the P.C. Act was framed against accused Prashant Laxman Mahale. Separate charge for offence punishable under Section 420/468/471 IPC was also framed against accused Janardan Prasad Tiwari. Accused persons pleaded not guilty to the charges framed against them and claimed trial.

10 The prosecution has examined 8 witnesses in support of its case. Out of those witnesses, PW6 Thomas George was the sanction authority who accorded sanction for prosecution of accused Prashant Laxman Mahale. PW2 Sh. Mustafa Khan was the Registration Clerk, Office of Sub Registrar V, Ghaziabad. PW3 Sh. Mohd. Alim introduced accused Janardan Prasad Tiwari in opening account. PW5 Sh. Abhimanyu Kumar examined the documents and specimen signatures of accused Janardan Prasad Tiwari in GEQD. PW8 Sh. V.S.V. Nagesh was the then Manager/Sr. Manager, Vigilance cell, Delhi of the Corporation Bank, whereas PW1 Sh. Shrinath Kamath was the then Chief Manager of Corporation Bank. PW7 Inspector Sushil Kumar is the IO of the case. PW4 Vipin Kumar is the owner of flat No. A 103, Ground Floor, Plot No. 148, Sector 2A, Vaishali, Ghaziabad.

11 Statements of accused persons have been recorded under Section 313 Cr.P.C. Accused Prashant Laxman Mahale has stated that he had identified the properties correctly on the basis of property verification report submitted by approved valuer as well as agreement to sale, loan application and other documents submitted to the bank. He was shown flat no. 103 on the ground floor and at that time the flat had the numbering 103 on its door. There were other flats in the said building which were financed by his bank and those flats were numbered as 101, 102, 103 etc. It seems that the numbers were changed afterward in order to defraud the bank. He had handled 350/400 housing loans and there was severe pressure on the branch to meet the deadlines and targets. He had exercised all care and caution to identify the properties. The properties were not bearing the property numbers and only the flats were numbered. He has stated that he has been made scapegoat.

12 All the accused persons opted to lead evidence in their defence. Accused Janardan Prasad Tiwari examined himself DW1.

13 I have heard Shri S. Krishna Kumar, learned PP for the CBI as well as Ld. Counsel for accused persons. I have also carefully gone through their submissions and the material available on record.

Criminal conspiracy 14 To prove the conspiracy between accused persons, prosecution has examined Sh. V.S.V. Nagesh (PW8) who stated that he was posted as Manager/Sr. Manager in Vigilance Cell and conducted internal investigation. He stated that accused Prabhat Sitaram Kudwa was working as Branch Head in Vasundhara Enclave Branch of Corporation Bank. His investigation disclosed that majority of the housing loan borrowers were introduced by brokers and they had not approached the bank directly. He has also stated that while sanctioning the housing loan, accused P.S. Kudwa did not conduct pre and post sanction visits to the properties, as a result many of the

borrowers availed loans without purchasing houses. Accused P.S. Kudwa also did not verify the genuineness of income documents submitted by the borrowers. He has also stated that in the present case accused J.P. Tiwari had been granted housing loan for purchase of flat No.A□03, LIG, Plot No.IIA, Vaishali, Ghaziabad and accused P.S. Kudwa had sanctioned the housing loan of Rs.5 lacs for purchase of abovesaid flat from Radhey Shyam Builders. PW8 visited the flat in question and it was revealed that no such flat bearing No.103 was in existence. He has also stated that there was one flat No.A□03 which was already purchased by one Vipin Kumar from Radhey Shyam Builders. He has further stated that each floor consists of four flats bearing Nos.A□01 to A□04 on the ground floor, B□201 to B□204 on first floor, C□301 to C□304 on the second floor and there was no flat bearing No.103 in the building. He relied upon the Manual of Instructions on Housing Loans as Ex.PW1/F. He also relied upon the loan file of the present case as Ex.PW1/G. According to the loan application, loan was requested for purchase of ground floor flat No.103, Plot No.IIA/148, Vaishali, Ghaziabad. He further stated that loan of Rs.5 lacs was sanctioned by accused P.S. Kudwa. He has identified the signatures of accused P.S. Kudwa and of accused Prashant Laxman Mahale. Sanction has been recorded by accused P.S. Kudwa at the back of the application. Appraisal note was prepared after sanction of the loan. Due diligence report bears signatures of accused P.S. Kudwa and visit report has been submitted by accused Prashant Laxman Mahale as per which he had visited the flat in question which was almost ready. PW8 has further stated that during inquiry, accused Janardan Prasad Tiwari stated that had not purchased any apartment but had purchased one shop from Radhey Shyam Builders in stilt□um□parking of the said building. PW8 contacted Radhey Shyam who had also confirmed that accused Janardan Prasad Tiwari had not purchased any flat and infact he had purchased the shop in the stilt floor of the said apartment. 15 PW8 has further stated that while applying for loan accused J.P. Tiwari had not submitted any document in support of his income as no such document is on the loan file Ex.PW1/G and in spite of this fact, loan application was processed and in the appraisal note, the business income of accused J.P. Tiwari was taken into account and it was assessed as his repayment capacity. The loan amount was disbursed to accused J.P. Tiwari.

16 Perusal of loan file Ex.PW1/G shows that application at page 7□B was moved by accused Janardan Prasad Tiwari for taking home loan under Corp Home Scheme for purchase of a flat at Ground Floor□03, Plot No.IIA/148, Vaishali, Ghaziabad. Name of the seller of the said flat was mentioned as R.D. Developers. Vide this application, loan of Rs.5 lacs was sought.

17 As per Manual of Instructions on Housing loans/Due Diligence Exercise while financing under Corp Home Ex.PW1/F, shows that before sanction of loan, Branch Managers were required to carry out verification. The genuineness of income proof of the applicants had to be strictly verified. The repayment capacity of the applicant was also to be determined. It was also required that original documents should be called for verification at the time of appraisal of the loan. For purchase of flat, property mortgaged was required to be inspected and identified. It was also required that margin for purchase of flat was brought by the applicant from his own sources. Repayment capacity of applicants was also required to be arrived at. 18 In the present case, it has come in evidence that accused Janardan Prasad Tiwari applied for Home loan for purchase of flat at Ground Floor□03, Plot No.IIA/148, Vaishali, Ghaziabad from Corporation Bank where accused Prabhat Sitaram Kudwa was posted as Branch Head being Sr. Manager and accused Prashant Laxman Mahale was

posted as an officer. The said flat was alleged to be purchased from M/s R.D. Developers.

19 As per testimony of PW8 Sh. V.S.V. Nagesh, when he physically inspected the site of flat in question, no such flat was in existence. He met the proprietor of M/s R.D. Developers as well as accused Janardan Prasad Tiwari and they both confirmed that no such flat bearing No.103 was in existence in the said building nor had accused Janardan Prasad Tiwari purchased a flat therein, rather he had purchased a shop in the stilt floor the said building. Testimony of PW8 has been corroborated by PW4 Sh. Vipin Kumar, owner of Flat No.A□103 who deposed that he was the owner of the said flat and had purchased the same from R.D. Developers and no flat bearing No.103 was in existence in the said building. Inspector Sushil Kumar (PW7) also corroborated the testimony of PW8 and PW4 that no such flat was in existence. PW7 has stated that no flat bearing No.103 existed on the ground floor of the said building, rather the flat No.A□103 was there which had been purchased by Vipin Kumar from Sh. Radhey Shyam and said Vipin Kumar had produced the documents Ex.PW4/B and Ex.PW4/C in support of his claim of ownership. 20 So, as per testimony of PW8 Sh. V.S.V. Nagesh, there was no flat bearing No.103 was existing at plot No.IIA/148, Vaishali, Ghaziabad for which loan was applied by accused Janardan Prasad Tiwari allegedly purchased from Radhey Shyam Developers. 21 In the present case, it is alleged that no pre-sanction verification of the property in question was got conducted by accused Prabhat Sitaram Kudwa. As per Manual Ex.PW1/F, Branch Head of the Bank was required to verify the property proposed to be purchased prior to sanction of home loan. In the present case, accused Prashant Laxman Mahale gave verification report dated 31.08.2004 appearing at page 45 of loan file Ex.PW1/G. In this report, accused Prashant Laxman Mahale mentioned that he had verified the existence of property and made his remarks "I have only visited the site. Flat 103 on Ground Floor, Sector IIA/148 Plot No. almost ready. Finishing/Furnishing work to be done". As per report of accused Prashant Laxman Mahale, the flat was in existence. But as per testimony of PW8 Sh. V.S.V.Nagesh which has duly been corroborated by PW4 Vipin Kumar and PW7 Inspector Sushil Kumar, no such flat was in existence in the said building. So, this visit report was prepared by accused Prashant Laxman Mahale without visiting the site. Even, it was the duty of accused Prabhat Sitaram Kudwa to verify the property before sanctioning of loan amount, but he had not done so individually. All this shows that accused Prabhat Sitaram Kudwa and Prashant Laxman Mahale hatched a criminal conspiracy with their co-accused while sanctioning the loan amount for the flat which was never in existence.

22 It has also come in evidence that the sale deed Ex.PW2/A (original sale deed at page No.34 to 42 on loan file Ex.PW1/G) submitted by accused Janardan Prasad Tiwari with the bank as collateral security was found to be forged one inasmuch as no such flat was in existence for which the sale deed was submitted by accused and loan was obtained for purchase of the same. Witness Mustafa Khan, official from Sub-Registrar□V, Ghaziabad, U.P. has proved the copy of sale deed registered with the Sub-Registrar as Ex.PW2/A.

23 It has also come in evidence that apart from forged sale deed Ex.PW2/A, no document regarding income of accused Janardan Prasad Tiwari was submitted along with the loan application to show his repayment capacity. As per manual Ex.PW1/F, accused Prabhat Sitaram Kudwa was required to verify the documents but he even did not verify whether the margin money was paid by accused Janardan Prasad Tiwari towards purchase of flat before sanction of the loan amount. He also did not

ascertain the repayment capacity of accused Janardan Prasad Tiwari. Accused P.S. Kudwa had also not obtained any document in support of the possession of assets by accused Janardan Prasad Tiwari.

24 All the above acts by accused persons clearly proves that accused Janardan Prasad Tiwari obtained home loan from Corporation Bank for purchase of non-existent flat and submitted forged and fabricated documents and used the same as genuine in securing loan amount. It has also been duly established that accused Prashant Laxman Mahale gave false verification report in favour of accused that the flat was existing, however it has been established otherwise that no such flat was in existence. It has further been established that accused Prabhat Sitaram Kudwa had not acted diligently while sanctioning loan amount. It has been proved that accused Prabhat Sitaram Kudwa and Prashant Laxman Mahale, being public servants criminally conspired with their other co-accused in forging documents and using them as genuine in securing loan from the bank with a view to cheat the bank.

25 It is a settled law that conspiracies are hatched in the pitch dark secrecy and direct evidence of those are hardly available. In this respect, the Hon'ble Supreme Court has observed in the case titled K.R. Purushothaman vs. State of Kerala, AIR 2006 SC 35 that to constitute a conspiracy, meeting of minds of two or more persons for doing an illegal act or an act by an illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every details of the conspiracy. The agreement amongst the conspirators can be inferred by necessary implications. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy and its objects are usually deduced from the circumstances of the case and the conduct of the accused involved in the conspiracy. The criminal conspiracy is an independent offence in Indian Penal Code. The unlawful agreement is sine qua non for constituting offence under Indian Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. The offence of conspiracy shall continue till the termination of the agreement. 26 In another case titled Shivnarayan Laxminarayan Joshi Versus State of Maharashtra (reported in 1980 SCC (Cri.)

493), the Hon'ble Supreme has observed that it is manifest that a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same.

27 Keeping in view the above clear and cogent evidence, prosecution has successfully established that there was criminal conspiracy between the accused persons and common object of which was to cheat the bank. Therefore, I am of the considered opinion that all the accused persons criminally conspired with each other to avail loan facility by submitting forged and fabricated documents and using them as genuine and thus cheated the bank by causing financial loss to the bank to the tune of Rs.5 lacs.

28 Consequently, all the accused persons are hereby held guilty for commission of offences punishable under Section 120-B IPC read with Sections 420/468/471 IPC and under Section 13(2) read with 13(1)(d) of P.C. Act, 1988.

Forgery & Cheating 29 It is alleged against accused Janardan Prasad Tiwari that he committed forgery in the documents with regard to flat No. 103, Ground Floor (LIG), Plot No.IIA/148, Vaishali, Ghaziabad and used the same as genuine and on the basis of same, managed to obtain loan from the bank and thus cheated the bank.

30 It is alleged against accused Prabhat Sitaram Kudwa that he fraudulently and dishonestly sanctioned and disbursed loan of Rs.5 lacs in favour of his co-accused Janardan Prasad Tiwari without obtaining the requisite documents, without physically inspecting the site in question and verifying the documents and thus cheated the bank. It is also alleged against Prashant Laxman Mahale that he prepared a false and fabricated verification report with regard to existence of flat which was not in existence knowing well that same was forged, it was used as genuine for grant of loan in favour of co-accused Janardan Prasad Tiwari and thus committed cheating. 31 Ld. counsel for accused Janardan Prasad Tiwari has argued that there is no evidence that any forgery or fabrication of documents has been committed by accused. In support of this contention, he has relied upon judgments in case of Mohd. Ibrahim and others Vs. State of Bihar and Another (2009) 8 SCC 751 ; Mani Lal Vs. State of Kerala 1998 Cri.L.J. 3785 ; Parminder Kaur Vs. State of U.P. and Another (2010) 1 SCC 322 and V. Sujatha Vs. State of Kerala and others 1994 SCC (Cri.) 1786 in which it has been observed that accused cannot be fastened with a liability in the absence of any evidence to the effect that he prepared any false document and that no conviction can be held under section 471 IPC in the absence of any forgery committed by the accused. It has further been argued that the bank has suffered no loss, so accused cannot be fastened with any liability. In support of this contention, judgments in case of Dr. Vimla Vs. The Delhi Administration AIR 1963 SC 1572 and Jibriyal Diwan Vs. State of Maharashtra (1997) 6 SCC 499 have been relied upon wherein it was observed that no injury was caused to the person allegedly deceived, accused could not have been held guilty u/s 467 and 468 IPC. Ld. defence counsel has further argued that the prosecution has not produced all the witnesses mentioned in the list of witnesses which cast a doubt about the prosecution story and reliance has been placed on S. Harnam Singh Vs. The State (Delhi Admn.) (1976) 2 SCC 819 in which it was observed that the non-production of the witnesses cited in the list of witnesses has the effect of prejudicing fair trial and amounts to an irregularity. He has further argued that the prosecution is bound to prove its case beyond reasonable doubt and has to stand on its own legs and reliance has been placed in case of M/s Roy and Company and Another Vs. Smt. Nani Bala Dey and others AIR 1979 Calcutta

50. 32 To prove the forgery committed by accused Janardan Prasad Tiwari, PW8 Sh. V.S.V. Nagesh has deposed that as per loan file Ex.PW1/G, loan application was moved by accused Janardan Prasad Tiwari on 14.08.2004. The loan was sanctioned on the basis of agreement for sale dated 01.10.2004. The loan amount was disbursed through SB A/C No.5066 opened in the name of accused Janardan Prasad Tiwari vide application form Ex.PW1/H. As per statement of account Ex.PW1/J, an amount of Rs.3,75,000/-lacs was disbursed on 29.09.2004. Remaining amount of Rs.1,25,000/-lacs was disbursed to him on 28.10.2004. He further deposed that he visited the site in question and found that no flat bearing No.103 on ground floor as mentioned in the sale deed was found existing. Witness was cross examined at length but the defence has failed to put any dent on his testimony.

33 Loan application form submitted by accused Janardan Prasad Tiwari is at page 7 and 8 of loan file Ex.PW1/G. Perusal of application form shows that loan of Rs.5 lac was applied for by accused for purchase of flat bearing No.Ground Floor□03, Plot No.IIA/148, Vaishali, Ghaziabad from R.D. Developers Radhey Shyam Singh. Along with loan application form sale deed dated 01.10.2004 Ex.PW2/A was annexed.

34 As per testimony of PW8, no such flat was in existence for which the loan was applied for by accused Janardan Prasad Tiwari. His testimony has duly been corroborated by PW4 Vipin Kumar who is the owner of flat No.A□03 on the ground floor of Plot No.IIA/148, Vaishali, Ghaziabad. PW4 has specifically deposed that no flat bearing No.103 was in existence in the said building. Even PW8 has deposed that he had verified from Sh. Radhey Shyam Singh as well as from accused Janardan Prasad Tiwari who had confirmed that no such flat No.103 was sold or purchased and that only one shop on the stilt floor of the said building was purchased by accused Janardan Prasad Tiwari. So far as contention regarding non□production of all the witnesses mentioned in the list of witnesses is concerned, I am of the considered view that it is not the quantity of witnesses but the quality thereof which proves the case. So, there was no necessity to examine all the witnesses when a certain fact has been proved from a particular witness. Thus, the forged and fabricated sale deed Ex.PW2/A was submitted by accused Janardan Prasad Tiwari for obtaining the loan from the bank and the same was used as genuine with the sole object to cheat the bank. 35 As per report Ex.PW5/B and Ex.PW5/C, signatures of accused Janardan Prasad Tiwari on the sale deed Ex.PW2/A submitted with the bank matched with his specimen signatures. The report of the GEQD examiner also proves the case of the prosecution that a forged and fabricated sale deed was submitted by accused Janardan Prasad Tiwari with the bank for a non□existent flat with a view to commit cheating, as it has duly been proved that no such flat was in existence. So, the opinion of expert also establishes that forgery in the documents was committed by accused. 36 As per testimony of PW8 Sh. V.S.V.Nagesh, when he inspected the site, there was no flat bearing No.103 at the given address which was proposed to be purchased by accused Janardan Prasad Tiwari. Testimony of PW8 has duly been corroborated by PW4 Vipin Kumar and also by PW7 Inspector Sushil Kumar to the effect that no such flat bearing No.103 was in existence for which loan was applied and loan amount of Rs.5 lacs was sanctioned and disbursed.

37 It has also come in evidence that accused Janardan Prasad Tiwari managed to get the loan in two installments i.e. of Rs. 3,75,000/□and Rs.1,25,000/□ Statement of account Ex.PW1/J in respect of account No.5066 in the name of accused Janardan Prasad Tiwari shows that a sum of Rs.3,75,000/□was disbursed on 29.09.2004, whereas remaining sum of Rs.1,25,000/□was disbursed on 28.10.2004 through credit/debit vouchers Ex.PW1/K1 to K8. So, the prosecution has successfully established that accused Janardan Prasad Tiwari committed forgery in the documents and used the same as genuine and on the basis of forged documents, managed to get housing loan of Rs.5 lacs from the bank and thus cheated the bank. 38 So far as preparation of false and fabricated report by accused Prashant Laxman Mahale is concerned, PW8 Sh.V.S.V. Nagesh has deposed that accused Prashant Laxman Mahale submitted verification report dated 31.08.2004 to the effect that he had visited the flat located at plot No.IIA/148, Vaishali and that the flat was almost ready. The said report is at page 45 of file Ex.PW1/G. Witness also stated that he conducted inspection of the said property and found that no such flat was in existence, which indicated that accused Prashant

Laxman Mahale did not conduct verification visit before submitting his report.

39 The report prepared by accused Prashant Laxman Mahale appearing at page No.45 of loan file Ex.PW1/G shows that after visiting the site, he made the remarks "I have only visited the site. The flat 103 on Ground Floor, Sector IIA/148 Plot No. almost ready. Finishing/furnishing work to be done". As per testimony of PW8 who himself went to physically verify the flat no.103, no such flat was in existence for which loan amount was disbursed. Testimony of PW8 has been corroborated by PW4 who deposed that he is owner of flat No.A□103 and no flat bearing No.103 was in the building on plot No.IIA/148, Vaishali, Ghaziabad. Similarly, PW7 Inspector Sushil Kumar has also deposed that no such flat was found in existence during the investigation. So, the prosecution has successfully established that the verification report given by accused Prashant Laxman Mahale appearing at page 45 of loan file Ex.PW1/G to the effect that flat no.103 was in existence, was false and fabricated and same has been given by him without visiting the site. It has been duly proved that this verification report was prepared by accused Prashant Laxman Mahale knowingly well that the said flat was not in existence and the same was used as genuine, on the basis of which loan of Rs.5 lacs was sanctioned to co-accused Janardan Prasad Tiwari and thus accused Prashant Laxman Mahale cheated the bank.

40 So far as accused Prabhat Sitaram Kudwa is concerned, it is alleged against him that the fraudulently and dishonestly sanctioned and disbursed loan amount of Rs.5 lacs in favour of accused Janardad Prasad Tiwari without verification of documents and thus cheated the bank.

41 It has been argued by ld counsel for accused P.S.Kudwa that loan was not sanctioned by him as he was not posted during the said period nor appraisal note was signed by him. He has further argued that it was on the report of accused P.L.Mahale, the loan was sanctioned and P.S.Kudwa had nothing to do with the same. He has further argued that Manual of Instructions Ex.PW1/F was not in the picture when the loan was sanctioned. In support of his contentions, he has relied upon judgment in case of C.Chenga Reddy and Ors. vs. State of A.P.(1996) 10 SCC 193 in which it was observed that though the prosecution has established that the appellants have committed not only codal violations but also irregularities by ignoring various circulars and departmental orders in the matter of allotment of work, yet no dishonest intention on their part could be shown and none of the circumstances could be construed as incriminating or were of any conclusive nature. He has further relied upon judgment in case of State of Rajasthan vs. Govind Ram Bagdiya and others 2003 Cri.L.J. 1169 in which it was observed that there was nothing to show that any personal gain was obtained by accused persons or there was any wrongful loss to Municipal Board. On similar points, judgments in case of Y.K.Gupta vs. State of U.P. 2001 Cri.L.J. 339 and M.Gopala Krishnaiah and etc. vs. The State 1988 Cri.L.J.651 have been relied upon. 42 It has already come in evidence that at the relevant period, accused Prabhat Sitaram Kudwa was posted as Senior Manager of the Bank. He was duty bound to verify the documents submitted along with loan application forms. As per manual Ex.PW1/F under the Corp Home Scheme, the branch head of the bank was required to verify the documents submitted along with application form from their originals. It was also required by the branch head to conduct pre-sanction and post-sanction verification of the property to be purchased. As per manual Ex.PW1/F, it was also required that the purchaser of property must show the payment of margin money before sanctioning of loan amount and the bank was required to

ascertain the repayment capacity of the borrowers. 43 In the present case, it has come in the testimony of PW8 Sh. V.S.V. Nagesh that no pre-sanction or post-sanction verification of the flat in question was conducted by accused Prabhat Sitaram Kudwa either before sanction of loan or thereafter. It has already been established that pre-sanction verification of flat in question was got conducted by accused Prashant Laxman Mahale who gave his report that the flat was existing and was almost ready. The said report of accused Prashant Laxman Mahale has been established to be false and fabricated. So far as post-sanction verification of the property to be purchased is concerned, there is no document or note on record that accused Prabhat Sitaram Kudwa conducted any post-sanction verification of the property for the purchase of which loan was sanctioned.

44 It has already been established from the testimony of PW8 Sh. V.S.V. Nagesh that no such flat bearing no.103 was in existence. Testimony of PW8 has duly been corroborated by PW4 and PW7 to the effect that no flat bearing no.103 was in existence for which loan was applied for. It has also been established that accused Prabhat Sitaram Kudwa did not obtain any document showing the income of accused Janardan Prasad Tiwari nor any noting was made by him to ascertain whether the margin money was paid by him to the seller of the flat before sanctioning of loan amount. He had also not ascertained the loan repayment capacity of accused Janardan Prasad Tiwari. In this way, accused Prabhat Sitaram Kudwa violated the guidelines envisaged in the banking manual Ex.PW1/F meant for grant of home loans. So, the prosecution has duly established that accused Prabhat Sitaram Kudwa did not verify the documents submitted by accused Janardan Prasad Tiwari; he did not conduct the physical verification of the property; he did not obtain the documents which were declared as assets by co-accused before fraudulently and dishonestly sanctioning and disbursing loan amount of Rs.5 lacs to his co-accused Janardan Prasad Tiwari and thus committed cheating with the bank. It has already been established that loan amount of Rs. 5 lacs was disbursed to co-accused through his bank account. So, the prosecution has successfully established that there was mens rea on the part of accused and he has caused loss to the bank by sanctioned and disbursing the loan to his co-accused for non-existent flat. Therefore, the authorities relied upon by accused P.S.Kudwa are distinguishable from the facts of the present case and do not help him. 45 From the aforesaid discussion, prosecution has been able to prove its case against accused Janardan Prasad Tiwari and Prashant Laxman Mahale under Section 420, 468 & 471 IPC. Prosecution has also been able to prove its case against accused Prabhat Sitaram Kudwa under Section 420 IPC.

Criminal misconduct

46

Accused Prabhat Sitaram Kudwa and Prashant

Laxman Mahale have also been charged for commission of offences punishable under Section 13(2) read with section 13(1)(d) of P.C. Act. It is alleged against accused Prabhat Sitaram Kudwa that while working as Sr. Manager of Corporation Bank, Vasundhra Enclave Branch he sanctioned loan under Corp Home Scheme to his co-accused Janardan Prasad Tiwari without duly verifying documents and without conducting pre-sanction and post-sanction verification of the flat in question.

47 It has come in evidence that accused Janardan Prasad Tiwari applied for a loan of Rs.5 lacs for purchase of a flat bearing no.103, Ground Floor (LIG), Plot No.IIA/148, Vaishali, Ghaziabad under Corp Home Scheme. Note appearing on the back side of page 8 of the loan application in the loan file Ex.PW1/G made by accused Prabhat Sitaram Kudwa shows that he misused his official position and facilitated his co-accused Janardan Prasad Tiwari inasmuch as accused Prabhat Sitaram Kudwa mentioned that Corp Home preliminary sanction according to him against equitable mortgage of the flat as the site/unit was checked by accused Prashant Laxman Mahale. Thereafter, accused P.S. Kudwa sanctioned a sum of Rs.5 lacs without verifying the property to be financed. As per Manual Ex.PW1/F, loan under Corp Home Scheme could be granted after due verification of property to be purchased, after due diligence, after comparing the copies of documents submitted with their originals, after ascertaining repayment capacity of borrowers, payment of margin money by borrowers from their own funds etc. But accused Prabhat Sitaram Kudwa by abusing his official position sanctioned and disbursed loan to his co-accused Janardan Prasad Tiwari on the basis of report of his co-accused Prashant Laxman Mahale to the effect that the flat was almost ready. The said report of accused Prashant Laxman Mahale was found to be incorrect at the time of physical inspection which is evident from the testimony of PW8 which has duly been corroborated by PW4 Vipin Kumar and PW7 Inspector Sushil Kumar.

48 It has also come in evidence that accused Prabhat Sitaram Kudwa had not taken on record the documents of the properties which were shown as his assets by accused Janardan Prasad Tiwari. In his statement of assets and liabilities, accused Janardan Prasad Tiwari had shown that he had two immovable properties at District Balrampur and at Ghaziabad, but accused P.S. Kudwa did not obtain the copies of the said properties on the record. It has also come in evidence that accused Prabhat Sitaram Kudwa had not ascertained whether the borrower i.e. co-accused Janardan Prasad Tiwari was having repayment capacity to pay the loan amount or not. As per manual Ex.PW1/F, accused Prabhat Sitaram Kudwa was required to have documents in support of margin money paid by his co-accused prior to disbursal of loan amount. But accused Prabhat Sitaram Kudwa had not verified whether the margin money was paid by his co-accused out of his funds or not.

49 Accused Prabhat Sitaram Kudwa had also not conducted any post-sanction verification of the property to be purchased. Without verifying the flat in question, accused Prabhat Sitaram Kudwa while abusing his official position, violated the guidelines envisaged in manual Ex.PW1/F and thus facilitated his co-accused in disbursing loan amount to him.

50 So far as accused Prashant Laxman Mahale is concerned, it has come in evidence that he prepared a false and fabricated report appearing at page 45 of loan file Ex.PW1/G. This report was prepared by accused Prashant Laxman Mahale to the effect that he personally visited the flat in question and found that the same was in almost ready. But, during investigation and also during the course of evidence, it has been established that no flat bearing No.103 was in existence at the plot. As per statement of PW8 Sh. V.S.V. Nagesh, no such flat was in existence at the given address. His testimony has duly been corroborated by PW4 Vipin Kumar and PW7 Inspector Sushil Kumar.

51 Since it has been established that no flat bearing no. 103 was in existence for which loan was applied for, the report given by accused Prashant Laxman Mahale was false and fabricated as the

same was given by him without visiting the property to be purchased. It has duly been established that accused Prashant Laxman Mahale has prepared false and fabricated report knowingly well that the property was not in existence and the same was used as genuine on the basis of which loan was sanctioned to accused Janardan Prasad Tiwari.

52 Consequently, it has been duly established by the prosecution that accused Prabhat Sitaram Kudwa and Prashant Laxman Mahale being public servants and while posted as Sr. Manager and Officer of Corporation Bank abused their official positions by causing wrongful loss to the bank and corresponding wrongful gain to their co-accused.

53 So far as sanction for prosecution of accused Prashant Laxman Mahale is concerned, PW6 Sh. Thomas George has proved the sanction order dated 26.02.2009 issued by him as Ex.PW6/A. He deposed that he granted sanction after going through the statement of witnesses and documents which were put up before him through the disciplinary department. This witness was cross-examined on behalf of accused Prashant Laxman Mahale, but he failed to put any dent to his testimony. So, the prosecution has duly established that PW6 was competent to accord sanction for prosecution of accused Prashant Laxman Mahale and defence has failed to show that the same was accorded without application of mind.

54 In view of above evidence and discussion, accused Prabhat Sitaram Kudwa and Prashant Laxman Mahale are held guilty for offence punishable under Section 13(2) read with Section 13(1)(d) of the P.C.Act.

Conclusion 55 It has been established by the prosecution that all the accused persons entered into a criminal conspiracy and common object of which was to cheat the bank by committing forgery and fabrication in the documents and using the same as genuine. Accused Prashant Laxman Mahale prepared false and fabricated report to the effect that flat purchased by accused Janardan Prasad Tiwari from accused Radhey Shyam Singh of M/s R.D. Developers was existing, but during evidence it has been established that no such flat was in existence. Accused Prabhat Sitaram Kudwa had not conducted any verification of the documents and the property to be mortgaged and facilitated his co-accused. Prosecution has convincingly proved the nexus between accused persons to the effect that on the basis of forged and fabricated documents, loan was sanctioned and disbursed causing financial loss to the bank and corresponding gain to accused persons.

56 It has also been proved that accused Janardan Prasad Tiwari committed forgery in the documents by submitting a forged and fabricated Sale Deed towards collateral security in securing the loan amount. It has also been proved that the said document annexed with the loan application was forged and fabricated as no flat in question of which the sale deed was submitted, was ever in existence. The said forged documents were used as genuine by accused with the purpose to cheat the bank for obtaining loan amount. 57 It has further been established that accused Prashant Laxman Mahale prepared forged and fabricated report to the effect that he visited the site and found flat in almost ready knowing well that the same was forged and fabricated on the basis of which co-accused Janardan Prasad Tiwari managed to get the loan amount sanctioned and disbursed and thus cheating has been committed with the bank. Accused Prabhat Sitaram Kudwa sanctioned the

loan of Rs. 5 lacs to his co-accused Janardan Prasad Tiwari without conducting pre-sanction and post-sanction verification of the property to be purchased. He had also not ascertained the repayment capacity of his co-accused Janardan Prasad Tiwari and also did not verify whether the margin money was paid by him out of his own sources. Thus, it has been established that accused Prabhat Sitaram Kudwa and Prashant Laxman Mahale abused their official positions being public servants while posted as Senior Manager and Officer respectively of Corporation Bank, Vasundhara Enclave Branch and bypassed the guidelines of bank by sanctioning and disbursing the loan amount. Thus, by abusing his official position as public servants, accused Prabhat Sitaram Kudwa and Prashant Laxman Mahale facilitated co-accused Janardan Prasad Tiwari in obtaining loan under Corp Home Scheme to the tune of Rs.5 lacs and causing wrongful loss to the bank.

58 Consequently, all the accused persons, namely, Prabhat Sitaram Kudwa, Prashant Laxman Mahale and Janardan Prasad Tiwari are hereby held guilty under Section 120B IPC read with Sections 420/468/471 IPC and 13(2) read with Section 13(1)(d) of P.C. Act. Accused Prashant Laxman Mahale and Janardan Prasad Tiwari are also held guilty under Sections 420, 468 & 471 IPC. Accused Prabhat Sitaram Kudwa is also held guilty under Section 420 IPC and under Section 13(2) read with Section 13(1)(d) of the P.C. Act. Accused Prashant Laxman Mahale is also held guilty under Section 13(2) read with Section 13(1)(d) of the P.C. Act. All the accused persons are convicted accordingly.

Announced in the open Court
Dated: 23.10.2013

(P.S. TEJI)
District & Sessions Judge ()
Special Judge (CBI)
Karkardooma Courts : Delhi

IN THE COURT OF SHRI P.S. TEJI : DISTRICT & SESSIONS JUDGE (EAST) : SPECIAL JUDGE (CBI), KARKARDOOMA COURTS, DELHI AC No.05/2009 Unique Case ID No.02402R0088442009 FIR No.RC DAI 2006 A 0045 U/s 120B read with Section 420/468/471 IPC and under Section 13(2) r/w Sec. 13(1)(d) of PC Act, 1988.

CBI	Versus	(1) Prabhat Sitaram Kudwa S/o Late Sh. S.A. Kudwa R/o A-8, Awadh Apartment, Vipul Khand-I, Gomati Nagar, Lucknow (UP)
		(2) Prashant Laxman Mahale S/o Late Sh. Laxman Mahale R/o Flat No.B-6, Mahalasa Niwas, II Floor, Devashree Enclave, Sangolda, Porvorim, Goa.
		(3) Janardan Prasad Tiwari

S/o Sh. Sharda Prasad
R/o RC-18, Sangam Vihar,
Manak Pur, Khora Colony,
Ghaziabad, U.P.

ORDER ON SENTENCE

I have heard Ld. Counsel for the convicts as well as learned PP for the CBI on the quantum of sentence. 2 The learned PP for the CBI has submitted that the convicts have been held guilty for commission of criminal conspiracy. Convicts Prabhat Sitaram Kudwa and Prashant Laxman Mahale, being public servants, by misusing their official position caused pecuniary loss to the bank. It is further argued that convicts Janardan Prasad Tiwari and Prashant Laxman Mahale committed forgery in the documents and used the same as genuine with a view to cheat the bank. He has further argued that accused Prabhat Sitaram Kudwa has been held guilty for committed cheating with the bank. He has further submitted that the convicts may be awarded maximum punishment prescribed under the law.

3 The learned counsel for convict Prabhat Sitaram Kudwa has submitted that he is 58 years old and is the only earning member of the family and that entire family is dependent upon him. He is having aged wife and unmarried daughters in the family. He had been compulsorily retired from service in the year 2004. On behalf of convict, Prashant Laxman Mahale, it has been submitted that he is having old aged parents and sister in the family to look after. On behalf of convict Janardan Prasad Tiwari, it has been submitted that he is having old aged mother and disabled father in the family to look after. Apart from them, convict is also having two marriagable daughters and two sons to look after. Entire family is dependent upon him. It is further submitted that convicts have attended the court regularly and faced a protracted trial, therefore, a lenient view may be taken while awarding sentence to them. 4 Vide judgment dated 23.10.2013, all convicts have been convicted under Section 120B IPC read with Sections 420/468/471 IPC and 13(2) read with Section 13(1)(d) of P.C. Act. Convicts Prashant Laxman Mahale and Janardan Prasad Tiwari have also been convicted under Sections 420, 468 & 471 IPC. Convict Prabhat Sitaram Kudwa has also been convicted under Section 420 IPC and under Section 13(2) read with Section 13(1)(d) of the P.C. Act. Convict Prashant Laxman Mahale has also been convicted under Section 13(2) read with Section 13(1)(d) of the P.C. Act. 5 Considering the circumstances under which the offences were committed, convicts are sentenced as under :□

(i)Convict Prabhat Sitaram Kudwa is awarded sentence of three years rigorous imprisonment with fine of Rs. 15,000/□for the offence punishable under Section 120□B IPC read with Sections 420/468/471 IPC and section 13(2) read with 13(1)(d) of P.C. Act. In default of payment of fine, convict shall further undergo simple imprisonment for six months. He is further awarded sentence of three years rigorous imprisonment with fine of Rs.15,000/□for the offence punishable under Section 420 IPC. In default of payment of fine, convict shall further undergo simple imprisonment for six months. He is further awarded sentence of three years rigorous imprisonment with fine of Rs.15,000/□for the offence punishable under Section 13(2) read with Section 13(1)(d) of P.C. Act. In

default of payment of fine, convict shall further undergo simple imprisonment for six months.

(ii)Convict Prashant Laxman Mahale is awarded sentence of three years rigorous imprisonment with fine of Rs.15,000/□for the offence punishable under Section 120□B IPC read with Sections 420/468/471 IPC and section 13(2) read with 13(1)(d) of P.C. Act. In default of payment of fine, convict shall further undergo simple imprisonment for six months. He is further awarded sentence of three years rigorous imprisonment with fine of Rs.15,000/□for the offence punishable under Section 420 IPC. In default of payment of fine, convict shall further undergo simple imprisonment for six months. He is further awarded sentence of three years rigorous imprisonment with fine of Rs.15,000/□for the offence punishable under Section 468 IPC. In default of payment of fine, convict shall further undergo simple imprisonment for six months. He is further awarded sentence of three years rigorous imprisonment with fine of Rs.15,000/□for the offence punishable under Section 471 IPC. In default of payment of fine, convict shall further undergo simple imprisonment for six months. He is further awarded sentence of three years rigorous imprisonment with fine of Rs.15,000/□for the offence punishable under Section 13(2) read with Section 13(1)(d) of P.C. Act. In default of payment of fine, convict shall further undergo simple imprisonment for six months.

(iii)Convict Janardan Prasad Tiwari is awarded sentence of three years rigorous imprisonment with fine of Rs.15,000/□for the offence punishable under Section 120□B IPC read with Sections 420/468/471 IPC and section 13(2) read with 13(1)(d) of P.C. Act. In default of payment of fine, convict shall further undergo simple imprisonment for six months. He is further awarded sentence of three years rigorous imprisonment with fine of Rs.15,000/□for the offence punishable under Section 420 IPC. In default of payment of fine, convict shall further undergo simple imprisonment for six months. He is further awarded sentence of three years rigorous imprisonment with fine of Rs.15,000/□for the offence punishable under Section 468 IPC. In default of payment of fine, convict shall further undergo simple imprisonment for six months. He is further awarded sentence of three years rigorous imprisonment with fine of Rs.15,000/□for the offence punishable under Section 471 IPC. In default of payment of fine, convict shall further undergo simple imprisonment for six months.

6 All the sentences of the convicts shall run concurrently. The convicts shall be entitled for the benefit of the

provisions of Section 428 Cr.PC. Copies of the judgment and order on sentence be given free of cost to the convicts.

File be consigned to record room.

Announced in the open Court
Dated: 28.10.2013

(P.S. TEJI)
District & Sessions Judge ()
Special Judge (CBI)
Karkardooma Courts : Delhi

