

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 24.03.2008
% Date of decision: 03.04.2008

+ CRL. REVISION PETITION No.433/2007

D.K.GUPTA ... PETITIONER
Through: Mr.Ashok Bhalla, Advocate
- V E R S U S -

CBI ...RESPONDENT
Through: Mr. Ashiesh Kumar, Advocate

AND

+ CRL. REVISION PETITION No.341/2007

SMT.ANJALI VERMA ...PETITIONER
Through: Mr.Navin Chawla, Advocate
- V E R S U S -

CBI ...RESPONDENT
Through: Mr. Ashiesh Kumar, Advocate

CORAM: HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

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| 1.Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2.To be referred to Reporter or not? | No |
| 3.Whether the judgment should be
reported in the Digest? | No |

SANJAY KISHAN KAUL, J.

1. The aforesaid two revision petitions arise out of a common order framing charges against a number of accused including the petitioners. The order of charge was passed

on 13.03.2007 and the charges were framed on 16.03.2007.

2. The brief facts leading to the said framing of charges are set out hereinafter:
3. Sh.Virender Verma (A-1) applied for a loan on 16.10.1989 with the New Bank of India, Defence Colony, New Delhi for his newly constructed firm M/s M.H.Enterprises. Three different loan facilities were sought for. The loan facilities were granted and payment not made and on an enquiry, it was found that the Bank had been cheated to the tune of Rs. 54,18,602.50 which resulted in registration of RC 14(A)/94 dated 25.02.1994. On completion of investigation, the charge sheet was filed.
4. The charge sheet claims that the then Branch Manager (A-4) failed to carry out pre sanction inspection to ensure the interests of the Bank and recommended the loan application of Mr.Virender Verma (A-1) to the Regional Office on the same date when it was applied for i.e. 16.10.1989. At the Regional Office, the application was scrutinized by Smt. Neeta Dhawan, Junior Manager, who noticed a number of shortcomings in the loan application. On the note made by Smt.Neeta Dhawan, Mr. Ashok Kumar, the then Manager (Loan), gave his comments. The file was then put up with the said two notings to Sh. D.K.Gupta (A-5), who is the petitioner in Crl Rev.P.433/2007. Sh. Gupta made an endorsement 'raise

the queries' and thus reply was sought from the Branch in respect of the notings made on 27/28.10.1989. The reply to these queries was submitted by Mr.Vijender Verma (A-1) on 30.10.1989 even though the official letter from the Regional Office reached the Branch on 16.11.1989. A pre sanction inspection survey was carried out by Sh. K.L.Bhasin (A-4) and as per his report dated 02.11.1989 replies were sent to the queries. On receipt of the letter from Mr.K.L.Bhasin (A-4), in the Regional Office, Smt.Neeta Dhawan again pointed that there were shortcomings which were yet to be fulfilled and on the reverse of the letter, Sh. Ashok Kumar, Manager (loan) marked the said note to Sh. D.K.Gupta (A-5) for removal of the shortcomings. It is alleged that Sh.D .K.Gupta instead of asking removal of the shortcomings, directed the sanction note to be put up with stipulation and a superior Sh.A.R.Lamba endorsed the same and directed the facility to be released after obtaining the required papers. It may be noted that the charge sheet also mentions the factum of the non existence of the firm of Mr.Vijender Verma (A-1) at the given address including the stated tenanted premises.

5. Charge sheet blamed Sh.D.K.Gupta (A-5) for not taking due care to ensure that the short comings pointed out by Smt. Neeta Dhawn and Sh. Ashok Kumar were completed and note was given by him that 'we may put detailed

sanction note with stipulation' and that he removed the notings put up by Smt.Neeta Dhawan and Mr. Ashok Kumar. This is the sum and substance of the role assigned to Sh. D.K.Gupta.

6. Insofar as Smt. Anjali Verma (A-7), petitioner in Crl.Rev.P.341/2007 is concerned, she is the wife of Mr.Vijender Verma (A-1). It was found that Mr.Vijender Verma (A-1) had opened an account No.CA 995 in Bharat Overseas Bank in the name of a non-existent sole proprietorship concern M/s.A.V.Apparels International of which Ms.Anjali Verma (A-7), wife of Mr.Vijender Verma, was the sole proprietor. Smt.Anjali Verma (A-7) gave a power of attorney to Mr.Vijender Verma (A-1) to operate the account and it is stated that no such firm was existing at the address given in the account opening form. It was found that cheque bearing no.868066 dated 04.01.1990 for Rs.40609/- bore her signatures on the reverse as proprietor of M/s.A.V.Apparels International and the cheque was endorsed by Ms.Anjali Verma (A-7) in favour of Mr.Vijender Verma (A-1), who encashed it. Smt.Anjali Verma (A-7), wife of Mr.Vijender Verma, sole proprietor of M/s.A.V.Apparels International, was stated to be a part of the conspiracy and abetted the offence by drawing and diverting the cash sanctioned by the bank fraudulently to Mr.Vijender Verma, accused no.1.

7. Learned Special Judge found prima facie case against Mr.Vijender Verma (A-1), Mr.K.L.Bhasin (A-4), Mr.D.K.Gupta (A-5) and Ms. Anjali Verma (A-7) for offences punishable under Section 120B r/w Sections 420 and 471 of IPC and Section 13 (2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988. In view of the fact that role of the two petitioners is different and only the factual matrix aforesaid is common, the matters are hereinafter dealt with separately.

Crl.Rev.P.433/2007 (Mr.D.K.Gupta)

8. It has been pointed out aforesaid that the only role assigned to the petitioner was that he did not take due care to ensure that the shortcomings pointed out by Smt.Neeta Dhawan and Mr.Ashok Kumar were completed and that the note was given by him to put up the detailed sanction report with the superior removing the notes put up by Smt.Neeta Dhawan and Mr. Ashok Kumar. In the order of charge, it has been mentioned that the sanction order was issued with certain stipulations, but that would not absolve the petitioner of his misconduct to cause pecuniary advantage to third person by abusing his position as a public servant and thus there were grounds for presuming that the petitioner/accused Mr.D.K.Gupta was a party to the criminal conspiracy.
9. The documents filed by the petitioner and the Trial Court Record have been perused.

10. It is not in dispute that after the shortcomings were pointed out by Smt.Neeta Dhawan and Mr.Ashok Kumar on 27/28.10.1989, petitioner herein had given the remark that the queries should be raised. Thus no fault could be attributed to the petitioner as he himself asked the queries to be raised in terms of the aspects pointed out by the said two officers. On the second occasion, when it was found that there were still some matters which needed to be attended to as per the note dated 04.11.1989 of the said two officers, all that the petitioner did vide note dated 06.11.1989 was to direct that the sanction note be put up with stipulation. The purport of the said note was clear that the sanction should be granted subject to compliance of the stipulation. The stipulations were as under:
- i. Party yet to receive the SSI certificate from the concerned authority;
 - ii. Details of experience;
 - iii. Sh.P.D.Mehar, the Proprietor, present assignment and where did he have his experience in garments;
 - iv. Pre-sanction report on the assets of proprietor.
 - v. Area of factory land.
 - vi. I.T>Returns of proprietor and guarantor for last three years and assessment orders.
11. The file was thereafter put up to a superior Sh.A.R.Lamba who endorsed 'yes' with further remarks that facility may be released after obtaining required papers. The matter

was thus dealt with by a superior, who found that the necessary requirements as initially put up by Smt.Neeta Dhawan and Mr.Ashok Kumar must be fulfilled and sanction granted subject to the same. It cannot be lost sight of that these officers were all located at the Regional Office and not at the Branch Office. It is the function of the officers at the Branch Office to confirm the ground realities. Thus aspects like, checking-up the addresses, verifying other aspects, visit to the site have to be dealt with by the Branch Office. The role of the Regional Office is to process the loan application and see whether it meets with the norms and requirements of the bank. The borrower, as per the papers forwarded from the Branch Office, had completed the necessary requirements after the initial enquiries were raised except to the extent pointed out by Smt.Neeta Dhawan and Mr.Ashok Kumar on 04.11.1989. The borrower thus was required to give certain reports and certificates as mentioned aforesaid and thus naturally when this note was put up to the petitioner he directed that since all formalities had been completed other than aforesaid, the sanction note be put up with stipulations. He was in any case not the sanctioning authority. The matter was thereafter put up to Sh.A.R.Lamba who approved it saying that the facility may be released after obtaining the required papers.

12. The discussion aforesaid shows that there can hardly be attributed anything to the petitioner or any impropriety in his role could be found or any act of his could be said to have caused wrongful gain to the borrower. The averment in the charge sheet that he removed the notes put up by Smt.Neeta Dhawan and Mr.Ashok Kumar are also not borne out from the record. This is so in view of the document letter DEF/LD/5022/03.11.89 which contains notings dated 04.11.1989 of Sh.Ashok Kumar and Smt.Neeta Dhawan, dated 06.11.1989 of the petitioner and dated 08.11.1989 of Sh.A.K.Lamba. This also appears to be the reason that on this aspect there is no discussion in the order of charge. The petitioner had not waived or relaxed the queries put up by his subordinates and, in fact, had directed that it should be ensured the shortcomings were completed and the sanction was subject to the completion of the same which was approved by his superior officers. There is thus no allegation worthwhile against the petitioner.
13. It is the settled principle of law that at the stage of framing of charge, the court does not go into detailed scrutiny of the material on record but has to only sift and weigh the evidence for purposes of finding out if a prima facie case is made out. In case, two views are equally possible and the evidence gives rise to some suspicion but not grave suspicion, the accused is liable to be

discharged. In this behalf, it would be useful to refer to the judgment cited by learned counsel for the petitioner in Dilawar Balu Kurane v. State of Maharashtra; 2002 SCC (Crl.) 310. In Seeta Hemchandra Shashittal v. State of Maharashtra 2001 (I) JCC (SC) 185 it has been held that where the material was too insufficient against the accused, the charges should not be framed. In view of the limited role of the petitioner, it can hardly be said that there is any evidence of criminal conspiracy or evidence under the PC Act. There was in fact no impropriety in the actions of the petitioner. It is in view thereof that the Supreme Court in Soma Chakravarty v. State through CBI; (2007) 5 SCC 403 has observed that charges may be directed to be framed where there exists a strong suspicion but that is also trite to say that the Court must come to a prima facie finding that there exists some material and suspicion alone without anything more cannot form the basis. The Trial Court cannot be a mouthpiece of prosecution.

14. A perusal of the charge sheet as well as the order of charge itself shows that other than alleging the two aspects of the petitioner not directing fulfillment of the conditions imposed by his subordinates and alleging that the petitioner had removed the notes put up by Smt. Neeta Dhawan and Mr. Ashok Kumar, nothing more has been said. Out of these two aspects the order of charge does

not even mention the last aspect and rightly so as the discussion on the note aforesaid shows that the same is not borne out from the record. The note of the petitioner himself directed compliance of the conditions imposed by his subordinate officers and thereafter his note was endorsed by the superior officer.

15. I am thus of the considered view that there is no material whatsoever on record for framing of charges against the petitioner.

Crl.Rev.P.341/2007 (Smt. Anjali Verma)

16. The petitioner is the wife of Mr.Virender Verma (A-1). However that itself cannot be suffice to frame charges as the sins of the husband cannot be visited on his wife without any material on record. The charge against the petitioner is that account no. CA995 had been opened by Mr.Vijender Verma (A-1) in the name of his wife petitioner (A-7) with Bharat Overseas Bank in respect of a non-existent firm. In fact, the firm is a sole proprietorship concern of the petitioner (A-7) and it was alleged that it did not exist at the address stated by the petitioner in the account opening form. It was further found that a cheque no.868066 dated 04.01.1990 for Rs.40609/- , which bore her signatures on the reverse as proprietor of M/s A.V.Apparels International, was encashed by Mr. Virender Verma (A-1) as it was endorsed by the petitioner (A-7) in favour of her husband. The order of charge found that

the account was opened by the petitioner on 15.06.1989 while the application for loan was made by her husband Mr. Virender Verma (A-1) on 16.10.1989. Thus it was found that no inference of any conspiracy between Mr.Virender Verma (A-1) and the petitioner could be found on that account. However, what has weighed with the Trial Court is that in the statement of two witnesses, it was found that the firm was not functioning at the stated address. Simultaneously, it has been observed that more than one firm pertaining to the same family members could possibly function from the same address, but the stage was not for the court to accept the statements of the witnesses recorded under Section 161 of the said Code.

17. It was also found that the number of cheques/pay orders were issued in favour of M/s A.V.Apparels by M/s M.H.Enterprises. The cheques bearing no. 868066 in the sum of Rs. 40609/- and the cheque bearing no.873234 in the sum of Rs. 9,141/- were endorsed by the petitioner in favour of Mr.Vijender Verma (A-1) and based on that account an inference has been drawn that the petitioner was definitely playing some part in diversion of the funds. It cannot be lost sight of that the petitioner is the wife of Mr.Vijender Verma (A-1) and operations were conducted by Mr.Vijender Verma (A-1). The only thing that the petitioner had done is that the cheques in question issued

in favour of M/s A.V.Apparels were endorsed in favour of Mr.Vijender Verma (A-1) and encashed by Mr.Vijender Verma (A-1). The statement of account shows that there are numerous transactions carried out by Mr.Vijender Verma (A-1) and the link to the petitioner is only that two cheques made out by the firm of Mr. Vijender Verma (A-1) in the name of M/s A.V.Apparels Ltd, proprietorship firm of accused no.7, were got signed by the petitioner for endorsement in favour of Mr. Vijender Verma (A-1) who in turn encashed the cheques. There was thus fund flow back to Mr.Vijender Verma (A-1) and there is no question of any diversion of funds as it is not a case made out that the petitioner played any role while making the application for borrowing or her proprietorship firm had a role to play in the same.

18. It was the case of the sole proprietorship of M/s M.H.Enterprises of Mr.Vijender Verma (A-1) showing payment being made to the sole proprietorship of the petitioner and getting the same cheques endorsed in his favour for encashment. This was possible as the cheques though made out in the name of proprietorship firm of the petitioner were bearer, it is also relevant to note that the deposition of the witness no.7 Mr.Hardan Singh relied upon by the prosecution shows that, in fact, M/s A.V.Apparels Ltd was functioning from the premises at 245, Khanpur, New Delhi, but stopped operations from

01.10.1989 and had stopped operations from the premises only 2-3 years back prior to the statement recorded on 07.06.1995. Thus the original address was correct but the firm had stopped operating from the address after a stage of time. The firm was, in fact, practically operated by Mr.Vijender Verma (A-1) in pursuance to an attorney in his favour. The same principles of law as enunciated aforesaid, would apply in the present case and mere suspicion arising out of the factum of the petitioner being wife of Mr.Vijender Verma (A-1) would not be sufficient to charge the petitioner.

19. It is not a case of grave suspicion against the petitioner or any prima facie material to form such a grave suspicion. It is really only the relationship of Mr.Vijender Verma (A-1) and the petitioner which seems to have persuaded the Special Court to frame charges against the petitioner.
20. In my considered view, there is really no material to frame charges against the petitioner since the two cheques referred to only show that Mr.Vijender Verma (A-1) made payments to the sole proprietorship of the petitioner and instead of getting the amount credited to the account of the proprietorship concerned, got the cheques endorsed in his name and encashed the same. Thus, the fund flow from the proprietorship concern of Mr. Vijender Verma (A-1) to the proprietorship concern of the petitioner did not take place.

21. The impugned order of charge and the charges framed against the petitioner can also thus not be sustained and the impugned orders are liable to be quashed.

Conclusion:

22. The result of the aforesaid is that both the petitions – Crl.Rev.P.433/2007 and Crl.Rev.P.341/2007 – are allowed and the order of charge and the charges framed against the petitioners impugned in these two petitions are quashed and the petitioners are discharged.
23. The petitions stand accordingly allowed.
24. The trial court record be sent back.

APRIL 03, 2008
dm

SANJAY KISHAN KAUL, J.