

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.M.C. 514/2011**

Decided on 08.03.2011

IN THE MATTER OF :

MANISH KUMAR AGARWAL

..... Petitioner

Through: Mr. Ramesh Gupta, Sr. Advocate with
Mr. Amit Kumar, Mr. Ashish Kumar and
Mr. Jawahar Lal, Advocates

versus

CBI

..... Respondent

Through: Mr. Harish Gulati, Advocate with
Mr. Anindya Malhotra, Advocate

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

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

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioner under Section 482 of the Cr.PC praying *inter alia* for quashing of charge-sheet No.3/2008 arising out of FIR No.RC.BD1/2007/E/003 pending before the court of learned ACMM, Karkardooma Courts, Delhi.

2. Learned Senior Advocate appearing for the petitioner states that there were seven FIRs filed against M/s Rajinder Steels Ltd. (hereinafter referred to as 'RSL') out of which, the petitioner was named in four FIRs. From out of the four FIRs, while the petitioner was exonerated by the CBI in two cases, he has been charge-sheeted in two cases, out of which, one of them is the present case. He submits that the petitioner was employed with

M/s RSL as a Project Manager Finance and his role with regard to disbursement of ₹13 crores by the IFCI under the Equipment Credit Scheme for implementing a project for manufacturing of High Tensile Steel Strappings (HTSS)/Cable Armoured Tapes (CAT), was very limited. He submits that all that the petitioner did was, forward the required information to the IFCI with regard to the outstanding loans of the company and the certificates issued by the auditors in respect of payment for the machinery to the suppliers and the supplies thereof. He, therefore, states that the charge-sheet *qua* the petitioner ought to be quashed as he is similarly placed as Shri S. Natarajan, Executive Project Finance of the company, whose name is mentioned in Column 12 of the charge-sheet.

3. The present petition is vehemently opposed by the counsel for the CBI, who states that merely because the petitioner has been exonerated in two other cases is not a ground for seeking quashing of the present FIR and all the pleas that are sought to be urged by the petitioner in the present proceeding, shall be available to him at the time of arguments on charges. It is further stated that there is sufficient material set out in the charge-sheet for charging the petitioner for the substantive offence punishable under Section 120B read with Sections 420/468/471 IPC.

4. This Court has perused the charge-sheet. As per the charge-sheet, vide order dated 18.09.2006, the High Court of Allahabad directed the CBI to investigate into the fraudulent siphoning of hundreds of crores of rupees from IDBI, ICICI, IFCI, UTI, ING Vysya Bank, Federal Bank and other financial institutions by a public limited company by the name of M/s Rajinder Steels Ltd. In compliance with the aforesaid order, a preliminary enquiry was registered on 09.11.2006. The said enquiry revealed that one

Daminder Singh Batra, Chairman-cum-Managing Director of M/s RSL, in connivance with others, deceived and induced IFCI to sanction loan under the Equipment Credit Scheme worth ₹15 crores for purchase of equipments. The said loan was allegedly got sanctioned and disbursed on the basis of false and forged documents. On the basis of a written complaint received from the Enquiry Officer of the Preliminary Enquiry, the case was registered on 16.03.2007 against Mr. Daminder Singh Batra, Chairman-cum-Managing Director, Smt. Gurmeet Kaur, Director (wife of Mr. D.S. Batra), the petitioner herein and one Shri S. Natarajan, Executive Project Finance of M/s RSL.

5. Pursuant to the investigation, the charge-sheet has been filed where a specific role has been attributed to the petitioner as set out in the following paragraphs:-

"6. Investigation further revealed that accused Manish Kumar Aggarwal (A-2) sent the required information through letter Nos.RSL/PF/MKA/95/68 and No.RSL/MIDC/BF/079/94-95 intimating the details of loans outstanding as on 30.4.95, list of equipments, Balance Sheet of the company. On receipt of this report from M/s RSL, Shri Ashish Kumar Gupta, DGM, IFCI, submitted a draft Flash Report to Shri B.B. Huria, General Manager, IFCI who recommended and forwarded the Flash Report to ED, IFCI, Head Office, New Delhi on 12.6.95 for perusal and further necessary action. ...

9. Investigation further revealed that in order to fulfill the terms and conditions as imposed by IFCI as mentioned its intent letter no.DRO/NBD/ECS/95-2126-33 dated 28.7.95, accused Manish Kumar Aggarwal (A-2), Manager (Project) of M/s RSL, in pursuance of aforesaid criminal conspiracy, requested vide letter no.RSL/MIDC/PF/079/95-96 dated 8.8.95 for the disbursement of Rs.10 crores, and furnishing therewith Auditor's certificate for advance to the suppliers and proforma invoices of M/s Technomac Engineers Pvt. Ltd., R.M. Machines Pvt. Ltd. and The Industrial Enterprises (Regd.),

performance Guarantee of M/s R.M. Machines. The Industrial Enterprises and Insurance of the equipments. Accused Manish Kumar Aggarwal (A-2) same day further requested vide letter no.RSL/MIDC/PF/079/95-96 dated 8.8.1995 to disburse Rs.13,50,00,000/-. Accused Manish Kumar Agarwal (A-2) in these letters, in pursuance of aforesaid criminal conspiracy, furnished false information that the equipments to be acquired under ECS were ready for delivery from its suppliers and would be received on or before 31.8.95 and it was proposed to conduct the trial run from September 95 and it was hoped that the commercial production would take place from October 95 and also furnished false performance guarantee of M/s R.M. Machines Pvt. Ltd.....

11. Investigation revealed that on 6.10.1995 accused M.K. Agarwal (A-2) Authorized Signatory, fraudulently and dishonestly and in furtherance of criminal conspiracy, wrote letter No.RSL/PF/MKA/95-96 to IFCI for kind attention Shri S.S. Jha, Manager intimating that the equipments acquired under the assistance Equipment Credit Scheme of Rs.1500 lakhs have been delivered in the 1st week of September 1995 and final payments have been made to the suppliers. No Objection Certificate (NOC) from their existing charge holders, i.e., Canbank Mutual Fund & Indbank Mutual Fund having no objection for exclusive charge on equipments acquired under the scheme in favour of IFCI was also enclosed. In this letter, a request was made to disburse the balance amount of Rs.152 lakhs (out of 15 crores) at the earliest.

12. Investigation further revealed that on receipt of the request from accused M.K. Agarwal (A-2) for the disbursement of balance amount of Rs.152 lacs (out of Rs.15 crores) and furnishing of requisite documents including No Objection Certificates from various Departments, performance guarantee from M/s Technomac Engineers Ltd. and other allied necessities. The disbursal was approved by Shri B.B. Huria, GM, IFCI. Thereafter, by reducing Rs.10 lacs as syndication fee and default of Rs.27,13,182/-, cheque No.745772 dated 17.11.95 for Rs.1.18 lacs was issued by IFCI. On the request of Shri M.K. Agarwal (A-2), IFCI requested the bank to issue Demand Drafts in favour of M/s RSL payable at Mumbai and the Demand Draft charges be borne by the company. Accordingly, Demand Drafts favouring

M/s RSL payable at Mumbai were issued.

15. Investigation revealed that accused D.S. Batra (A-1) and accused Manish Kumar Aggarwal (A-2) directed their employees, namely, Shri Denis Saldanha and Shri Narender Kumar Shukla @ N.K. Shukla also to sign the aforesaid invoices of M/s R.M. Machines. Accused D.S. Batra (A-1) and accused Manish Kumar Aggarwal (A-2) used the aforesaid false and forged invoices as genuine and submitted the same in IFCI and fraudulently availed and got disbursed loan on the basis of said false documents."

6. In view of the aforesaid specific allegations against the petitioner, this Court is not inclined to quash the charge-sheet. Merely because it is submitted on behalf of the petitioner that the co-accused, Mr. D.S. Batra is absconding and hence the matter would get delayed before the trial court, is not a ground for seeking quashing of charge-sheet. The petitioner shall have an opportunity to take all the pleas that are available to him before the learned ACMM at the time of arguments on charge. The petition is dismissed.

7. Needless to state that the observations made hereinabove are limited to the maintainability of the present petition and shall not be treated as a reflection on the merits of the case, which shall be decided by the court below in accordance with law.

MARCH 08, 2011
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(HIMA KOHLI)
JUDGE