

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

Judgment reserved on: May 09, 2011
Judgment delivered on: June 20, 2011

+ **CRL.M.C. NO. 479/2010**

AMRESH KUMAR MISHRA**PETITIONER**

Through: Mr. Vijay Aggarwal, Advocate.

Versus

CENTRAL BUREAU OF INVESTIGATION**RESPONDENT**

Through: Mr. Harish Gulati, Advocate.

CORAM:
HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.

1. Amresh Kumar Mishra, the petitioner herein vide this petition under Section 482 CrPC is seeking setting aside of the order dated 08th January, 2010 of learned Special Judge, CBI, New Delhi whereby he dismissed the application of the petitioner under Sections 219 & 220 of the Code of Criminal Procedure seeking consolidation and joint trial of three cases being corruption cases Nos. 98/08, 105/08 & 108/08. The petitioner has also prayed for directions to the learned

Special Judge to consolidate aforesaid corruption cases and conduct joint trial of those cases.

2. Briefly put, facts relevant for disposal of the plea of the petitioner is that pursuant to the investigation of case RC No. 1(E)/2007/EOW-II/DLI registered on 23rd August, 2007 in EOW Cell, CBI, charge sheet being corruption case No. 98/08 was filed in the court of Special Judge on 16th December, 2008 under Sections 120B, 419, 420, 467, 468, 471 IPC & Section 13(2) read with Section 13(1)(d) of P.C.Act, 1988 against 10 accused persons namely Manoj Kumar Sharma, K.B. Nandwani, Ravi Bhushan Roy, (Valuer), R.K.Joshi, (the then AGM, UCO Bank), Amresh Kumar Mishra (petitioner), Ramji Mishra, Parveen Kumar, Swadesh Kumar Mishra, Anandji Mishra and Shiv Kumar Sharma.

3. Brief allegations as per the charge sheet are that M/s. Gauri Exim Pvt. Ktd, was sanctioned a credit limit of ₹ 70 lakhs as Advance Against Foreign Bill under Course of Collection (ABC) and an overdraft limit to the tune of ₹ 25 lakhs on 13.12.2004 by accused R.K.Joshi, AGM, UCO Bank, High Court Branch, New Delhi on the basis of collateral security of land located at Bhadohi, U.P. in the name of M/s. Gauri Exim Pvt. Ltd. valued at ₹ 169.31 lakhs by the accused Ravi Bhushan Roy of M/s. R.B. Consultants and Valuers, Anand Nagar, Bhadohi, U.P. The said land however was not in the

name of M/s. Gauri Exim Pvt. Ltd. on the date of sanction but it was purchased on 10th January, 2005 in the name of his Director Manoj Sharma. The bank officials are claimed to have released ₹ 70 lakhs to the private persons in furtherance of conspiracy as advance on 15th December, 2004 against four export bills submitted by the party without creation of mortgage and adhering to the terms and conditions of sanction letter, which was accepted by the accused Manoj Sharma on 19th January, 2005. It is also alleged in the charge sheet that on the request of M/s. Gauri Exim Pvt. Ltd., credit limit of the company was further enhanced to ₹ 185 lakhs (ABC) on 27th February, 2005 by extension of equitable mortgage of the same property stipulated in the sanction dated 13th December, 2004. The branch officer neither conducted any physical verification of the property proposed as collateral nor got it verified from UCO Bank's Branch at Bhadohi. When the property was verified by Regional Office, New Delhi through Regional Office, Varanasi on 20th June, 2005, it was found that the value of the property was negligible as it was full of 10-15 feet deep pits. It is also alleged in the charge sheet that after 15th December, 2004, Director of M/s. Gauri Exim Pvt. Ltd. submitted 12 fake and forged bills to the branch for collection on different dates and obtained advance payments to the tune of ₹ 179 lakhs while most of those bills were returned unpaid by the foreign

bank. Thus, the accused persons caused a wrongful loss of ₹ 187 lakhs to the bank.

4. That charge sheet being corruption case No. 105/2008 pertaining to RC No. 2(E)/2007/EOW-II/DLI was filed in the court of Special Judge, CBI, New Delhi on 22nd December, 2008 under Sections 120B, 419, 420, 467, 468, 471 IPC and Section 13 (2) read with Section 13 (1) (d) of P.C.Act, 1988 against the accused persons namely Shiv Kumar Sharma, Naveen Kumar Sharma, R.K.Joshi (the then AGM, UCO Bank, High Court Branch), Amresh Kumar Mishra (petitioner), Ramji Mishra, Parveen Kumar, Swadesh Kumar Mishra, Anand ji Mishra and Chander Kant Dubey.

5. Brief allegation in the said charge sheet are that M/s. Sati Exim Pvt. Ltd. was sanctioned a credit limit of ₹ 70 lakhs as Advance Against Foreign Bill under Course of Collection (ABC) and an overdraft limit of ₹ 25 lakhs on 13.12.2004 by R.K.Joshi, AGM, UCO Bank, High Court Branch, New Delhi against collateral security of property situated at Varanasi, purportedly in the name of Shiv Kumar Sharma valued at ₹ 2.01 crores as per the valuation report dated 13th August, 2002 of the valuer J.P.Srivastava. The said property though mentioned in the sanction letter dated 13.12.2004 was not in the name of M/s. Sati Exim Pvt. Ltd. or its director Shiv Kumar Sharma on the date of the sanction of limit and ABC. The

property was purchased on 10th January, 2005 in the name of director of the company Shiv Kumar Sharma. It is alleged that the bank officials in criminal conspiracy with the private persons released ₹ 70 lakhs to M/s. Sati Exim Pvt. Ltd. on 15th December, 2004 as advance against four fake and forged export bills submitted by the company without creation of mortgage and acceptance of the terms and conditions stipulated in the sanction letter. In fact, on 15th December, 2004, the bank officer had already allowed overdraft of ₹ 69,89,155/- lakhs in the current account of the company. It is further the case of prosecution that credit limit of the company was enhanced to ₹ 180 lakhs (ABC) on 27th February, 2005 as against the earlier sanctioned limit of ₹ 70 lakhs (ABC) and ₹ 25 lakhs (Overdraft), by extension of equitable mortgage of the said property at Varanasi mentioned in the sanction letter dated 13th December, 2004. The bank officials neither conducted any physical verification of the said property nor got it verified from the local branch of the bank. It is also the case of the prosecution that after 15th December, 2004, the Director of M/s. Sati Exim Pvt. Ltd. submitted 13 fake and forged bills to the branch for collection on different dates and obtained advance payments to the tune of ₹ 245 lakhs while most of the bills were returned unpaid by the foreign bank resulting in wrongful loss of ₹ 179.94 lakhs (including interest) to the bank.

6. That charge sheet being CC No. 108/08 was filed pursuant to the investigation of case RC No. DAI-2006-A-0009 registered with Anti Corruption Branch, CBI, New Delhi. The charge sheet was filed against five accused persons namely Ravinder Kumar Joshi (the then AGM, UCO Bank), Chander Kant Dubey, Director, M/s. Edge Garments Pvt. Ltd., Tej Kishen Tikoo, Director, M/s. Edge Garments Pvt. Ltd., Amresh Mishra and Anand Mishra. Besides them, Late Ranjit Banerjee and Desh Raj Sonkar were named in Column No. 2 of the charge sheet.

7. Briefly stated, allegations in the charge sheet are that the accused R.K. Joshi, the then AGM-cum-Branch Manager of UCO Bank, High Court Branch, New Delhi sanctioned a limit of ₹ 1.78 crores as Advance Against the Export Bills in the Course of Collection (ABC) in favour of M/s. Edge Garments Pvt. Ltd. despite of the fact that the company had applied for packing, credit and Foreign Bill Purchase (FBP) facility and not ABC facility. The sanction was granted in the background of purchase orders from six different companies in favour of M/s. Edge Garments Pvt. Ltd. The advance was to be collaterally secured by way of equitable mortgage of the title deed of property No. 282, Satya Niketan, New Delhi, which was valued at ₹ 2 crores by the valuer Virender Kumar Arora. The sanction limit was disbursed without equitable mortgage of aforesaid property, which was offered by the directors of the company as security

against the loan facility. It is alleged that investigation revealed that the said property was a leasehold property allotted by MCD, as such, it could not have been a subject matter of mortgage without the necessary permission from the competent authority. It is the case of the prosecution that the accused bank officials in furtherance of criminal conspiracy with others accepted the Agreement of Sale pertaining to property No. 282, Satya Niketan, New Delhi and placed it on record as security/equitable mortgage whereas the document did not confer a valid title for creation of mortgage. It is also alleged that the sanction limit was released by the accused bank officials in contravention of the terms of the sanction resulting in wrongful loss to the tune of ₹ 164 lakhs to the bank as some of the bills were returned unpaid by the buyers bank.

8. Petitioner Amresh Kumar Mishra moved an application under Section 219/220 of the Code of Criminal Procedure for consolidation of aforesaid three charge sheets. His application, however was dismissed by the learned Special Judge vide order dated 08th January, 2010. Feeling aggrieved, the petitioner has approached this court under Section 482 CrPC read with Article 27 of the Constitution of India.

9. Learned Sh. Vijay Aggarwal, Advocate appearing for the petitioner has submitted that perusal of the charge sheets would

show that in all the three charge sheets, allegations of the prosecution are that the private persons named as accused in the charge sheets have entered into criminal conspiracy with accused R.K.Joshi, the then AGM-cum-Branch Manager, UCO Bank, Delhi High Court Branch to cheat the bank and caused it wrongful loss by obtaining overdraft/sanction limits on the basis of inadequate collateral security, which imply that nature of the conspiracy in all the three charge sheets is the same. Learned counsel further argued that most of the accused persons including the petitioner in the above charge sheets are common and even most of the witnesses are also common, therefore, in interest of valuable time of the court and the defence of the accused/petitioner, the above three charge sheets should be consolidated and tried together. In support of this contention, learned counsel for the petitioner has drawn my attention to Section 219 and 220 of the Code of Criminal Procedure. He has submitted that petitioner is a common accused in all the three charge sheets pertaining to almost similar offence which have been allegedly committed within a span of one year. Therefore, he should be tried together for the aforesaid three offences of similar nature. Learned counsel further submitted that the offences, which are subject matter of the above three charge sheets are of almost similar nature and they can easily be termed as the series of acts committed by the accused persons so connected together so as to

form the same transaction. Therefore, in view of Section 220 CrPC, these offences should be tried together.

10. Learned Sh. Harish Gulati, Advocate appearing for the respondent/CBI has submitted that the above three cases have not arisen out of the same transaction and their subject matters are totally different. He submitted that although some of the accused named in the charge sheets and the witnesses are common but this does not mean that the aforesaid three charge sheets should be consolidated and tried together. Learned Prosecutor further submitted that basic evidence to prove the charges under respective charge sheets is also different. The cases being of complex nature relating to bank frauds of huge amount, the joint trial would lead to confusion, both to the prosecution as well as the accused persons, particularly those, who are not common in the respective charge sheets. Thus, learned Prosecutor has pressed for dismissal of this petition with cost.

11. I have considered the rival submissions and perused the record. Sections 218 to 223 of the Code of Criminal Procedure deal with the law relating to joinder of charges.

12. Section 218 (1) embodies the general principle for a criminal trial that for every distinct offence, there should be a separate charge and there should be a separate trial for every such charge.

Section 218(2) however provides for the situations in which exception can be made to the aforesaid general rule. It provides that there can be joinder of charges/accused persons in a trial provided the requirements of Sections 219, 220, 221 & 223 are met.

13. Section 219(1) of CrPC provides that when a person is accused of more than one offences of similar kind committed within a space of twelve months, he may be charged with and tried in one trial jointly for upto three such offences.

14. Section 220(1) provides that when in one series of acts so connected together to form a single transaction, more than one offences are committed by the same person, he may be charged with, and tried at one trial for every such offence.

15. From the language of Section 219 and 220 Cr.P.C., it is clear that these provisions by their terms refer to the case of a single accused and are not applicable where several persons are tried jointly. Undisputedly, all the accused persons named in respective charge sheets are not common. Some of the accused persons are charge sheet specific and their names do not figure in other charge sheets. The fraudulent transactions done pursuant to the conspiracy are distinct. Therefore, in my considered view, no case for holding joint trial of aforesaid three charge sheets is made out under Section 219 and 220 Cr.P.C.

16. Only provision in the Code of Criminal Procedure dealing joinder of accused persons in criminal trial is Section 223 Cr.P.C. Unless the conditions enumerated in Section 223 Cr.P.C. are fulfilled, no two accused persons can be tried jointly.

17. Learned counsel for the petitioner has made an effort to bring the case of the petitioner within the purview of Section 223(a) CrPC and submitted that in the above referred three charge sheets, main accused R.K.Joshi is common. Besides him, there are several common accused persons and witnesses. Learned counsel further submitted that even the nature of transactions and the offences for which, the charge sheets have been filed are absolutely similar. Therefore, the petitioner being an accused in the all the three cases besides few others, it can be safely concluded that all the three offences have been committed in the course of same transaction i.e. conspiracy amongst the accused persons to defraud the bank. Thus, learned counsel for the petitioner has strongly urged for setting aside of the order of learned Special Judge and issue of a direction to consolidate and conduct a joint trial for all the three charge sheets.

18. I find no merit in the above contention. Section 223(a) Cr.P.C. reads thus:

(a) persons accused of the same offence committed in the course of the same transaction;

(b).....

.....

19. On bare reading of Section 223(a) Cr.P.C., it is clear that in order to justify the joint trial of the accused persons arrayed in the aforesaid three charge sheets, the petitioner is required to show that the accused persons of respective charge sheets have committed the same offence in the course of the same transaction. On careful reading of the charge sheets, above-said requirement of Section 223(a) Cr.P.C. is obviously not fulfilled. The charge sheet pertaining to Corruption Case No.98/2002 relates to the conspiracy between M/s. Gauri Exim Pvt. Ltd. through its director and accused R.K. Joshi, the then AGM-cum-Manager, UCO Bank, Delhi High Court branch. Charge sheet of Corruption Case No.105/2008 relates to a conspiracy between Sati Exim Pvt. Ltd. through its director Shiv Kumar Sharma and R.K. Joshi, the then AGM-cum-Manager, UCO Bank, Delhi High Court branch and the charge sheet in Corruption Case No.108/2008 relates to conspiracy between M/s. Edge Garments Pvt. Ltd. through its director Chander Kant Dubey and Tej Kishen Tikoo and R.K. Joshi, AGM, UCO Bank, Delhi High Court branch. The beneficiaries of the aforesaid three charge sheets are also different being above referred three companies. All the accused persons named in the respective charge sheets as also the witnesses cited in respective charge sheets are not common. Merely because the nature of allegations constituting offence is similar and some of the accused persons named in the charge sheet

and the witnesses are common, it cannot be said that the offences which are subject matter of respective charge sheets have been committed in the course of same transaction. Thus, in my considered view, basic requirements of Section 223(a) Cr.P.C. to justify consolidation of the charge sheets and joint trial is not satisfied.

20. In view of the discussion above, I find no merit in the petition. It appears to have been filed with a view to delay the proceedings of trial.

21. Petition is accordingly dismissed.

(AJIT BHARIHOKE)
JUDGE

JUNE 20, 2011
akb/pst