

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

+ CRL.M.C. No. 160/2010

% Judgment reserved on: 30th November, 2011
Judgment delivered on: 16th April, 2012

KASHIBATLA RAMAKRISHNA Petitioner
Through : Ms.Shobha and Ms. Vijoy Lakshmi,
Advts.

versus

CBI Respondent
Through : Narender Mann, Spl. PP for CBI with
Mr. Manoj Pant, Adv

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the instant petition the petitioner has sought to quash the criminal case FIR no. RCA/BDI/2001 (E)/2005/CBI/BS registered for the offences punishable under Section 120B read with Section 409/420 Indian Penal Code, 1860 and Sections 13(2) and 13(1) (d) of the Prevention of Corruption Act, 1988 pending before the Additional Sessions Judge, Delhi, against the petitioner.

2. It is submitted by Id. Counsel for the petitioner, that whole thrust of allegation against the petitioner in the charge sheet is regarding his act as a Zonal Manager of the Bank, and by making recommendation for enhancement of Working Capital Limits of the company (A-4) and

permitting the then Branch Manager, United Bank of India, Janpath Branch, New Delhi to purchase and discount the Foreign Export Bills of the Company (A-4) on DA basis.

3. It is further submitted that the allegations against the petitioner in the charge sheet are that petitioner dishonestly and deceitfully acted upon, but has completely failed to take into account the fact that the petitioner, who at that point of time was posted as Zonal Manager, of the New Delhi Zone of the Bank, recommended for enhancement credit limit of the Company (A-4), which was made on the basis of recommendation sent by Sh. M.P. Sharma, the then Branch Manager, Janpath Branch to the Regional Manager, North India Region Sh. Hari Ram Pandey. Thereafter, forwarded by the Regional Manager to the Petitioner has traveled from General Manager (Credit) to the Chief Manager (Credit) at Head Office to Chief Manager (Credit) to the Assistant General Manager then to the Deputy Manager and again to General Manager (Credit) then to the Executive Director, then Chairman cum Managing Director and finally to the Board of Directors.

4. Ld. Counsel for the petitioner has further submitted that no allegation has been made against the Board of Directors or the CMD or the Executive Director and if that is so, then how can the petitioner be dragged for criminal prosecution for a decision which was finally taken and approved by Board of Directors, which was travelled through the Senior Officers of the Bank. Ld. Counsel has relied upon a case of **Duncan's Agro Case 1996 5 SCC 591**, whereby the Hon'ble Supreme Court has quashed the criminal proceedings, observing therein that

“If the officer of the Bank has not acted properly because of the fact that ultimate decision was taken by the Board of Directors, it cannot reasonably be held that some of the Officers of the Bank connived and mislead the Board, more precisely, then there is no allegation against the members of the Board”.

5. Ld. counsel has further pointed out that CBI sought sanction to prosecute Shri Shantanu Guha, the then Chief Manager (Credit Operations-II) from Head Office, but the Chairman and Managing Director (CMD) being the competent authority had declined the same and therefore, he has not been sent for trial and shown in Column No.2 in the charge-sheet.

6. The petitioner was Zonal Manager at that particular point of time and had acted on the basis of the telex message sent by Shri Shantanu Guha intimating that the competent authority has approved recommendation of the petitioner to modify/amend the terms and conditions of the sanction letter so as to include the discounting of Foreign Export Bills on DA basis also.

7. Ld. Counsel for the petitioner has asserted that undisputedly the accused company was a very valued client of the bank and had immensely satisfactory transaction with the bank for more than two decades. The Managing Director of the Company used to directly correspond with the with the CMD of the bank and its file was directly controlled by the Head office. Even the enhancement proposal was initiated and forwarded by Head Office to the Branch Manager to be processed. It is also an undisputed fact that the Company has already settled its account with the bank, and in pursuant thereto, the bank had issued No Dues certificate vide dated 24.08.2007.

8. Ld. Counsel for the petitioner further submitted that the petitioner has gracefully retired. Had he not been retired then it is sure that the CBI would not have got the sanction to prosecute the petitioner as well. The bank has not suffered any loss on account of the recommendation made by the petitioner which, even otherwise, had finally been approved by the competent authority, i.e., Board of Directors.

9. Ld. Counsel has humbly submitted that the petitioner has served the bank for about 39 years with honesty and complete devotion and exemplary performance. He has not been dragged in criminal prosecution for no wrong at all on his part and on top of it when the bank has suffered no loss at all. On the contrary, the bank has earned nearly 20 Crores by way of interest and commission during the entire tenure of the said account out of which Rs.8 Crores in the period between 1993 to 1995.

10. It is further submitted that the petitioner at this age is forced to face a criminal trial for the decisions which were finally taken by the competent authority/Board of Directors. The CBI was provided whole lot of documents by the Bank, which clearly shows that no malafide can be assigned for the act of the petitioner, and for this reason alone the Bank refused to give sanction to CBI to prosecute Sh. Guha, as mentioned above.

11. Presently, the dispute between the Bank and the borrower company has already been settled. The Hon'ble Supreme Court in *Nikhil Merchants's case [(2008) (9) SCC 677]* quashed the criminal proceedings on the basis that the parties have settled their account with the Bank. The present case has also similar facts, therefore squarely covered by the judgment referred above.

12. In *Indian Oil Corporation's case [2006 (6) SCC 736]*, the Hon'ble Supreme Court while laying down principles for quashing of a criminal proceeding has examined as to whether the allegations made in the complaint, when taken on their face value as true and correct, constitute the offences defined under the various sections.

13. The facts of the case, in brief, are that in the year 1979 M/s Rattan Exports and Industries Ltd.(accused No.4) started its business in the year 1979 and was having its current account with the United Bank of India. It was a hundred per cent export oriented unit, engaged in export of tea, coffee, fruit juice concentrate, canned food products, rice, garments, leather goods, computer peripherals, V belts, electronic items, brushes, etc. etc.

14. The company was initially a proprietorship concern, was subsequently converted into a private limited company at the instance of bank and later on a public limited company, w.e.f 14.04.1984. The main trading activity of the said company was in the erstwhile USSR and CIS countries. The company gradually became one of the leading exporters in India and enjoyed the status of a government recognized Trade House.

15. On 14.07.1988 the Company was given overall limit of Rs.1250 lakhs, which was further enhanced by the Board of Directors from 1250 lakhs to 1672 by the Board approval dated 19.11.1991.

16. On 28.04.1992, Head Office vide its letter advised the Branch Manager, Janpath Branch of UBI to obtain requisite documents from the Company for forwarding enhancement proposal of the Company. This

letter was endorsed by Head Office to the Regional Manager and Zonal Manager also.

17. Ld. Counsel for the petitioner has submitted that it is a matter to note that petitioner assumed charge as Zonal Manager, New Delhi Zone in the mid of May, 1992. The Janpath Branch with whom Company (accused no. 4) was maintaining its account for more than a decade recommended to the Regional Manager, North India Region vide its letter dated 01.06.1992 for sanction of enhancement limit.

18. On 24.06.1992, this recommendation was forwarded by the Regional Manager (North India Region) with similar recommendation to Zonal Manager, New Delhi Zone.

19. Ld. Counsel has further submitted that petitioner, who assumed charge as Zonal Manager, New Delhi Zone hardly a month back and had no personal or better knowledge of the said account. Based on the recommendation of Regional Manager and Branch Manager, Janpath Branch, sent his recommendation on 27.06.1992 for the enhancement of Credit Limits to the Head Office for scrutiny.

20. It is to be noted that Head Office was already following up the matter, as the account was 'Head Office Controlled Account' and the process was initiated by Head Office itself, vide letter dated 28.04.1992 addressed to Janpath Branch and copies endorsed to the Regional Manager and Zonal Manager.

21. Thereafter, the Head Office by way of detailed "*Draft Board Note*" signed by General Manager and Deputy Manager (Credit) recommended for

enhancement of Oral Credit Limits on 09.10.1992, which was approved by the Chairman and Managing Director.

22. Ld. Counsel has further pointed out that the Board of Directors in the addendum note dated 23.10.1992 mentioned that *“Accordingly we sought sanction for approval of RBI in respect of aforesaid Facility. We also sought approval of RBI for increasing the overall Credit Limit of the Company from Rs.1672.00 Lacs to Rs.4442.00 Lacs, as we have agreed in principle for such enhancement. Reserve Bank per telex No. 5709 dated 16.10.1992 advised us to dispose of the case in the light of their instructions conveyed to our Bank per telex no. 5520 dated 09.10.2012.”*

23. It is further submitted that on 07.11.1992, the said approved Board Note was then placed before the Board of Directors. The Board of Directors consisting of six Directors from various walks of life finally approved the proposal for sanction of enhancement Credit Limit to the tune of Rs.4442.00 Lacs (44.42 Crores) in its meeting held on 07.11.1992. The Head Office conveyed the enhanced sanction to the Zonal Manager with intimation to the Branch Manager and Regional Manager.

24. Ld. Counsel has further submitted that the officiating Chief Manager namely Sh. S. Bose Roy of Janpath Branch vide letter dated 10.12.1992, informed the Zonal Manager of Company's representation for inclusion of DA Bills also in the sub-limit of FOBP along with D.P. Bills, also that the party of late had been submitting bill of DA (Delivery against acceptance) basis which were duly accepted and honoured on scheduled dates in the last 9 months and that they were not experiencing any problem. Party's request

for allowing them L/G limit under Inland & Foreign both may be considered favourably.

25. She has further submitted that on 12.12.1992, petitioner immediately took up with the Head Office and obtained telephonic approval initially and on the basis of the same permitted the Janpath Branch to discount the DA Bills vide remarks dated 12.12.1992. Accordingly, on 14.12.1992, the petitioner then sought the approval by telex.

26. Pursuance thereto, the Chief Manager (Credit Operation-II) Head Office, vide telex message dated 31.12.1992 informed the approval in writing to the petitioner, specifically stating therein that the competent authority had agreed to modify the FOBP sub-limit of the company by inclusion of DA Bills as well.

27. Ld. Counsel for the petitioner has further submitted that on 16.10.1993, Rajan Bagaria (accused no. 3) directly informed the CDM of the Bank, Sh. A.K. Bhattacharya, that the goods shipped by the Company (Rattan Exports) had been received by them in Moscow and were lying in their godown. He gave an undertaking that all due payments will be made to M/s. Rattan Exports within that year.

28. Board Note dated 05.11.1993 discussing the difficulty in payment by Rattan Exports due to unstable condition in CIS Countries and Russia, sought the approval of Board of Directors upon its recommendation to allow M/s Rattan Exports (accused no. 4) to continue to enjoy existing sanction limit of Rs.44.42 Crores. The same was followed by Development Report dated 17.01.1994.

29. It is further submitted that critical position prevailed from August, 1993 to April, 1994, on account of large scale of crystallization of bills amounting to Rs.15.43 Crores and their subsequent realization to the full extent on account of relentless follow up by the Bank supported by the cooperation extended by the party. The manner in which the advances made under packing credit was treated as fully secured both by primary and collateral, also explained by the Head Office to the Reserve Bank of India vide communication dated 01.06.1994, wherein it was clearly mentioned as to how consequent upon the disintegration of the Soviet Union, in absence of mutual agreed trade terms between India and CIS countries, realization of Export Bills were getting abnormally delayed. And how the RBI, had been requested by the Bank to allow extension of Bill realization beyond 180 days, which was ultimately allowed by RBI. This was followed up by another letter by the Head Office to the RBI bearing no. CROPIII/04/437/683/94 dated 14.06.1994.

30. Ld. Counsel has also pointed out here that the account gradually became NPA as on 31.03.1996. Accordingly, the account was seriously followed up Chief Regional Manager, i.e. the petitioner, who was functioning as the Chief Regional Manager of North India Region, consequent upon the abolition of the Zonal system of administration, arising out of the organizational restructuring w.e.f March, 1994, as well as the Branch and Head Office. As a result, payments of worth more than Rs.11 Crores by way of bill realization and otherwise were received during 1996-1997. Also Sh. Ratan Bagaria, was persuaded to offer mortgage of his Farm House property at Vasant Kunj, Delhi (valued over Rs.6 Crores), to

strengthen the Bank's security position, which he did. Though the equitable mortgage of the same was credited by Sh. Shayam Churiwala, Executive Director of the Company, by virtue of a notorized Power of Attorney (not registered), the equitable mortgage was confirmed by Sh. Ratan Bagaria by his letter.

31. It is further submitted that the said Ratan Bagaria, by his letter dated 11.06.1996, addressed to CMD, had undertaken to regularize the overdue position within next 3 months, followed by various letters giving similar assurances. Thereafter the above named Ratan Bagaria, in his letter dated 15.07.1996 addressed to CMD had requested for allowing drawings to the tune of 10% out of the bill realization to enable them to run the affairs of the Company and to meet administrative and running expenses of their various offices. However the proposal was not approved by the Head Office apparently because of the fact Company's name by that time was reported in the RBI Auction letter.

32. Ld. Counsel for the petitioner has humbly submitted that the petitioner honourably retired from the services of the Bank on 31.01.2000. It is important to mention here that before allowing the petitioner to retire, Bank had called for explanation from him and after being satisfied with his detailed reply, came to the conclusion that the petitioner was not involved in any irregularities in respect of this account. Thus the petitioner was allowed to retired on attaining superannuation.

33. It is further submitted that thereafter on 24.08.2001, FIR was lodged with CBI, BS & FC, New Delhi on the basis of source information, against the Company (A-4), its Directors and few officials of the Bank including

the petitioner for causing wrongful loss of Rs.21.39 Crores to the United Bank of India, in fact no loss has been caused.

34. Ld. Counsel has further submitted that the petitioner was for the first time called by the Investigating Officer for his say in the year 2002. Since the petitioner was not provided any record either by Bank or CBI, in spite of his written request, he had to make a statement out of memory in relation to the decisions he had taken or the act done about 10 years back.

35. On 26.03.2004, CBI submitted chargesheet in the case before the court, wherein it is recorded as under:-

“1. Investigation further revealed that Sh. Ratan Bagaria (A-2) as the Managing Director of the Company submitted an application dated 28.05.1992 for further enhancement of Working Capital Limits of the Company from Rs.1672 Lacs to Rs.4442 Lacs for achieving the projected turnover for Rs.200 Crores. The proposal submitted by the Branch was recommended by Sh. Kasibatla Ramakrishna, the then Deputy General Manager, United Bank of India, Janpath Branch, New Delhi (A-6) vide his letter dated 27.06.1992 dishonestly by ignoring the adverse facts and circumstances and without keeping the interest of the Bank in mind. The personal net worth of the Directors of the Company was very low while the collateral security of Rs.57 Lacs provided by the Company for covering the recommended limits was inadequate. There was then ongoing Turmoil in USSR starting from the year 1992 which had lead to trade squeeze by the Exporters. Sh. M.K. Devraj, the then Deputy General Manager (Credit), Head Office, United Bank of India Kolkata (since deceased) prepared a Note for the Board of Directors, United Bank of India, for sanction of enhanced limits to the Company which was approved by Sh. Manas Kumar Basu, the then General Manager, Credit Department (A-5) knowingly, willfully, and dishonestly. The said Note was further approved by Dr. A.K. Bhattacharjee, the then Chairman & Managing Director on 12.10.1992. They all had failed to

appreciate the facts regarding squeeze of trade; turmoil in the USSR and further also the low cumulative turnover of only Rs.16.80 Crores achieved by the Company during the first two quarter ending with 30.06.1992 & 30.09.1992 against the projected Turn Over target of Rs.200 Crores and thus, the Note prepared for Board of Directors for sanction of steeply enhanced Limits to the Company was in fact prejudicial to the interest of the Bank. The said enhanced limits were subsequently sanctioned by the Board of Directors on 07.11.1992 as detailed under:

Overall Sanctioned Limits – Rs.442 Lacs

Sub-Limits:-

1. For Merchandise Unit at Delhi (Overall Limit – Rs.3700 Lacs)

(a) Packing Credit (PC)-FBP Limited to Rs.2500 Lacs

i. PC - Rs.1200 lacs

ii. EBP - Rs.1600 lacs

(b) Letter of Credit (I & F) Rs.900 lacs

(c) Letter of Guarantee (BG) Rs.300 lacs

2. For its Hyderabad Unit (Overall Limit – Rs.742 lacs)

(a) Packing Credit (PC) Cum FOBP Rs.350 lacs

(b) Letter of Credit (I & F) Rs.300 lacs

(c) Rupee Term Loan as existing Rs. 92 lacs

The Limits to the extent of Rs.3700 lacs was to be released through Janpath, New Delhi Branch which was later on transferred to newly Overseas Branch at Asaf Ali Road, New Delhi opened on 12.09.1995, for the Merchandise Unit of the Company at New Delhi and the remaining Limits of Rs.742 lacs was to be released through Hyderabad Branch for the Manufacturing Unit of the Company at Hyderabad. With the Creation of Overseas Branch at Asaf Ali Road, New Delhi

**

2. Investigation further revealed that the Packing Credit cum FOBP sub-limit to be released for the Merchandise Unit of the Company at New Delhi to the extent of Rs.1600 lacs, was only against DP Bills (documentary), backed by confirmed Orders Letter of Credit and details of the documents as specified in the contract. However, Sh. Kasibatla Ramakrishna (A-6), the then Deputy

General Manager, United Bank of India, New Delhi knowingly, willfully and dishonestly directed Sh. S. Basu Roy, the then Branch manager, United Bank of India, Janpath Branch, New Delhi on 12.12.1992 to purchase & discount the Foreign Exports Bills of the Company (A-4) on DA basis which was contrary to the terms and conditions of the sanction of Limits dated 07.11.1992. Sh. Kasibhatla Ramakrishna (A-6) subsequently sent a Fax Message dated 14.12.1992 to General Manager (Credit), Head Office, United Bank of India, Kolkata for amendment of the terms and conditions of the Sanction Letter dated 07.11.1992 so as to include the discounting of Foreign Export Bills on DA Basis also. Sh. Shantanu Guha, the then Chief Manager (Credit Operation – II), Head Office, Kolkata in league with Sh. Kasibatla Ramakrishna (A-6) sought the approval of Sh. M.K. Basu (A-5) the then General Manager (Credit & IB) vide his Note dated 28.12.1992 who willfully, knowingly and dishonestly approved the said Note. Sh. M.K. Basu (A-5) further failed to obtain the approval of the competent authority for such an amendment which in this case was the Board of Directors. Sh. Shantanu Guha consequently dishonestfully sent a Telex Message dated 31.12.1992 to Sh. Kasibatla Ramakrishna (A-6) falsely intimating that in terms of his recommendations, the Competent Authority had agreed to modify the FOBP sub-limit of the Company by including the Purchase of Bills of unexpired usance of 60 days backed by confirmed order/Letter of Credit and other documents as specified in the Contract, on DA basis knowing well that Company was including in the “In-house” Business.

3. Investigation further disclosed that Sh. Ratan Lal Bagaria (A-2) of the Company (A-4) dishonestly and deceitfully submitted the Foreign Export Bills which were drawn on the Companies owned and controlled by his brother Sh. Rajan Bagaria (A-3) who at one time was also the Director of the Company (A-4) and Sh. V.K. Maheshwari (A-1) in conspiracy with Sh. Ratan Lal Bagaria (A-2) and with the active connivance of Sh. Kasibatla Ramakrishna (A-6) allowed the purchase of Foreign Bills on DA Basis which were earlier submitted by the Company (A-4) on DP Basis and made available the advance / finances against these Foreign Bills under the cover of the above-said illegal and unauthorized

amendment of sanction Letter dated 07.11.1992. The total amount of US\$ 8,86,280.11 against such 44 Foreign Bills i.e. Bill No. 069316 dated 05.05.1995 for US\$ 70,686.00 purchased on 29.05.1995; Bill No. 069349 dated 25.07.1995 for US\$ 15,184.80 purchased on 26.07.1995; 12 Bill Nos. 069352 to 069364 dated 28.07.1995 for US\$ 15,184.80 each purchased on 28.07.1995; Bill NO. 069369 dated 04.08.1995 for US\$ 42,167.06 purchased on 17.08.1995; 4 Bill Nos. 069371 to 069374 dated 08.08.1995 for US\$ 15,184.50 each purchased on 11.08.1995; 12 Bill Nos. 069386 to 069397 dated 05.09.1995 for US\$ 15,184.80 each purchased on 05.09.1995; 12 Bill Nos. 069418 to 069427 and 069429 to 069430 dated 14.09.1995 for US\$ 15,184.80 each purchased on 18.10.1995 and Bill NO. 069487 dated 22.12.1995 for US\$ 2,31,691.00 purchased on 18.03.1996 had remained outstanding which is equivalent to Rs. 3,15,57,073.00. Sh. V.K. Maheshwari (A-1) had allowed the discounting of these 44 bills when the Concurrent Auditor of the Bank had already adversely commented in respect of Discounting of Bills in the account of the Company (A-4). Out of these 44 Bills, bill NO. 069316 purchased on 29.05.1995 for US\$ 70,686.00 was drawn on M/s. Arvee International PTE Ltd., 10, Anson Road, Singapore 0207 and the Bill NO. 069369 for 42,167.06 purchased on 17.08.1995 was drawn on M/s. Continental Trading Co., Polant while the rest of the 41 Bills for US\$ 15,184.80 each and further another Bills for US\$ 2,31,691.00 were drawn on M/s. Interlog Pvt. Ltd. Singapore. All the three companies on which the Bills of the Company (A-4) were drawn, were either owned wholly or were controlled by Sh. Rajan Bagaria (A-3) brother of Sh. Ratan Lal Bagaria (A-2) and as such, these Foreign Bills of the Company submitted to the Bank for purchase, amounted to an 'In House Trading'. The details of these outstanding 44 Bills are given in the attached Annexure. Sh. Ratan Lal Bagaria (A-2) through the Company (A-4) availed the funds against these 44 bills from the United Bank of India and further availed the Export Incentives / Benefits in respect of these Foreign Bills. The consignments against these 44 Foreign Export Bills of the Company (A-4) were retained by Sh. Rajan Bagaria (A-3), brother of Sh. Ratan Lal Bagaria (A-2) against which the total amount of Rs. 3,15,57,073/- had remained outstanding for payment. Sh. V.K.

Maheshwari (A-1) knowingly, willfully, dishonestly and deceitfully had continued to purchase the Foreign Exports Bills of the Company (A-4) when the amount against the earlier discounted / purchased bills had remained outstanding for payment and these facts were well within the knowledge of Sh. Kasibatla Ramakrishna (A-6).

4. Sh. Shantanu Guha was posted and functioning as Chief Manager (Credit Operation – II) in the Head Office of United Bank of India, Kolkata and as such was a public servant. The Chairman & Managing Director was the Competent Authority to grant sanction for prosecution of Sh. Shantanu Guha. He is, therefore, not sent up for trial and his name has been put in Column no. 2 of the Charge-sheet.”

36. Ld. Counsel has argued that no material has been filed by CBI against him. If the evidence on record remains un-rebutted, even then the petitioner cannot be convicted. If this is the position, then why the petitioner be dragged such a long trial for nothing.

37. Ld. Counsel has also referred the evidence against him which has emerged on record.

38. **Sh. Raj Ghodnadikar (PW2)** has stated that as per normal practice of export, every bank while sanctioning limits of Packing Credit and discounting of bills, stipulation was mentioned to obtain ECGC cover. Like Insurance Cover, for pre-shipment which was taken on Whole Turnover basis. The post shipment coverage was also taken by banks as Whole Turnover basis and later on the concerned branch have had the effective payment of premium etc.

39. On going through the records of his office, this witness further stated that United Bank of India had been taking WTPCG i.e. pre shipment

insurance cover from ECGC since 01/09/1998 and this was in force even during May, 1994 to December, 1995. He, however, stated that United Bank of India had never taken Whole Turnover Post Shipment Guarantee for discounting of the bills of the exports at any point of time.

40. **Smt. Geeta Muralidhar (PW3)** stated that United Bank of India did not take policy / ECGC cover for whole turn over and post – shipment guarantee at any point of time including during 1994-1996. It was also a fact that United Bank of India, Overseas Branch, New Delhi did not take any post-shipment ECGC cover in respect of export bills of M/s. Ratan Exports and Industries Ltd. during 1994-1996.

41. **Sh. D.R. Paul (PW4)** On going through the records, he stated that out of 162 export bills submitted by M/s. Rattan Exports Industries Ltd., New Delhi only 74 export bills amounting to Rs.12,63,38,456/- had been purchased / discounted for by this branch and bank's fund was credited in the account of the concerned firm. It was also a fact that against these 74 export bills which were discounted for by the branch, no payment had yet been received by the bank from the buyers. He also stated that the remaining 88 export bills of M/s. Ratan Exports Industries Ltd., New Delhi were accepted by the Branch, without making any payment, for the purpose of only collection and these bills were sent to the concerned foreign banks for collection. It was a fact that against these 88 bills also no payment was also received. However in respect of these 88 export bills, no fund of bank was involved.

42. **Raj Kumar Pipil (PW5)** stated that as per stipulation of the sanction order when the Packing Credit Limits and foreign bill collection limits were

enhanced in 1992 in favour of M/s. Ratan Exports & Industries Ltd., New Delhi, Insurance Cover of ECGC was required to be obtained by the branch in respect of each export bills and this was the responsibility of the then Branch Manager. He stated that in respect of the export bills of M/s. Ratan Exports & Industries Ltd., New Delhi, which were discounted for by the branch, no ECGC cover was either obtained by this branch nor the exporter was asked to obtain ECGC cover in respect of the concerned exports by the Branch Manager of this branch. Moreover, in respect of post shipment of ECGC cover on whole turn over basis, no ECGC cover was obtained by the Head Officer of our bank.

43. **Mr. Arvind Kumar (PW17)** stated that debit voucher dated 04.07.1994 and three credit vouchers all dated 04.07.1994 were prepared by him and identified his writing on these vouchers. The credit voucher dated 29.05.1995 was prepared by Sh. Sushil Sharma, Clerk of their Janpath branch, who has since been expired in 1995.

44. This witness further stated that as per working system in their bank relating to purchase of export bills, he stated that the concerned export bills were first submitted by the borrower and the same were examined by the Chief Manager. Thereafter, approval was accorded by Chief Manager Sh. V.K. Maheshwari to purchase these bills by the borrower. He had prepared the debit and credit voucher. Against credit vouchers the packing credit account of the party was credited and against debit voucher the FOBP account was debited. He had no authority to purchase the export bills as per his own decision, however these were purchased and vouchers were prepared in favour of M/s. Ratan Export & Industries Ltd., only after the

purchase of concerned bills were approved by the Chief Manager of our Janpath Branch through Sh. V.K. Maheshwari.

45. Further stated that the bills against which the above vouchers were prepared, were all against acceptance of bills and not against payment. As per procedure the bills which were purchased against acceptance was sent to the Foreign Bank with the instruction to hand over the documents to the drawee firm and payment was to be received by that bank within a stipulated time. In case of purchase of bills against payment, bills were purchased by the bank and these are sent to the Foreign Bank with the instruction to hand over these bills after getting the payment from the drawee firm and eventually the payment was sent to us by the Foreign Bank. As a banker, he stated that the system of handing over documents against payment was a safer system in the interest of the bank, then the delivery of the documents against acceptance.

46. Further stated that he had seen the sanction loan dated 10.09.1992, that was sanctioned by the Board of Directors on 07.11.1992. The sanction relates to sanction of limits of M/s. Ratan Export & Industries Ltd. In this sanction note, limit for bill purchase had been sanctioned by the Board of Directors against DB facility i.e. bills were to be purchased against payment. He could not say under what circumstances the bills of the borrowers used to be purchased against acceptance. This system had been going on in the branch when he joined there. He also prepared vouchers after the purchase of bills which were approved by Sh. V.K. Maheshwari against acceptance.

47. **Sh. Rajender Kauldhar (PW18)** states that he had seen a note dated 09.10.1992, relating to proposal for revoke of enhancement of export credit

limit in favour of M/s. Ratan Export Industries Ltd. The note was approved and limits were sanctioned vide resolution no. 21 dated 07.11.1992 by the Board of Directors. Vide this sanction, M/s. Ratan Export Industries Ltd., was sanctioned, credit limit of Rs.4442 lacs inclusive of packing credit, foreign bill purchase / foreign bill negotiations and others. With reference to this sanction in respect of FOBP / FOBN, he stated that the sanction was for foreign bank purchase / foreign bank negotiations. Against this sanction, the Branch was required to accept the bills of the party and sent it to the foreign bank with the instructions to hand over the documents to the drawee firm against payment only.

48. Further stated that as per system export bills were sent to foreign bill with the instructions either to hand over the documents against the acceptance or against payment to the drawee firm depending on the nature of sanction. As per the sanction, the export bills of M/s. Ratan Export Industries Ltd. were required to be sent to the foreign bank against DP i.e. the documents were to be handed over only against payment by drawee firm but actually in all these cases the bills were sent to foreign banks against DA (drawn against acceptance) which was not in accordance with the sanction of a credit limit of UBI HO as mentioned in the note dated 09.10.1992. He further stated that the account of M/s Ratan Export Industries Ltd., was being maintained at our Janpath Branch and this was transferred to Overseas Branch after opening of Overseas Branch. He had also worked in Janpath Branch and handled this account when Sh. S. Basu Roy was the Sr. Manager in Janpath Branch.

49. Further stated that after enhancement of the limits of the concerned firm at the initial stage, the bills were submitted for purchase and thus used to be sent to the foreign bill for DP i.e. to be drawn against payment. But later on, the party had requested to send their bills to the foreign bill as DA i.e. drawn against acceptance. He remembered that for this deviation, Shri S. Basu Roy, Sr. Manager of Janpath Branch had written a letter to the DGM, UBI New Delhi requesting for approval of the party's request to send the bills to the foreign bill against the DA and approval of the DGM, UBI New Delhi requesting for approval of the party's request to send the bills to the foreign bank against the DA and approval of the DGM was also obtained in this matter. He is not aware whether HO approval for this deviation was approved or not.

50. This witness further deposed that he had seen all the 45 bills submitted by M/s. Ratan Export & Industries Ltd., which were purchased by Janpath / Overseas Branch during 1994-1995 against limit sanction to the borrower. He state that these bills were sent to Foreign Banks of the drawee firm for releasing payments and, as that was stated earlier, these bills were purchased by his / their bank against DA i.e. drawn against acceptance.

51. He had also seen the forwarding letter of all these bills through which the concerned bills of M/s. Ratan Export & Industries Ltd. were sent to the Foreign Banks during 1994-95. He stated that all these forwarding letter were prepared and signed by him except one forwarding letter dated 20.05.1994. He identified his signatures in all the 45 bills and confirmed his signatures. In all these instances, it has been mentioned that the documents

might be delivered against acceptance as approved by Sh. V.K. Maheshwari, Chief Manager.

52. Regarding forwarding letter dated 20.05.1994, he stated that letter had been signed by Sh. Jagdish Singh Dugal, Officer of Janpath Branch and identified his signature on the concerned letter. Sh. Jagdish Singh Dugal had taken voluntary retirement from the bank during 1996. He further stated that the foreign bill purchase file relating to M/s. Ratan Export & Industries Ltd. of Janpath / Overseas branch, he stated that as per remark on the letter of the borrower Sh. S. Basu Roy who was Branch Manager of Janpath branch had mentioned that the bills might be purchased against acceptance and borrower had submitted the bills to be purchased against acceptance whereas, sanction was there for accepting for purchasing bills of the borrower against payments. As per instruction of Sh. S. Basu Roy, Manager of Janpath Branch, he distinctly remember that a letter was prepared and addressed to DGM, United Bank of India, New Delhi, which was signed by Sh. S. Basu Roy for confirming the approval which was communicated by him on telephone and the confirmation was also received from the branch by Zonal manager / petitioner. He did not know whether any approval was obtained by DGM or HO in this regard or not. He, however, stated that since the limits were sanctioned to the borrower M/s. Ratan Export & Industries Ltd., some conditions and procedures stipulated in the sanction note by the Board of Director of UBI, which was the competent authority for making any changes in the conditions or issues, would require approval of the Board of Directors of UBI.

53. Further stated that he had prepared a chart in respect of these 44 bills showing the outstanding amounts in respect of these bills and the amount of loss that was caused to United Bank of India in respect of these bills. From the chart prepared by him, it would be very clear to understand Sh. V.K. Maheshwari approved purchase of bills when payments of previous export bills were already due specially in respect of same firms. When the first bills were discounted on 29.05.1995 drawn on M/s. Arvee International, Singapore, a number of payments in respect of this firm were already outstanding, even then Sh. V.K. Maheshwari allowed discounting of this bill. Again 12 bills were allowed to be discounted on 28.07.1995 by Sh. V.K. Maheshwari when earlier export bills were not yet been adjusted and the payment of bills were overdue. In the interest of Bank, it was very necessary to monitor the export bills for which payments remain outstanding. While monitoring, the Branch Manager of the Bank was expected to take strict action and even refuse further discounting of the bills if the previous bills were not paid for a reasonable time. In the instant case, all the 44 bills were allowed to be discounted by Sh. V.K. Maheshwari in such situations when the borrower's a/c was already overdue on account of non receipt of payments from foreign buyers through their banks and such practice was highly irregular and prejudicial to the interest of the Bank.

54. **Sh. S. Basu Roy (PW19)** stated that in his letter dated 21.11.1992, he had noted all the conditions etc. including special conditions for information and necessary action of the borrower which were there in the sanction note except those conditions on which borrower had nothing to do. One of the special conditions in the sanction note was regarding ECGC coverage for the

export bills. It was stipulated that the ECGC coverage would be arranged by our Janpath Branch in respect of export bills. As per this condition, responsibility to obtain ECGC cover for export bills was of the Branch Manager of Janpath Branch and hence that condition was not mentioned by him in his letter dated 21.11.1992. As per sanction note, it was not a fact that ECGC coverage was to be obtained by the borrower and that was to be ensured by the Branch Manager Janpath Branch. In fact the meaning of the condition was that the ECGC coverage was to be taken for export bills by the Branch Manager of Janpath Branch. In case his interpretation was wrong then the Sr. Officers to whom his letter was endorsed would have definitely raised objections and would have given necessary directions. But he did not receive any direction or objection from them.

55. He further stated that the limits of FOBP was sanctioned against DP i.e. Drawn against payment but the borrower started submitting export bills for DA i.e. Drawn against Acceptance and wanted the Bank to purchase the bills. He did not act as per request of the borrower at his level and sent a note to the DGM, UBI, New Delhi (petitioner), requesting for consideration and approval. He had received the approval of the DGM, UBI, New Delhi. The petitioner on that issue and after that bills of M/s. Ratan Export & Industries Ltd., were accepted and purchaser against DA basis.

56. In this case, sanction of credit limits to the tune of Rs.44.42 Crores was accorded by the Committee of Management of the Board of Directors of UBI in favour of the borrower. In case any amendment of the sanction was required, then the matter had to be placed before the same authority for approval which had sanctioned the credit limits. He was not aware whether

petitioner the then DGM, UBI, New Delhi, on receipt of his request had obtained approval of the Competent Authority for amendment of sanction or not.

57. **Sh. P.P. Singh (PW20)** stated that approval of the Branch Manager to purchase of export bill was required either in oral or writing. He was an officer of Scale-I. He had no power to allow purchase of discounting export bills.

58. He further stated that he had seen a note dated 09.10.1992 relating to proposal for revoke of enhancement of export credit limit in favour of M/s. Ratan Export Industries Ltd. The note was approved and limits were sanctioned vide resolution no. 21 dated 07.11.1992 by the Board of Directors of UBI. Vide this sanction, credit limit of Rs.4442 lacs were increased inclusive of Packing Crediting, foreign bill purchase / foreign bill negotiations and others. With reference to this sanction in respect of FOBP/FOBN, he stated that the sanction was for foreign bank purchase / foreign bank negotiations. Against the sanction, the Branch was required to accept the bills of the party and sent it to the foreign bank with the instructions to hand over the documents to the drawee firm against payment only.

59. As per the sanction the export bills of M/s. Ratan Export Industries Ltd. were required to be sent to the foreign bank against DP i.e. to say the documents were to be handed over only against payment by drawee firm but actually in all these cases the bills were sent to foreign banks against DA (Drawn against acceptance) which were not in accordance with the sanction of a credit limit of UBI HO as mentioned in the note dated 09.10.1992.

60. He further stated that after enhancement of the limits of the concerned firm at the initial stage the bills were submitted for purchase and thus used to be sent to the foreign bill for DP i.e. to be drawn against payment. But later on, the party had requested to send his bills to the foreign bill as DA i.e. drawn against acceptance. He remembered that for this deviation Sh. S. Basu Roy, Sr. Manager of Janpath Branch had written a letter to the DGM, UBI New Delhi requesting for approval of the party's request to send the bills to the foreign bill against the DA and approval of the DGM, UBI New Delhi requesting for approval of the party's request to send the bills to the foreign bank against the DA and approval of the DGM was also obtained in this matter. He was not aware whether HO approval for this deviation was approved or not.

61. Further stated that the time limit for collection of payment of foreign banks was mentioned in the foreign letter, while sending the bills by the bank only when the bills were sent against DA. Since, the sanction of the HO in this regard was for FOBP i.e. against DP question of term limits in a sanction note did not arise and it was not required also.

62. **Sh. V.N Bhattaharya (PW21)** states that these Irregularity Reports have been submitted to the Office of the DGM, New Delhi by Sh. V.K. Maheshwari, the then Chief Manger of these two Branches, in respect of the account of M/s. Rata Exports and Industries Ltd. Most of the Irregularity Reports submitted by Sh. V.K. Maheshwari have been seen by Sh. K.N. Ramakrishnan, the then DGM, Union Bank of India, New Delhi as these contain his signatures and instructions to regularize the account had been issued by the DGM. The above facts imply that the position of the account

of M/s. Ratan Exports and Industries Ltd. was brought to the notice of DGM by Sh. V.K. Maheshwari in the Irregularity Reports and Sh. K.B. Ramakrishnan, DGM was aware of the performance of the concerned account.

63. **Sh. S.N. Ghosh (PW23)** states that it was a fact that the foreign purchase limit was sanctioned to the company in 1992 on DP basis where company could have got the payment after the bills were discharged by the buyer on payment. Since it was a difficult proposition and was not in the interest of the company, Sri Rattan Lal Bagaria had asked him during December, 1992 to submit bills to United Bank of India on DA basis. In DA basis, the company would have received payment immediately on presentation of the bills and the buyer would get the documents from the foreign bank without making any payment immediately. Accordingly, as directed by Sri Rattan Lal Bagaria, he submitted 8 bills on 12.12.1992 to United Bank of India for discounting / purchase. Initially, the Branch Manager did not allow the discounting against DA basis as requested by him in his letter dated 12.12.1992 but later on purchased these bills after getting approval of the Zonal Manager, United Bank of India on telephone. Later on although bills of this company used to be submitted for purchase on DA basis.

64. Further stated that during his tenure, in M/s. Rattan Exports Industries Ltd., he had found that after 1992, Sri Rattan Lal Bagaria was not very serious about making payments to United Bank of India and it was likely that he was planning to leave the country and that was what he did at a later stage.

65. Further stated that on account of his connections with Senior officers, of United Bank of India Head office, he managed the bills for purchase on DA basis but this was done by him with ulterior motive as is evident now.

66. **Sh. Adesh Kumar (PW24)** stated that he had seen the sanction loan dated 10.09.1992, it was sanctioned by the Board of Directors on 07.11.1992. The sanction relates to sanction of limits of M/s. Ratan Export & Industries Ltd. In this sanction note limit for bill purchase has been sanctioned by the Board of Directors against DB facility i.e. bills were to be purchased against payment. He could not say under what circumstances, the bills of the borrowers used to be purchased against acceptance. Since, this system was going on in the branch when he joined there, he also prepared vouchers after the purchase of bills were approved by Sh. V.K. Maheshwari against acceptance.

67. Further stated that it was a clear and repeated instructions of Sh. V.K. Maheshwari, Branch Manager and Sh. K. Ramakrishna, DGM, UBI, New Delhi (the petitioner) that under no circumstances the bills of M/s. Ratan Export & Industries Ltd. should be delayed for discounting and for this account need not follow routing procedures strictly.

68. Further stated that before giving approval to discount the bill of M/s. Ratan Exports & Industries Ltd. on 18.03.1996, he had talked to Sh. V.K. Maheshwari on phone at his residence and informed him about the matter. Sh. V.K. Maheshwari had instructed him to go ahead and asked him to discount the bill on the same day and the account of borrower should be credited with the discounted amount. Accordingly, he had approved the concerned bill of M/s. Ratan Exports & Industries Ltd. on 18.03.1996 while

working as officiating Branch Manager, United Bank of India, Overseas Branch, New Delhi.

69. **Sh. D.K. Bhattacharya (PW25)** stated that in the analysis prepared by his office and sent to ED it was mentioned that in respect of three clarifications, no specific reply was given by Sh. K.B. Ramakrishna (the petitioner) in his explanation. In respect of another point, the reply was only denial by the CRM and the concerned document which was a letter dated 16.09.1996, was never put up and the same was not available. Accordingly, the matter against Sh. K.B. Ramakrishna (the petitioner) was closed.

70. When some questions were put before **Sh. P. Basu (PW26)** during the recording of his statements he replied as under:-

Q. Please go through the sanctioned note dated 07.11.1992 regarding enhancement of Rs.44.42 Crore to Ratan Exports Ltd. – please state which authority had sanctioned the limit?

A. The sanction of limit was accorded by the Board of Directors in its meeting held on 07.11.1992.

Q. As per the sanctioned note dated 07.11.1992, the FOBP sub-limit to the borrower was sanctioned against DP basis. Do you agree?

A. Yes.

Q. Which option is better or best in the interest of the Bank out of the two DA or DP regarding purchase of foreign bills?

A. In respect of purchase of foreign bills, L.C. backed foreign bills or D.P. Basis are preferable option in the interest of the Bank.

Q. Since the sanction of the limit was done by the Board of Directors of UBI, amendment on the concerned sanction, if any,

requires to be done by the Board of Directors, which is the competent authority or not?

A. Yes. Amendment to the original sanction of any type requires Board's approval. However, due to exigency of business, the authority below the competent authority can take a decision but subsequently the deviation or the action taken needs to be reported to the competent authorities.

Q. As per the evidence on record, first set of 8 bills for Rs.680071.50 was submitted by the firm on 12.12.1992 for purchase of bills on DA basis. On the same date, i.e. 12.12.1992, Sri K.B. Ramakrishna, the then Dy. General Manager, UBI, New Delhi allowed purchase of these bills on DA basis contrary to the sanction made by the Board of Directors. Whether the action of Sri Ramkrishna was authorized and whether he was competent to approve purchase of bills on DA basis?

A. DGM, UBI, New Delhi was not competent to approve purchase of concerned ills on DA basis. However, in the interest of business exigency, he may do so in deserving cases with the subsequent approval of the competent authority.

Q. On receipt of the proposal contained in the telex mentioned above, what action was taken in the Office of General Manager (Credit) UBI, Head office, as per the available records of his office?

A. On receipt of the recommendation dated 14.12.1992 from DGM, New Delhi, a note was put up on 28.12.1992 by Sri Santanu Guha, Chief Manager, for amendment of the sanctioned terms to include DA Bills also for purchase of foreign bills and the note was placed to DGM (Credit) and GM (Credit) for approval. Subsequently, the not was cleared by the DGM (Credit), Late M.K. Devraj and approved by Sri M.K. Basu, the then G.M. (Credit) UBI, Head Office on 30.12.1992.

Q. In the background of your answer mentioned above, whether Sri M.K. Basu, the then G.M. (Credit), UBI, Head office was competent to approve the proposal?

A. Sri M.K. Basu, as General Manager (Credit) was not competent to approve such amendment. However, on account of business exigency, he may do so in deserving cases subject to subsequent confirmation / approval by the competent authority.

Q. The concerned not put up by Sri Santanu Guha was cleared by Late M.K. Devraj and approved by G.M. (Credit), Sri M.K. Basu on 30.12.1992. in the light of your statement mentioned above, Sri M.K. Basu was not the competent authority to approve the note to include DA also. Do you agree?

A. Sri G.M. (Credit), Sri M.K. Basu was not competent authority, but in the interest of business exigency, he may do so subject to putting up the matter before the competent authority for necessary confirmation / approval.

Q. Kindly go through the records of your office and confirm whether at a subsequent stage the matter has been put up to the competent authority for approval or not?

A. Specific approval regarding amendment of the sanction relating to inclusion of DA has not been obtained from the competent authority, which is Board of Directors. However, the fact relating to overdue of bills arising out of discounting of foreign bills drawn on DA basis has been mentioned in the subsequent note placed to the Board of Directors.

Q. Is it a fact that approval of DA bills by Sri M.K. Basu, G.M. (Credit) subsequently Board Notes were put up on different issues and nowhere this deviation from DP. To DA has been specifically mentioned in the concerned note. Do you agree?

A. Yes. In the subsequent Board Note specifically this deviation has not been reported. However, the fact relating to overdue of bills arising out of discounting of bills drawn on DA basis has been mentioned in the subsequent note placed to the Board of Directors, which relates to purchase of bills on DA basis.

Q. Mr. Basu, kindly go through the Board Notes put up after approval accorded by Sri M.K. Basu G.M. (Credit), UBI and state whether in this note terms of sanction has been mentioned as DP in

respect of FOBP or not, and if yes, whether such note was correct in the light of the approval of Sri M.K. Basu, G.M. (Credit).

A. It is a fact that in respect of FOBP limit sanctioned to Ratan Exports Ltd., DP has been mentioned as limit against DP bills though by that time DA bill was allowed by Sri M.K. Basu. I state that since modification was allowed by the then G.M. (Credit) by including DA bills, this note should have been suitably drafted by mentioning FOBP documentary DA bills in respect of DP.

Q. Kindly go through the telex message sent by Sri Santanu Guha, the then Chief Manager (Credit) UBI, Head officer, addressed to DGM, UBI, New Delhi on this issue in which he has mentioned that the competent authority as accorded modification in FOBP sub limit by inclusion of DA bills – whether such message of Sri S. Guha is correct in the light of your above statement because as on 31.12.1992, the competent authority had never approved the amendment from DP to DA.

A. Since as on 31.12.1992, the competent authority did not approve the amendment of FOBP sub limit from DP to DA, the telex message dated 31.12.1992 sent to DGM, UBI, New Deli was not correct so far as mentioned of ‘competent authority’ is concerned.

Q. Sir, as per your statement on the basis of available records, this amendment from DP to DA relating to discounting of export bills of the borrower has not been brought to the notice of the competent authority, i.e. the Board of Directors. Do you agree?

A. From the available records, it is a fact that matter has not been specifically brought to the notice of the competent authority. However, in the subsequent note placed before the Board of Directors the position of overdue bills arising out of the discounting of bills drawn on DA basis was stated.

71. When some questions were put before **Dr. A.K. Bhattacharya (PW26)** during the recording of his statements he replied as under:-

Q. Dr. Bhattacharya, since you have admitted to approve the mother draft meaning thereby that you in principle had approved

that the borrower was to be sanctioned the concerned enhancement. Do you agree.

A. Yes, as far as I remember, the performance of the company was good and they are in need for financing on account of increase of export business and was being periodically referred to from our Delhi Zonal Office. The Zonal Manager, number of times had said that this export account will be lost in case we do not take care of their ultimate credit needs. My predecessor, it was reported, Mr. J.V. Shetty, who was the then Chairman & Managing Director of Canara Bank was keen to take over this account from the United Bank of India.

Q. Sir, as per draft Note in March, 90, actual sale of the borrower was Rs.41.62 Crores. In March 91, it was 51.98 Crores whereas in March 92, it was estimated to Rs.127.59 Crores and for March 93, the projected sale has been shown at Rs.200 Crores. Along with this, it has also been mentioned about the problematic political situation in Russia which had already been disintegrated by that time and the borrower had although made export business with Russia only. Do you think such high sale projection at that time when the problem in Russia for business purpose was not a favourable phenomena, was realistic for enhancement of limit from 16 Crores to 44.42 Crores?

A. At that time the enhancement was made under the specific recommendations of the Zonal manager, Delhi Office who was the Bank's representative in the business scenario of Delhi and the General Manager (Credit). In the circumstances, I found the propose acceptable for getting the fund approved by the Board of Directors.

Q. Sir, subsequent to the enhancement on 07.11.1992, as many as three Notes were put up. One to CMD and two Notes to the Board of Directors on different issues and nowhere it was mentioned about the amendment was approved by the General Manager (Credit) and post facto approval was not sought in as much as these three Board Notes, General Manager (Credit) continued to mention to FOBP limits on D.P. basis. Do you admit this was a suppression

of fact and misleading information put up in the Board Note by the concerned officer?

A. Yes, I agree.

Q. Dr. Bhattacharya, as per the statement of Sri M.K. Basu, the then General Manager (Cr.) there was an instruction from you to him that the matter relating to the concerned borrower should be disposed of at this level without any delay or harassment and the borrower should not be put into trouble in any manner and post-facto approval can be taken on all issues. Do you admit?

A. I totally deny such statement, if any, given by Sri M.K. Basu.

72. **Sh. H. Kundu (PW28)** states that in the comments dated 07/08/1999, Sh. Shyamal Mukherjee has mentioned about a large number of irregularities committed in the concerned account and in his comments also, it was mentioned that the very enhancement of the limits to the borrower from Rs.16.72 Crores to Rs.23.72 Crores on 21/09/1992 and then to Rs.44.42 Crores on 07/11/1992, was required to be looked into in detail because during the relevant time economical and political disintegration of erstwhile USSR had already taken place and it was required to be taken into consideration while sanctioning such a huge limit to a trading unit whose main business transactions were with erstwhile USSR only.

73. Further stated that in his note, he had also mentioned that the enhanced limits were made available to the company w.e.f December, 1992. By that time, the Branch and Head Office of UBI had received the borrowers Q & A Statements for the quarter ending in June 1992 to September 1992, when the company had achieved sales aggregating Rs.60-80 Crores against projected annual sales for 1992-93 of Rs.214.85 Crores. The concerned officials of the Branch, Zonal Office and Head Office should have

considered this aspect and take precautionary measures to restrict the bank advances to the company in the light of sales performance. But not action was taken which was very necessary in the financial interest of the bank and further loans could have been immediately stopped.

74. Another pertinent lapse was that ECGC coverage was not taken (buyer-wise, in respect of the export bills of the borrower) by the branch in as much as it was not ensured that the borrower need to infuse funds of his own to the tune of Rs.824.43 Lakhs, before the release of the funds. The borrower never put this money though this was one of the stipulations in the sanction note dated 07/11/1992.

75. Another serious irregularity was committed in this account by the then GM (Credit), UBI and CM(Credit), UBI, when they permitted discounting of the export bills on DA basis in an authorized manner contrary to the stipulation in the sanction note dated 07/11/1992, where the sanction was given by the Board of Directors for the limits in respect of export bills on DA basis. Amendment of the sanction note as required was to be done by the Competent Authority in this case and even post facto approval was also not obtained by Sh. N.K. Basu and Sh. S. Guha for their action. Moreover, in all the subsequent Board notes, nothing was mentioned about their unauthorized action about amendment in the stipulation. Rather in the subsequent notes put up to the Board in respect of the export bills or DP basis it was mentioned though by the time, export bills were allowed to be discounted at DA basis.

76. This witness has also stated that since the petitioner Sh. K. Ramakrishna was due to retire, an explanation would have been called for

from him only to close the file. Later on, GM (P), UBI sent back 6 draft explanation letters to the Vigilance Department, UBI vide his letter dated 21/12/1999, mentioned that the same were returned as discussed. Accordingly, the matter in respect of other responsible officers except petitioner Sh. K. Ramakrishna was closed.

77. He further states that number of irregularities were committed by the concerned officers of the bank and the matter was also reported in detail to CMD, Sh. B. Chaudhary, but for the reasons best known to him, he did not agree to initiate action against the officers responsible for the irregularities, but did not put his desire in writing.

78. **Sh. Shyamal Mukherjee (PW29)** states that apart from the above omission and commission, he had also found that while in the sanction note dated 07/11/1992 the FOBP limit was sanctioned to the borrower on DP basis this was subsequently amended to DA basis by Shri. M.K. Basu, General Manager (Credit), UBI on the recommendation of Sri K. Ramakrishna, DGM, New Delhi, though in this case amendment was required to be done by the Board of Directors, which was the competent authority. However, action of GM (Credit), UBI as mentioned above was also not got ratified at any point of time and the same was not mentioned either in the note prepared by Shri Santanu Guha, then CM, UBI nor by Shri M.K. Basu, GM (Credit). The concerned Note had also been agreed to by the then DGM (Credit), Shri M.K. Debraj, who has since expired.

79. When this witness was put to some questions, he replied as under:-

“Q. Sir, in the light of your statement mentioned above do you agree that the action on the part of GM (Credit) and CM (Credit) regarding amendment of the sanction order was an over tact on their part as GM was not competent to make such amendment and later on this was not got ratified by the Board though subsequent to his action as many as 3 Board Notes on different matters were put up to the Board?”

A. No, this was not an authorized act on the part of the concerned individuals and when this was approved by the GM (Credit) the same should have been reported to the Board of Directors being the Competent Authority for ratification subsequently.

Late on as per order of CVO I prepared another note vide no. 394 dated 27.11.1999 on this subject and submitted the same to CVO for perusal. In this note I reiterated that bills were purchased on DA basis with effect from 30.12.1992 without any pre/post approval of the Board of Directors. In this note, I had recommended for getting explanation from officers, who are found to have committed omission and commission and these are Sh. S. Basu Roy, Sh. S. Dutta, Sh. P.B. Banerjee, Sh. M.M. Bhaduri, Sh. A.K. Pradhan, Sh. S. Guha and Sh. K. Ramakrishna, GM, who was formerly DGM, New Delhi.”

80. **Sh. Raj Kumar (PW32)** stated that this firm was sanctioned Rs.44.42 Crores limit as enhancement by United Bank of India during Nov’92 which includes Packing Credit and FOBP limit. FOBP limit was sanctioned to the tune of Rs.1600 Crores. The firm started availing the limit from Dec’92 on DA basis after approval of the amendment was obtained from the Dy. General Manager, Delhi from DP to DA in respect of discounting of bills.

81. Further stated that in case of discounting of foreign bills on DP basis, the foreign bank was under obligation to deliver the documents to the drawee firm only after receipt of the payment and subsequently the payment

amount was transferred to the Bank which was required to be credit in the FOBP a/c of the borrower.

82. It is further stated that in the instant case, of M/s. Ratan Exports & Industries Ltd., the sanction of the limits were enhanced during Nov'92 by the Board of discounting of export bills on DP basis, however, the bills were purchased on DA basis as per order of the then Dy. General Manager, United Bank of India, New Delhi as reveals from the records. It was further mentioned that during the relevant time, Sh. S. Basu Rai and later on Sh. V.K. Maheshwari were Chief Managers of Janpath Branch / Overseas of United Bank of India.

83. He further stated that the export bills of M/s. Ratan Exports & Industries Ltd. were analysed as above and had all been drawn and discounted during the period from 05.05.1995 to 18.03.1996.

In this connection, he further stated that Bank had filed Suit in Debt Recovery Tribunal, Delhi against the borrower for recovery of its dues on 05.03.1998 for total amount of Rs.32.87 Crores with interest as on 04.03.1998. Book dues as per records as on 04.03.1998 was Rs.21.40 Crores. In respect of the 44 bills, which have been analysed above, the Bank had suffered substantial loss on account of non-payment of the bills from the foreign buyer.

84. **Sh. V.K. Hora (PW34)** stated that the news item in question related to facing of trade squeeze by the exporters to erstwhile USSR. From this document, it was evident that as in Jan'92, the Zonal Office of United Bank of India, New Delhi as well as the branch was aware about the difficulties in respect of trade with erstwhile USSR and hence such liberal

recommendation in favour of the concerned borrower for enhancement of huge limits was surely against the interest of the Bank.

85. Further states that it was evident from the letter dated 27.06.1992 of Sh. K. Ramakrishna (the petitioner), the then Deputy General Manager, New Delhi that he had accepted the information furnished by the borrower as gospel truth without examining the matter in proper perspective, in his recommendation while mentioning about the uncertainty in the business with the USSR but subsequently he had totally accepted the statement of the borrower that they would achieve the projected sales target for 1992-93 but he has not recorded any logic for such optimistic expectations and this was clearly against the interest of the bank.

86. In the instant case, even if the borrower was sanctioned Rs.44.42 Crores as limits but since his achievements during the financial year March' 93 followed by March' 94 and so on were not favourable, the Branch Manager and the Deputy General Manager could have taken strict action by properly monitoring the account of the borrower to safeguard the interest of the Bank.

87. **Sh. G.S. Trikha (PW41)** stated that the account of M/s. Ratan Exports and Industries Ltd. was used to be treated by their bank as an important and VIP account. It was a clear and repeated instruction of Sh. V.K. Maheshwari, Branch Manager and Sh. K. Ramakrishna, DGM, UBI, New Delhi that under no circumstances the bills of M/s. Ratan Exports and Industries Ltd. should be delayed for discounting and need not follow routing procedures strictly. Accordingly, he had approved the concerned bill of M/s. Ratan Exports and Industries Ltd. on 17/8/1995 while working as

officiating Branch Manager, United Bank of India, Overseas branch, New Delhi.

88. To strengthen her arguments, ld. Counsel for the petitioner has also relied upon case of **State of Haryana and Ors. Vs. Bhajan Lal & Ors. (1992) Supp (1) SCC 335**, wherein it is held as under:-

“In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.”

89. She further relied upon case of **P.S. Rajya Vs. State of Bihar (1996) 9 SCC (1)**, wherein it is held as under:-

“1. At the risk of repetition, we may state that the charge had not been proved and on that basis the appellant was cleared of

departmental enquiry. In this connection, we may also usefully cite a decision of this Court in State of Haryana and Others vs. Bhajan Lal and Others (1992 Supp.(1) SCC 335). This Court after considering almost all earlier decisions has given guidelines relating to the exercise of the extra ordinary power under Article 226 of the Constitution or the inherent powers under Section 482 of the Code of Criminal procedure for quashing an F.I.R. or a complaint. This Court observed as follows:

‘In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prime facie constitute any offence or make out a case against the accused.

(2) Where the allegation in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers

under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private any personal grudge.'

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon

an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an- arbitrary jurisdiction on the court to act according to its whim or caprice."

3. The present case can be brought under more than one head given above without any difficulty.

4. The above discussion is sufficient to allow this appeal on the facts of this case."

90. She further relied upon a case of **M. Mohan vs. State (2011) 3 SCC 626** wherein it is held as under:-

*"1.This Court had an occasion to examine the legal position in a large number of cases. In **R.P. Kapur v. State of Punjab** AIR 1960 SC 866, this Court summarized some categories of cases where the High Court in its inherent power can and should exercise to quash the proceedings:*

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge."

2. This Court in **State of Karnataka v. L. Muniswamy and Ors.** (1977) 2 SCC 699, observed that the wholesome power under Section 482 Code of Criminal Procedure entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice requires that the proceedings ought to be quashed. The High

Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In this case, the court observed that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the Legislature. This case has been followed in a large number of subsequent cases of this Court and other courts.

3. This Court in **Madhavrao Jiwajirao Scindia and Ors. v. Sambhajirao Chandojirao Angre and Ors.** (1988) 1 SCC 692, observed in para 7 as under:

The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

4. In **Connelly v. Director of Public Prosecutions** 1964 AC 1254, Lord Ried at page 1296 expressed his view "there must always be a residual discretion to prevent anything which savours of abuse of process" with which view all the members of the House of Lords agreed but differed as to whether this entitled a Court to stay a lawful prosecution.

5. In State of A.P. v. Golconda Linga Swamy and Anr. (2004) 6 SCC 522, this Court observed as under:

*Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely: (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid aliunde concedit, conceditur et id sine quo res ipsa esse non potest* (when the law gives a person anything, it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement*

of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

6. This Court in **Zandu Pharmaceutical Works Ltd. and Ors. v. Mohd. Sharaful Haque and Anr.** (2005) 1 SCC 122, observed thus:

It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/ continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

7. In the light of the settled legal position, in our considered opinion, the High Court was not justified in rejecting the petition filed by the Appellants under Section 482 of the Code of Criminal Procedure for quashing the charges under Section 306 I.P.C. against them. The High Court ought to have quashed

the proceedings so that the Appellants who were not remotely connected with the offence under Section 306 I.P.C. should not have been compelled to face the rigmaroles of a criminal trial.”

91. Ld. Counsel for the petitioner has further submitted that during the pendency of the proceedings M/s. Rattan Export and Industries Ltd. (A-4) settled all its account with the Bank by way of compromise / settlement duly approved by Managing Committee of the Board of Directors on 24.08.2007 by paying Rs.865.04 Lacs and thereby the account was closed w.e.f 24.08.2007. Thereafter, the Bank issued “No Due Certificate” as well besides realizing all collateral securities held by it as security for advance.

92. It is submitted that Debt Recovery Tribunal (DRT), Delhi has also confirmed the withdrawal of Suit filed by the Bank consequent upon the settlement including all dues of the borrower Company vide its order dated 18.10.2007.

93. Ld. Counsel has pointed out that vide judgment dated 29.04.2009, this Court quash the criminal proceedings against Sh. Rattan Bagaria observing therein that it has not been disputed that the amount has already been paid to the bank and the settlement includes all dues of the borrower company.

94. Ld. Counsel further submitted that thereafter, the petitioner also filed the instant petition on 17.01.2010 for quashing of the criminal proceedings against him in CrI. Case NO. RCA/BDI/2001(E)/2005/CBI/BS under Section 120B read With section 409/420 IPC and Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 pending in the court of Addl. Sessions Judge, Delhi.

95. Ld. Counsel has further asserted that after about 60 dates, the CBI could finally provide the legible documents, but in this process it took 7 years which were part of charge sheet. Only thereafter, ld. Trial Court could fix the matter for arguments on charge. On the basis of evidence discussed above, if goes without rebuttal, the petitioner cannot be convicted.

96. On the other hand, Mr. Narender Mann, ld. Special PP for CBI has submitted that charge-sheet dated 31.03.2004, was filed against six persons as under:-

- (i) Sh. Vinod Kumar Maheshwari, S/o, Late Sh. Hira Lal Maheshwari, the then Chief Manager, United Bank of India, New Delhi.
- (ii) Sh. Ratan Lal Bagaria, S/o, Late Sh. G.D. Bagaria, MD of M/s. Ratan Exports & Industries Ltd.
- (iii) Sh. Rajan Lal Bagaria, S/o, Late Sh. G.D. Bagaria, Former Director of M/s. Ratan Exports & Industries Ltd.
- (iv) M/s. Ratan Exports & Industries Ltd. through Sh. Ratan Lal Bagaria, S/o, Late Sh. G.D. Bagaria, Managing Director.
- v) Sh. Manas Kumar Bose, S/o, Late Sh. Kalipada Basu, the then General Manager, United Bank of India, Head Office, Kolkata.
- vi) Sh. Kasibhatla Ramakrishna, S/o, Sh. Ramajogayaya, the then Zonal Manager (Deputy General Manager), United Bank of India, Zonal Office, New Delhi.

97. It is further submitted that case is pending trial and is fixed for framing of charge, therefore at this stage, instant petition may not be allowed.

98. Ld. Counsel has further submitted that the exercise of power under Section 482 of the Cr.P.C. should be sparingly and in exceptional circumstances be exercised to prevent the abuse of the process of law or to meet the ends of justice.

99. To strengthen his arguments, ld. Special PP for CBI has relied upon a case of **Anur Kr. Jain vs. CBI W.P. (Crl.) NO. 80/2010** wherein it is held as under:

“From the aforesaid pronouncement in the field, there can be no scintilla of doubt that the constitutional remedy under Article 227 of the Constitution of India would be available but the exercise has to be extremely limited. The power of supervisory jurisdiction by the High Court is to be exercised very sparingly and only in appropriate cases where judicial conscience of the writ court commands that it has to act lest there would be gross failure of justice or grave injustice would usher in. If we allow ourselves to say so, care, caution and circumspection have to be the pyramidal structure while exercising the inherent and the supervisory jurisdiction. The exercise of jurisdiction should not be one by which there would be an obstruction in carrying on of a criminal trial to its logical end. There may be cases where the writ court may feel inclined to interdict or intervene where it is felt that if the error is not corrected at the very inception the same would cause immense injustice and correction at a later stage may not be possible and further refusal to intervene would ensue in travesty of justice. The writ court, under no circumstances can assume the role of appellate authority and re-appreciate the evidence.”

100. It is further submitted that in ***Anur Kr. Jain(supra)*** while referring the case of **State vs. Navjot Sandhu, (2003) 6 SCC 641** it is observed as under:

“Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code". Thus the inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code can be exercised even when there is a bar under Section 397 or some other provisions of the Criminal Procedure Code. However as is set out in Satya Narayanan Sharma case (supra) this power cannot be exercised if there is a statutory bar in some other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate powers the High Court must refuse to exercise its inherent power. The inherent power is to be used only in cases where there is an abuse of the process of the Court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out herein above fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment.” (Emphasis supplied) ”

101. Ld. Counsel for the CBI has further submitted that well settled law is that jurisdiction under Section 482 Cr.P.C. should not be exercised, if there is a specific provision in the Code or any other enactment for redress of grievance of the aggrieved party. Chapter XIX of the Cr.P.C. prescribed provisions relating to Trial of Warrants cases by Magistrate in cases

instituted on a police report. Under Section 238, the Magistrate has to satisfy himself the compliance of the provision of Section 207 Indian Penal Code, 1860. Section 239 relates to cases when the accused shall be discharged and Section 249 relates to framing of charges. Therefore, Special Judge has to follow the procedure as contemplated under Chapter XIX of the Code. The case is fixed for arguments on the issue of discharge / framing of charges. Therefore, keeping in view the facts that there is a specified procedure in Cr. P.C. to be followed in the present case and therefore the trial court is following the same procedure, the powers under Section 482 Cr.P.C. may kindly not be invoked in the present case.

102. Ld. Counsel has further submitted that it is not a case which falls any of the exception or it is not a case where error has been committed and if the said error is not corrected at this stage, it would cause immense injustice.

103. It is also not a case of the petitioner that there is some error which at later stage may not be possible to rectify and further refusal to intervene would ensue in travesty of justice.

104. Ld. Counsel has asserted that there are allegations in the charge-sheet against the petitioner, which are supported by Statement of witnesses, particularly, the statement of PWs 18, 19, 20, 21 ,23, 26, 27, 28 and 32. Therefore, at this stage, reliability of statement of witnesses cannot be judged without having examined in the court at an appropriate stage and same has to be taken as correct at their face value.

105. Ld. counsel has further submitted that Section 120B Indian Penal Code, 1860 defines criminal conspiracy – when two or more persons agreed

to do, or cause to be done, - (i) an illegal act, or (ii) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

106. To strengthen his argument, he has referred a case of **State vs. Nalini (1999) 5 SCC 253** wherein it has been held as under:-

“In reaching the stage of meeting of minds, two or more persons share information about doing an illegal act or a legal act by illegal means. This is the first stage where each is said to have knowledge of a plan for committing an illegal act or a legal act by illegal means. Among those sharing the information some or all may have an intention to do an illegal act or a legal act by illegal means. Those who do form the requisite intention would be parties to the agreement and would be conspirators but those who drop out cannot be roped in as collaborators on the basis of mere knowledge unless they commit acts or omissions from which a guilty common intention can be inferred. It is not necessary that all the conspirators should participate from the inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any of them and some others may quit from the conspiracy. All of them cannot be treated as conspirators. Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy; all of them will be liable for such offences even if some of them have not actively participated in the commission of those offences.

“One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with the other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in crime”

107. It is further submitted that the law has been very settled in **Hardev Singh vs. State of Bihar AIR 2000 SC 2245**, wherein it is held that to frame charge on conspiracy some connecting link or connecting factors somewhere are good enough, relevant portion of the judgment is reproduced as under:-

“Some general evidence pertaining to the conspiracy would be sufficient to form part of the charge of conspiracy in the charge sheet. As a matter of fact some connecting link or connecting factor somewhere would be good enough for framing of charges since framing of charge and to establish the charge of conspiracy cannot possibly be placed at par. To establish the charge of conspiracy there is required cogent evidence of meeting of two minds in the matter of commission of an offence – in the absence of which the charge cannot be sustained – this is, however, not so, in the matter of framing of charge since the incidence of the offence shall have to be investigated.”

108. To sum up his arguments, Id. Counsel has prayed that keeping in view the facts and circumstances and material on record, present petition is not maintainable and the same may be dismissed in the larger interest of society and in the interest of justice.

109. I heard Id. Counsel for parties.

110. From the record it revealed that on 28.04.1992, Head Office vide its letter advised the Branch Manager, Janpath Branch of United Bank of India to obtain requisite documents from the Company for forwarding enhancement proposal of the Company. This letter was endorsed by Head Office to the Regional Manager and Zonal Manager also.

111. It is pertinent to mention here that the petitioner assumed the charge as Zonal Manager, New Delhi Zone in mid of May, 1992. The Janpath Branch, with Company (accused no.4) was maintaining its account for more

than a decade recommended to the Regional Manager, North India Region vide its letter dated 01.06.1992 for sanction of enhancement limit.

112. On 24.06.1992, this recommendation was forwarded by Regional Manager (North India Region) with similar recommendation to Zonal Manager, New Delhi Zone.

113. The petitioner who assumed the charge as Zonal Manager, New Delhi Zone hardly a month back, based on the recommendation of Regional Manager and Branch Manager, Janpath Branch, sent his recommendation on 27.06.1992 for the enhancement credit limits to the Head Office for scrutiny.

114. I note, the head office was already following up the matter as the account was '*Head Office controlled account*' and the process was initiated by Head Office itself, vide letter dated 28.04.1992. Thereafter, the Head Office by way of detailed "*Draft Board Note*" signed by General Manager and Deputy Manager (Credit) recommended for enhancement of Oral Credit Limits on 09.10.1992, which was approved by the Chairman and Managing Director. It is further to be noted that thereafter, Board of Directors in addendum note dated 23.10.1992 sought approval from RBI in respect of aforesaid facility.

115. I further note that they principally agreed for increasing the overall Credit limit of the company from Rs.1672.00 Lacs to Rs.4442.00 Lacs. Accordingly, Reserve Bank of India, per telex no. 5709 dated 16.10.1992 advised the Board of Directors to dispose of the case in the light of their instructions conveyed to their bank per telex no. 5520 dated 09.10.1992. Thereafter on 07.11.1992, the said approval Board Note was then placed

before Board of Directors, consisting of six Directors from various walks of life finally approved the proposal for sanction of enhancement Credit to the tune of Rs.4442.00 in its meeting dated 07.11.1992. Accordingly, the Head Office conveyed enhanced sanction to the Zonal Manager with intimation to the Branch Manager and Regional Manager.

116. The petitioner on 12.12.1992, with the approval of Head Office permitted Janpath Branch to discount the DA bills, sought the approval by telex on 14.12.1992. Pursuant thereto, the Chief Manager (Credit Operation-II) Head Office vide telex message dated 31.12.1992 informed the approval in writing to the petitioner, specifically stating therein that competent authority had agreed to modify the FOBP sub-limit of company by inclusion of DA bills as well.

117. In fact, the problem started from August, 1993 to April, 1994 on account of large scale crystallization of bills amount to Rs.15.43 Crores and their subsequent realization to the full extent on account of relentless follow up by the bank supported by the cooperation extended by the parties. The manner in which advances made under packing credit was treated as fully secured both by primary and collateral, also explained by Head Office to RBI vide communication dated 01.06.1994, wherein it was clearly mentioned as to how consequent upon the disintegration of Soviet Union, in the absence of mutually agreed trade terms between India and CIS countries, realization of export bills were getting abnormally delayed.

118. Thereafter, the account of the accused company became NPA as on 31.03.1996. Accordingly, the account was seriously followed up by the Chief Regional Manager, i.e. petitioner who was functioning as the Chief

Regional Manager of North India Region, consequent upon the abolition of Zonal system of administration, arising out of the organization restructuring w.e.f. March, 1994, as well as the Branch and Head Office. As a result, payments of worth more than Rs.11 Crores by way of bill realization and otherwise were received during 1996 to 1997. Also Sh. Ratan Bagaria, was persuaded to offer mortgage of his Farm House property at Vasant Kunj, Delhi (valued over Rs.6 Crores) to strengthen the bank's security position, which he did.

119. As observed in case of *Duncan's Agro (Supra)* that if the officer of the Bank has not acted properly because of the fact that ultimate decision was taken by the Board of Directors, it cannot reasonably be held that some of the Officers of the Bank connived and mislead the Board, more precisely, then there is no allegation against the members of the Board.

120. Undisputedly, the accused company was a very valued client of the bank and had immensely satisfactory transaction with the bank for more than two decades. The Managing Director of the Company used to directly correspond with the CMD of the bank and its file was directly controlled by the Head office. Even the enhancement proposal was initiated and forwarded by Head Office to the Branch Manager to be processed.

121. The petitioner served this bank for about 39 years and he never been dragged in any criminal proceedings for any wrong at all on his part. Even during pendency of this issue, the petitioner retired gracefully from the bank. Had he not retired from the Bank, CBI would not have got the sanction for prosecution, as it happened in case of other officers. The Bank has suffered no loss at all, contrary, bank has earned nearly 20 Crores by way of interest

and commission during the entire tenure of said account out of which Rs.8 Crores in the period between 1993 to 1995.

122. It is also important to mention here that before allowing the petitioner to retire, bank had called for explanation from him and after being fully satisfied with his detailed reply, came to the conclusion that the petitioner was not involved in any irregularities in respect of this account. Thus, the petitioner was allowed to retire on attaining superannuation.

123. The CBI took 7 years in providing the legible documents to the petitioner. More so, the criminal proceedings against co-accused i.e. Ratan Bagaria has been quashed vide judgment dated 29.04.2009 by this Court on the ground that disputed amount has already been paid to the bank and the settlement includes all dues of borrow company. There may be cases where the writ court may feel inclined to interdict or intervene where it is felt that if the error is not corrected at the very inception the same would cause immense injustice and correction at a later stage may not be possible and further refusal to intervene would ensue in travesty of justice.

124. The law is settled. The standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. But the evidence in the criminal proceedings are one and the same.

125. I am conscious to the fact that power of quashing of a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint or in the charge-sheet

and that the extraordinary or inherent powers do not confer an- arbitrary jurisdiction on the court to act according to its whim or caprice.

126. Law has been settled in a case of *R.P. Kapur (Supra)* where the allegations in the First Information Report or complaint taken at their face value and accepted in their entirety do not constitute the offence, the High Court in its inherent power can and should exercise to quash the proceedings.

127. In case of *L. Muniswamy & Ors. (Supra)* to quash the proceedings under Section 482 Cr.P.C. when it comes to the conclusion that allowing the proceedings to continue would be an abuse of process of court or that the ends of justice requires that the proceedings ought to be quashed. It is also for the court to take into consideration any special features which appears in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue.

128. If I allow the proceedings continued before the Trial Court against the petitioner, it would be an abuse of process of court which would result in injustice and against the promotion of justice. When the case is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offences is made out even if the allegations are accepted in toto.

129. I have gone through the entire material witnesses.

130. Sh. Rajender Kauldhar (PW18) states that as per instruction of Sh. S. Basu Roy, Manager of Janpath Branch, he distinctly remember that a letter was prepared and addressed to DGM, United Bank of India, New Delhi, which was signed by Sh. S. Basu Roy for confirming the approval which

was communicated by him on telephone. He also remember that the confirmation was also received from the branch by Zonal manager, that had happened during December, 1994 and at that time Sh. Ramkrishnan (the petitioner) was the Zonal Manager of the United Bank of India, Zonal Officer, New Delhi. He does not know whether any approval was obtained by DGM or HO in this regard or not. He, however, stated that since the limits were sanctioned to the borrower M/s. Ratan Export & Industries Ltd., some conditions and procedures stipulated in the sanction note by the Board of Director of UBI, which was the competent authority for making any changes in the conditions or issues, would require approval of the Board of Directors of UBI.

131. Sh. S. Basu Roy (PW19) states that the limits of FOBP was sanctioned against DP i.e. Drawn against Payment but the borrower started submitting export bills for DA i.e. Drawn against Acceptance and wanted the Bank to purchase the bills. He did not act as per request of the borrower at his level and sent a note to the DGM, UBI, New Delhi Sh. Ramakrishnan (the petitioner) requesting for consideration and approval as that was requested by the borrower for purchase of export bills against DA. He had received the approval of the DGM, UBI, New Delhi, (the petitioner) on that issue and after that, bills of M/s. Ratan Export & Industries Ltd., were accepted and purchaser against DA basis.

132. In this case, sanction of credit limits to the tune of Rs.44.42 Crores was accorded by the Committee of Management of the Board of Directors of UBI in favour of the borrower. In case any amendment of the sanction was required, then the matter had to be placed before the same authority for

approval which had sanctioned the credit limits. He was not aware whether the then DGM, UBI, New Delhi Shri Ramakrishna (petitioner), on receipt of his request had obtained approval of the Competent Authority for amendment of sanction or not.

133. Mr. V.N. Bhattacharya (PW21) states that most of the Irregularity Reports submitted by Sh. V.K. Maheshwari were seen by Sh. K.N. Ramakrishnan, the then DGM, Union Bank of India, New Delhi as these contain his signatures and instructions to regularize the account have been issued by the DGM. The above facts imply that the position of the account of M/s. Ratan Exports and Industries Ltd. was brought to the notice of DGM by Sh. V.K. Maheshwari in the Irregularity Reports and Sh. K.B. Ramakrishna (petitioner), DGM was aware of the performance of the concerned account.

134. Mr. Adesh Kumar (PW24) states that it was a clear and repeated instructions of Sh. V.K. Maheshwari, Branch Manager and Sh. K. Ramakrishna, DGM, UBI, New Delhi that under no circumstances the bills of M/s. Ratan Export & Industries Ltd. should be delayed for discounting and for this account need not follow routing procedures strictly.

135. Dr. D.K. Bhattacharya (PW25) states that in the analysis prepared by his office and sent to ED, it was mentioned that in respect of three clarifications, no specific reply was given by Sh. K.B. Ramakrishna (petitioner) in his explanation. In respect of another point, the reply was only denial by the CRM and the concerned document which was a letter dated 16.09.1996, was never put up and the same was not available.

Accordingly, the matter against Sh. K.B. Ramakrishna (petitioner) was closed.

136. Sh. P. Basu (PW26) when put to some questions answers as under:

“Q. As per the evidence on record, first set of 8 bills for Rs.680071.50 was submitted by the firm on 12.12.1992 for purchase of bills on DA basis. On the same date, i.e. 12.12.1992, Sri K.B. Ramakrishna, the then Dy. General Manager, UBI, New Delhi allowed purchase of these bills on DA basis contrary to the sanction made by the Board of Directors. Whether the action of Sri Ramkrishna was authorized and whether he was competent to approve purchase of bills on DA basis?”

A. DGM, UBI, New Delhi was not competent to approve purchase of concerned ills on DA basis. However, in the interest of business exigency, he may do so in deserving cases with the subsequent approval of the competent authority.

Q. Sir, as per draft Note in March, 90, actual sale of the borrower was Rs.41.62 Crores. In March 91, it was 51.98 Crores whereas in March 92, it was estimated to Rs.127.59 Crores and for March 93, the projected sale has been shown at Rs.200 Crores. Along with this, it has also been mentioned about the problematic political situation in Russia which had already been disintegrated by that time and the borrower had although made export business with Russia only. Do you think such high sale projection at that time when the problem in Russia for business purpose was not a favourable phenomena, was realistic for enhancement of limit from 16 Crores to 44.42 Crores?”

A. At that time the enhancement was made under the specific recommendations of the Zonal manager, Delhi Office who was the Bank’s representative in the business scenario of Delhi and the General Manager (Credit). In the circumstances, I found the propose acceptable for getting the fund approved by the Board of Directors.”

137. Sh. H.K. Kundu (PW28) states that since Sh. K. Ramakrishna was due to retire an explanation may be called for from him only to close the file. Later on, GM (P), UBI sent back 6 draft explanation letters to the Vigilance Department, UBI vide his letter dated 21/12/1999 mentioned that the same were returned as discussed. Accordingly, the matter in respect of other responsible officers except Sh. K. Ramakrishna was closed.

138. He further states that number of irregularities were committed by the concerned officers of the bank and the matter was also reported in detail to CMD, Sh. B. Chaudhary, but for the reasons best known to him, he did not agree to initiate action against the officers responsible for the irregularities, but did not put his desire in writing.

139. Sh. Shyamal Mukherjee (PW29) when put to some questions answers as under:

“Q. Sir, in the light of your statement mentioned above do you agree that the action on the part of GM (Credit) and CM (Credit) regarding amendment of the sanction order was an over tact on their part as GM was not competent to make such amendment and later on this was not got ratified by the Board though subsequent to his action as many as 3 Board Notes on different matters were put up to the Board?”

A. No, this was not an authorized act on the part of the concerned individuals and when this was approved by the GM (Credit) the same should have been reported to the Board of Directors being the Competent Authority for ratification subsequently.

Late on as per order of CVO he prepared another note vide no.394 dated 27.11.1999 on this subject and submitted the same to CVO for perusal. In this note, he reiterated that bills were purchased on DA basis with effect

from 30.12.1992 without any pre/post approval of the Board of Directors. In that note, he had recommended for getting explanation from officers, who were found to have committed omission and commission and these were Sh.S. Basu Roy, Sh. S. Dutta, Sh.P.B. Banerjee, Sh. M.M. Bhaduri, Sh. A.K. Pradhan, Sh. S. Guha and Sh. K. Ramakrishna, GM, who was formerly DGM, New Delhi.

140. Sh. V.K. Hora (PW34) states that it was evident from the letter dated 27.06.1992 of Sh. K. Ramakrishna, the then Deputy General Manager, New Delhi that he had accepted the information furnished by the borrower as gospel truth without examining the matter in proper perspective, in his recommendation while mentioning about the uncertainty in the business with the USSR but subsequently he had totally accepted the statement of the borrower that they would achieve the projected sales target for 1992-93 but he had not recorded any logic for such optimistic expectations and this was clearly against the interest of the bank.

141. Mr. G.S. Trikha (PW41) states that it was a clear and repeated instruction of Sh. V.K. Maheshwari, Branch Manager and Sh. K. Ramakrishna, DGM, UBI, New Delhi that under no circumstances the bills of M/s. Ratan Exports and Industries Ltd. should be delayed for discounting and need not follow routing procedures strictly.

142. I note, during the pendency of the proceedings, M/s. Rattan Export and Industries Pvt. Ltd. (Accused no. 4) settled all its account with the bank by way of compromise / agreement duly approved by Managing Director of Board of Directors on 24.08.2007 by paying Rs.865.04 Lacs and thereby the account was closed w.e.f 24.08.2007. Thereafter, the Bank issued "No Due

Certificate” as well besides realizing all collateral securities held by it as security for advance.

143. In pursuance of the aforesaid arrangement, criminal proceedings against co-accused, Sh. Rattan Bagaria have been quashed by this Court vide judgment dated 24.09.2009 by observing that the total amount has been paid to the Bank and the settlement includes all dues of the borrower company. The petitioner has already suffered more than 11 years and till date the trial court failed to frame charges upon the petitioner. Therefore, I found the present case is squarely covered by the principle laid down by the Supreme Court in case of *Bhajan Lal (Supra)*.

144. Additionally, the present case is fully covered by the judgments in cases of *Duncan’s Agro, R.P.Kapur* and *L.Muni Swamy*, as all the cases discussed above.

145. After going through all the witnesses deposed against the petitioner, settled law and the submissions of Id. Counsel for the parties, I am of the considered opinion that if the trial is allowed to go on and evidence on record remains un-rebutted, even then, the petitioner cannot be held guilty. Therefore, there would be no purpose to proceed with the trail against the petitioner. It will promote injustice. In such eventuality, jurisdiction under Section 482 Cr. P.C. comes on rescue.

146. Accordingly, FIR no.RCA/BDI/2001 (E)/2005/CBI/BS under Section 120B read with Section 409/420 Indian Penal Code, 1860 and Sections 13(2) and 13(1) (d) of the Prevention of Corruption Act, 1988 with emanating proceedings against the petitioner are hereby quashed.

147. Accordingly, Crl. M.C. 160/2010 is allowed.

148. No order as to cost.

SURESH KAIT, J

APRIL 16, 2012

Jg/Mk