

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

+ Crl. M.C. 1806/2011

% Judgment reserved on: 9th January, 2012
Judgment delivered on: 22nd May, 2012

VIPIN JAIN

..... Petitioner

Through: Mr. Ajay Burman, Mr. Kunal
Malhora and Mr. Ramandeep Barua, Advs.

Versus

CBI

..... Respondent

Through: Ms. Sonia Mathur, Standing
Counsel for CBI with Mr. Ashok Kumar,
Inspr./CBI/EOI/New Delhi.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The instant petition being filed to quash the proceedings including the summoning order and order on framing of charge and all consequent proceedings pending against the petitioner in the court of Special Judge, Rohini Delhi in R.C. NO. 1(e)/2002-EOW-1-New Delhi under Section 120B IPC read with Section 420/467/468/471 The Indian Penal Code, 1860 and Section 13(2) read with Section 13(1)(d) and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988.

2. Vide order dated 14.09.2011, this Court has passed the following order:

"During arguments, learned counsel for the petitioners submits that the loan in question was sanctioned at the level of regional head i.e. Mr.S.K. Khanna and thereafter, all the documents were sent to Branch Manager, Mr.G.K. Dhawan, who after receiving them, sent to petitioner.

Thereafter, the Branch Manager, found to be correct and in proper form, who further forwarded the same same to the petitioner/Mr.Vipin Jain, Manager, Loans.

Mr.Vipin Jain, thereafter, sent all the sanctioned document through his Branch Manager to Legal Advisor, who is attached to Regional office for vetting and opinion. After vetting, all the documents were found to be in order. The petitioner/Mr.Vipin Jain had received all the documents through Branch Manager and thereafter, the petitioner received the stock statement from the company duly certified by the Chartered Accountant.

Thereafter, drawing power was calculated and the money disbursement as allowed by the Branch Manager.

Learned counsel for the petitioner has pointed out that neither Mr.S.K. Khanna, who was heading the Regional office of the entire region had initiated and sanctioned the loan nor Mr. P. Sridhar, Assistant Manager and Mr. S.C. Dutt, Manager attached to the regional office who processed all the documents for loan nor Mr. P.C. Sood, who has also disbursed the part of loan and also opened the LC(Letter of Credit) of sister concerned, were made accused in this case.

It is further submitted that the department has taken action against Mr. P.C. Sood, Mr. S.K. Khanna and Mr. G.K. Dhawan and punished them with major penalties. Despite, all the above mentioned persons have been made witnesses in the case. They are the main conspirators who initiated the process and thereafter sanctioned the loan, against the norms and policies. It is also not the case of the

prosecution that the above said persons were made approvers in the case.

Whereas, in the case of the petitioner, the deptt. has exonerated, thereafter, promoted to next scale. The CVC has also given the clean chit.

It is further submitted that as per the policy, the sanction papers should have been initiated from any of the Branch and thereafter, they should have been processed as per the sanctioning power of the concerned officers. But, in the present case the situation is totally reverse."

3. In brief, the facts of the case are that in May, 1998 Mr. M.K. Aggarwal of M/s. Rasiwaisa India Pvt. Ltd. approached the Oriental Bank of Commerce along with PW-29 at Regional Office and met Shri S.K. Khanna, the then Regional Head Shri S.K. Khanna directed him to meet the then Chief Manager, Shri G.K. Dhawan, at the Branch Office I.F.B. of the Oriental Bank of Commerce, Connaught Place, New Delhi.

4. On 08.06.1998, as per the direction of Regional Head, loan proposal was sent to Regional Office from the Chief Manager, I.F.B. Branch, Oriental Bank of Commerce. Accordingly, on 30.06.1998, Chief Manager of IFB Branch sent the reply of the borrower to the queries raised by the Regional Office.

5. On 09.07.1998, the loan proposal was processed at the Regional Office by the Officers of Regional Office, namely. Sh. S.C.Dutt, Sh. J.C. Dhir and finally sanctioned by Sh. S.K. Khanna, Regional Head.

6. Thereafter on 29.07.1998, loan documents were executed by Sh. M.K. Aggarwal in the Bank. On 31.07.1998, vetting of documents

were done by ‘Legal Retainer’ of the bank at Regional Office whereby documents were found in order and hence approved and all the terms and conditions of the sanction letter were complied by the Branch.

7. On 31.07.1998, the facility was disbursed after obtaining stock statement duly certified by Chartered Accountant.

8. Petitioner verified the stock on 07.11.1998 as per direction of Branch Head and pointed out irregularities committed by the Borrower for the first time and suggested to initiate steps for recovery of bank funds. The petitioner had submitted the report of irregularity.

9. Mr. Ajay Burman, Ld. Counsel appearing on behalf of the petitioner submitted that up to 2001 RBI and Inspection & Control Department carried out enquiry and reported gross negligence on the part of the Regional Office and exonerated and did not point out involvement of staff at Branch level. The petitioner was also one of the Managers at Branch Level.

10. On 21.09.2011, a complaint was lodged in writing by CVO, Oriental Bank of Commerce to the CBI for investigation. In his complaint CVO named late Sh. J.C. Dhir, AGM Sh. S.K. Khanna, Dy. General Manager, Account holders and staff at Regional Office who processed the loan, to be the persons responsible for committing the offence. Petitioner was also named as a person to be responsible for any act. Therefore, on 20.06.2003, the Bank granted sanction to CBI for prosecuting the petitioner at the behest of CBI and on the format / draft sanction provided by CBI.

11. On 28.06.2003 Charge-sheet was filed by the CBI in the Court and on 25.11.2003, Oriental Bank of Commerce sought explanation

from the petitioner on 9 points on the lines of sanction obtained by the CBI. Accordingly, Petitioner filed the detailed reply on 9 points on 03.02.2004 as desired by the Bank.

12. On 15.07.2004, after receiving the copy of documents from the Id. Trial Court, the petitioner submitted another detailed letter in his defence along with copies of all the supporting documents.

13. On 06.09.2004, Disciplinary Authority of the Bank submitted to the Chief Vigilance Officer a detailed letter and given his view that minor penalty action will meet ends of justice. Disciplinary Authority stated that out of 9 allegations, Reply on 6 points is satisfactory and remaining 3 are small procedural gaps and are sustainable only.

14. The Chief Vigilance Officer sent detailed recommendations to the Chief Vigilance Commissioner on 12.10.2004 seeking first stage advice for minor penalty proceedings. Accordingly, the Chief Vigilance Commission in its Observations opined that on the one hand; the Bank has considered the irregularities extremely grave warranting sanctioning of prosecution of petitioner in the court of law and; on the other hand the bank is underlying the irregularities committed by the petitioner by initiating minor penalty proceedings. The Chief Vigilance sought reasons from the bank for taking such a stance.

15. On 03.12.2004, Disciplinary Authority, based on fresh evaluation of documentary evidence, brought into sharper focus by the explanation submitted by the petitioner stating that there was no attempt to underplay the lapses attributed to the petitioner. Again

requested to the Chief Vigilance Officer to taking up with the Chief Vigilance Commission for first stage advice.

16. The Chief Vigilance Officer, in view of above observations, again sought first stage advice from CVC on 27.01.2005.

17. Since the case was under CBI investigation, CVC advised the bank to seek advice from CBI for simultaneous Department Action. CBI concurred for simultaneous Departmental Action. DA kept the matter in abeyance.

18. Meanwhile, formal charges framed by the Id. Special Judge against the accused persons including the petitioner.

19. Being aggrieved, the petitioner challenged the same before this Court. Charges framed were set aside in Crl. Rev. No. 77/2006 and the matter remanded back to the Id. Trial Court for re-consideration.

20. Again an order passed by the Id. Special Judge for framing of charge against the petitioner on the same grounds without even considering the arguments advanced before the High Court earlier and observations made by this Court.

21. Petitioner again filed a Crl. Rev. P. NO. 263/2007 against the order of framing of charge and the same was admitted on 23.09.2009 for regular hearing.

22. Based on request of the Disciplinary Authority of the Oriental Bank of Commerce, the Chief Vigilance officer again referred the matter to CVC seeking first stage advise stating that out of 9 allegations, Reply to 6 allegations is satisfactory and remaining 3 allegations involving procedural lapses are sustainable only.

23. The Chief Vigilance Commission advised the bank to keep the disciplinary proceedings in abeyance till the disposal of the court case.

24. In February, 2008 internal promotion procedure in the bank took place and the petitioner being eligible was called for interview. On 31.03.2008, the result of the internal promotion was declared where the petitioner's result was kept in a sealed envelop. In fact, the petitioner topped the successful candidates and stood first out of 184 successful candidates.

25. The petitioner obtained copies of all the correspondence, exchanged between the Oriental Bank of Commerce and the Chief Vigilance Commission alongwith internal notings thereon, under Right to Information Act, 2005. Based upon the copies of above details, received from the Chief Vigilance Commission, the petitioner submitted a representation to the Bank seeking justice in the matter, as the internal notings of CVC clearly and apparently exonerated the petitioner of the allegations levelled by the CBI and the Bank in the aforesaid case of M.K. Aggarwal & Ors. in bank account of M/s. Rasiwala India Pvt. Ltd.

26. Based on the copies of above details, received from the Chief Vigilance Commission, the petitioner submitted a representation to the Bank seeking justice in the matter as the internal notings of CVC clearly and apparently exonerated the petitioner of the allegations levelled by the CBI and the Bank in the aforesaid case of M.K. Aggarwal & Ors. in bank account of M/s. Rasiwaisa India Pvt. Ltd.

27. Thereafter, based on the representation submitted by the petitioner, Human Resource Development Department of the Bank

placed a Memorandum before the Board of Directors of the Bank stating all the details. The Board of Directors of the Bank directed for releasing ad hoc promotion to the petitioner. The petitioner obtained copy of the approved note of the Board of Directors of the Oriental Bank of Commerce, under Right to Information.

28. While the Crl. R.P. No. 263/2007 was pending and admitted for regular hearings, a petition under Section 482 Cr.P.C i.e. Crl. M.C. 3322/2010 was filed before this Court, on the ground of apparent exoneration in disciplinary proceedings where the same was withdrawn with a liberty to move appropriate application in Crl. Rev. P. No. 263/2007 containing grounds taking up in Crl. M.C. NO. 3322/2010 and liberty was granted to the petitioner.

29. The Crl. Rev.P. No. 263/2007 was dismissed being not maintainable in view of the decision of Division Bench of this Court in Anuj Jain Vs. CBI in Writ Petition No. 80/2010.

30. Thereafter, the present petition has been filed incorporating all the documents as annexures which were obtained under Right to Information Act which include documents / correspondence / notings of CVC, CVO and Bank officials, along with the petition annexure P-7 and Annexure P-8 from Page No. 69 to 167 contains the internal notes and notings of CVC and notes approved by Board of Directors of Oriental Bank of Commerce.

31. Additionally, the Bank note signed by General Manager, (HRD) put up before the Chairman and duly signed by all of them including Executive Director, RBI Nominee Director for approval is from page 127 to 153 in the paper book.

32. It is submitted that the same may be perused, note contains the following:

“1. Remarks of Reserve Bank of India (Regulator of Banking Industry of India).

Reserve Bank of India in its inspection report has observed that "Gross negligence has been observed on the part of the sanctioning authority".

It may be noted that the petitioner was posted in the Branch and not at Regional Office, where the loan proposal was processed and sanctioned.

2. Staff Accountability Report in the instant case (Examined by the Inspection & Control Department of the Bank.

The Bank conducted departmental inquiry and concurring with the findings of the Inquiring Authority, the Disciplinary Authority imposed the punishment of dismissal from services of the Bank against Sh. S.K. Khanna, Deputy General Manager and imposed major penalties on Sh. G.K. Dhawan, Chief Manager of the Branch and his successor, Sh. P.C. Sood, Chief Manager.

In the above case even the comments of the present petitioner were not at all called as he was not implicated by Inspection & Control Department (Staff Accountability Cell). However, on accounts of lapses pointed out in SP's Report in November, 2003 comments of the petitioner were called by the Bank on the same points on which the sanction for prosecution was given. The petitioner submitted his detailed reply in February, 2004 and July, 2004.

The matter was examined in detail by Disciplinary Action Department and it was observed that out of 9 allegations

against the petitioner, his reply on 6 points was found to be satisfactory. In respect of remaining 3 points, it was observed that the lapses were procedural and no malafide is attributed to the petitioner in the case."

3. **Views of Central Vigilance Commission.**

Remarks of Sh. A.K. Nagar, Advisor to CVC:

'Considering the lapses narrated and the explanation of the CO (Sh. Vipin Kumar Jain), it can be observed that the lapses are not of serious nature and therefore initiation of minor p.p. would be just and reasonable and we may agree with the DA/CVO'.

"Incidentally, this is a case where the bank accorded sanction of prosecution based on the facts and documents submitted by the CBI but proposed initiation of minor penalty proceedings as certain new facts and evidence were brought to the notice of the Bank by the CO Sh. Vipin Kumar Jain (appellant herein). In our opinion, it was the responsibility of the Disciplinary Authority to examine all the documents thoroughly before giving sanction of prosecution so that the officer would not have been subjected to undue hardship as happened in this case."

"In view of the details as given above, DA in this case should be properly counselled"

Remarks of Vigilance Commissioner:

"Minor p.p. would not be desirable. Right Course would have been simultaneous RDA for major penalty for identical or near similar charge. However, since the role of Sh. V.K. Jain does not appear to be too serious and as there seems to be a realization that he may have been unduly penalised through prosecution, we may keep

the disciplinary action on hold to be reviewed after disposal of the court case".

4. **Bank's views**

Bank while submitting justifications for the promotion of the petitioner to next scale, has observed that:-

a. Proper examination of documents on record was not done prior to giving sanction of prosecution to CBI.

b. The documents submitted by the petitioner reflect his innocence from any malafide or criminal intentions to unduly favour the borrower. It also speaks that he is facing unjustifiable hardship through prosecution.

c. There is nothing in his past track record to suggest any malafide on his part.

5. *Besides above, given below is the detailed chart in respect of the charges levelled against the petitioner, clarifications submitted by him and Bank's observation on the same.*

<i>Charges</i>	<i>Clarifications</i>	<i>Bank's Observation</i>
1. He processed / recommended and forwarded the loan application of M/s. Rasiwaisa India (P) Ltd. to Regional Office, New Delhi for sanction in isolation of any account or dealing with the bank in contravention to the	The proposal was not processed at Branch Level and process not was prepared at RO, New Delhi. I only prepared a forwarding letter as directed by the Branch Manager. I complied with the instructions of the BM in good faith as he was working under	Loan proposal dated 30.05.1998 of M/s. Rasiwaisa India (P) Ltd. was received at B/O Industrial Finance, Delhi and the same was examined at branch level and recommended and forwarded to Regional Office, New Delhi vide letter dated 08.06.1998 which is

guidelines contained in advance manual. As per Para 1.4 Page '4' of Advance Manual, Volume-I of the Bank, the selection of 'Borrower' is of utmost importance and applicant should have a properly introduced / satisfactory conduct of account or be the Bank but apparently as the account was not opened or borrow was not dealing in any manner whatsoever with the bank with conduct / dealing of the borrower would not have been known to the branch.	the directions of the then Regional Head It is incorrect that the applicant was new to the Bank as he was referred to the Branch by the Regional Head.	initialled by Sh. Jain. Important points of the proposal were discussed in the letter. However, detailed process note as per bank's guidelines was prepared at the Regional level.
2. He got the process note of the said loan of M/s. Rasiwaisa India (P) Ltd. favourably projected by giving false / inflated financial figures of the firm and facilitated M/s. Rasiwaisa India (P)	No process not was recorded at Branch level. The Projections as submitted by the company were forwarded to RO New Delhi which were changed at RO New Delhi in consultation with the BM.	He has taken the figures from the financial papers submitted by the party and put them in the forwarding letter. However, he has not given false / inflated figures.

Ltd. to enjoy the credit facilities for which the said firm was not eligible.		
3. He failed to verify the credentials of the firm and forwarded / recommended the loan proposal of the subject borrower without following the credit Policy Guidelines issued by Head Office which states that finance to steel sector be discouraged. The calculations of Maximum Permissible Bank Finance (MPBF) made in the process not has not been correctly calculated. Had this been done properly, the actual Net Working Capital (NWC) available with the firm would have been lower and MPBF would also be less.	The Regional Head referred the case. I have not forwarded / recommended the loan proposal. The BM probably under instructions of Regional Head recommended the same. The proposal was for trading of Iron & Steel and not for Industry. As per the Loan Policy of the Bank, trading was a thrust area of lending. Process note was prepared / recorded at Regional Office and not at Branch Level. Accordingly, MPBF was also calculated at RO. The RO after preparing the process note and calculating the MPBF, sanctioned 50% of the credit limits in favour of the company, which in the opinion of RO was in accordance with	Regarding recommending limit without proper verification of borrower, he has enclosed the statement of Sh. N.K. Garg recorded before Investigating Officer of CBI wherein Sh. Garg has stated that he introduced Sh. M.K. Aggarwal of M/s. Rasiwaisa India (P) Ltd. to Sh. S.K. Khanna, Dy. General Manager, Regional Office, New Delhi & Sh. Khanna directed him to submit his proposal to Sh. G.K. Dhawan, Chief Manager, B/o, Industrial Finance Branch, New Delhi. As account was referred to the branch by Regional Head, he was not associated in selection of borrower. The credit policy restricted finance to iron and steel industry.

	available NWC.	The proposal was recommended for trading of Iron and steel. As per Credit Policy, finance to Conventional Sector was a thrust areas, which also covers trading in iron and steel. He calculated the MPFB on the basis of projected sale figures furnished by the borrower without appreciation as to whether the same was achievable or not. However, the MPFB calculated by Sh. Jain was not relied upon by the Regional Office which did its own calculations and the same was drastically reduced at their level after discussions with the Chief Manager of the Branch. Moreover, the credit facilities were sanctioned as per the calculations done at Regional Office.
4. He unauthorizedly accepted the stock statement dated 31.07.1998 of the party in toto without physical	There are no guidelines in place, which even remotely suggest that drawing in a hypothecation account are to be	He calculated the D.P. on the basis of stock statement certified by a Chartered Accountant. However, the stocks were not physically

verification and allowed drawing power to the extent of Rs.21.21 lacs on 31.07.1998 with the object to release LC no. 296/98 in favour of M/s. Hind Steel Sales for Rs.50 Lacs on behalf of the subject borrower.	permitted after physical verification of stocks reported in the stock statements. As per practice in the branch, CA certified stock statements were taken for allowing DP in the beginning. In the instant case also, the stock statement was duly certified by a Chartered Accountant. The BM permitted the DP. The branch was under concurrent audit. HO Officials also inspected the branch in October / November, 1998 and none of them commented on allowing DP in the account or any lapse in this respect. A different department opened L/C's. I was nowhere in the picture for opening of L/C. Loans department had no role in opening of LC.	verified by him at irregular intervals as per bank's guidelines.
5. He failed to reply the queries raised by Regional office in respect of the	The detailed reply was submitted by the party and the same was forwarded by the	It is a fact that the letter of the party was forwarded to Regional Office through Branch

said loans but simply forwarded, with the covering letter of the branch, the reply submitted by the party and further recommended the sanction of the credit facilities obviously confirming that he was satisfied with the reply of the party which caused heavy loss to the bank.	BM. None of the inspection reports has stated any lapse at Branch level.	letter dated 30.06.1998 without any comments / observations. However the letter was signed by the Chief Manager of the Branch and only the Office copy of the same was also initialled by Sh. Jain.
6. He overlooked the sanctioned conditions of R.O. for obtaining Balance Sheet as on 31.03.1998 and charging of securities before lease of the credit facilities and thus facilitated immediate release of the facilities to M/s. Raiwasia India (P) Ltd. without complying the vital sanction condition of obtaining audited balance sheet of the firm as on 31.03.1998. The	The audited Balance Sheet as on 31.03.1998 was very much obtained along with the loaning documents and entered in documents register at Page n. 141 on 29.07.1998. Thereafter original loaning documents included audited balance sheet were got examined from bank's legal advisor, who confirmed / approved that all terms of the sanction have been complied with. The Branch Manager thereafter	The credit facilities were released on 31.07.1998 after obtaining the audited Balance Sheet as 31.03.1998 as is evident the coy of relevant pages of document register sent by him along with his letter supra. The charge was created within ROC, on 27th & 29th August, 1998 i.e. after release of facilities in favour of parties. However, as per rules the application for Registration of charge can be filed within 30 days after the date of

Balance Sheet in question was obtained in Sept.' 98 by Sh. P.C. Sood, Branch Manager whereas the charge over M/s Upkar estates and M/s. Rasiwaisa India Pvt. Ltd. was created with Registrar of Companies on 27 th and 28 th , Aug.' 1998 i.e. after release of the facilities which caused heavy loss to the bank.	released the credit facilities on 31.07.1998. The charge with ROC was filed / registered within 30 days of the execution of documents and the same was done in time. Filing / Registration of charge within 30 days of the documentation is very much in order as per bank / ROC guidelines.	creation of charge and after registration of charge with ROC it takes effect from the date of its creation.
7. He without verifying the stock of the company allowed maximum drawing power of Rs.50 Lacs on 31.08.1998 by initialling the DP register of the bank on the basis of false stock statement submitted by the firm dated 30.08.1998 and deliberately did not get the said DP register countersigned by the Branch	The DP was noted in the DP register and the same was marked in the computer system. It was under instructions from Mr. P.C. Sood, the then BM. It is evident because once the concerned officer passed payment of Rs.29.00 lacs on 31.08.1998 for pay order favouring SAIL, Sh. P.C. Sood authorized two other cheques for Rs.4.00 lac on 31.08.1998 (same day) by writing	D.P. Register was initialled by him but was not signed by Sh. Sood, Chief Manager of the branch. Thus, in the absence of signature of Branch Incumbent, allowing D.P. is irregular. However he has enclosed copy of the computer generated statement for 31.08.1998 from which it is evident that DP was marked in the computer system.

Manager, Sh. P.C. Sood and allowed the said DP suo-motto. He also did not make available the DP in the computer system of the bank.	/ signing “Pay” on the cheques itself. As already stated above, I was not deputed by the BM for verification of stocks. It is also not mandatory to verify the stock prior to permitting DP as per bank’s guidelines.	
8. He failed to subtract the chargeable stock received under both the LCs by M/s. Rasiwaisa India (P) Ltd. from the stock statement dated 31.08.1998 submitted by the firm and allowed DP to M/s. Rasiwaisa India (P) Ltd., and accepted the stock statement submitted by the firm in which the stocks received under 1st LC worth Rs.49,99,540/- was subtracted only. The stock allegedly received from M/s. Rohini Strips Ltd. worth Rs.50 Lacs under 2nd LC was	The borrower submitted the stock statement and there were no reasons to believe that the stock statement does not depict a true and correct position of chargeable stocks with the company. In view of foregoing, the DP was calculated based on the stock statement given by the Company. Here I would like to submit that in this particular case, no documents under LC for Rs.50.00 lacs were received at the branch till 31.08.1998 and as such the questions of its subtraction from the total stock value does not arise at all.	Considering the fact that the 2nd L/C was opened on 22.08.1998, the contention of Sh. Jain that the documents under the 2nd L/C were not received upto 31.08.1998 appears to be correct. Hence, Sh. Jain cannot be held liable for failing to subtract the chargeable stock received under 2nd L/C and D.P. was not correctly calculated.

not subtracted.	In view of the foregoing there is no lapse on my part in any manner.	
9. Since no DP was available in the computer system of the bank, he deliberately initialled a cheque of Rs.29,00,500/- and a pay order for Rs.29 lacs of M/s. Rasiwaisa India (P) Ltd. and allowed the firm to issue a pay order of Rs.29.00 lacs favouring SAIL, New Delhi from the CC account of the firm on 31.08.1998 and facilitated in siphoning Off the loan amount.	I did not pass the cheque. The same was entered in the system by a clerk and passed by sh. Mahinder Singh, the concerned officer at the branch. The undersigned only put his signatures on the pay order favouring SAIL as second signatory. Here it would be relevant to mention that it is very clearly written on the Pay Order of Rs.29.00 lacs fvg. SAIL, that it is issued on account of Rasiwaisa India (Pvt.) Ltd. As the Pay Order was issued to a Govt. body, there is no question of any misuse / siphoning of the bank's funds. However, SAIL dispatched the goods to Rohini Strips Ltd. and not to our client. This fact is clearly mentioned in SAIL	D.P. was made available in the computer system as stated above. Sh. Jain has submitted that pay order in favour of M/s. Steel Authority of India was issued on the request of the borrower and debit to C/C account was authorized by some other officer and he signed only as second signatory on pay order. However, SAIL has allowed payment of this pay order in the account of M/s. Rohini Steel Strips.

	letter dated 02.05.2003 from DM (Vigilance), Kolkata to Sr. Dy. Director (Vigilance), SAIL, New Delhi. From the above, it is amply clear that siphoning off bank's funds was facilitated by SAIL and not by bank's officials including the undersigned.	
--	---	--

33. Ld. Counsel for the petitioner has argued that that material / documents / statements produced by the prosecution with charge-sheet do not disclose any offence prima facie against the petitioner, which raising strong suspicion for framing charge against the petitioner. Even if the entire material taken on its face value, at this stage and allegations levelled in charge-sheet against the present petitioner accepted as it is, the entire prosecution is liable to be quashed because of subsequent events disclosing circumstances that very basis of prosecution has been knocked off in view of the Disciplinary authority, Chief Vigilance Officer and Chief Vigilance Commission concurring and coming to a conclusion and recommended that there is no criminality involved after considering all 9 allegations levelled by CBI in charge-sheet and only procedural lapses in 3 of the allegations and proposed to initiate minor penalty proceedings.

34. It is further submitted that CBI has been harping upon the allegations levelled in the charge-sheet, but ignored the main ground i.e. indirect exoneration / deemed exoneration by disciplinary authority / CVO/CVC. He submitted that in fact this is an independent ground which has nothing to do with the first ground as to whether the charges framed were proper or legal. This ground taken independently entitles the petitioner for quashing of the present proceedings and entire prosecution even if the charges have been framed.

35. To strengthen his arguments, Id. Counsel for the petitioner has relied upon a case of ***PS Rajya vs. State of Bihar 1996 SCC (Crl.) 897*** wherein it is held as under:-

“The standard of proof required to be established in a criminal case is far higher than the standard of proof required to establish the guilt in a departmental proceedings. The charge in departmental proceedings and in criminal proceedings was one and the same could not be established in departmental proceedings, there was lesser chance of the charge being established in a criminal trial. The criminal proceedings would only result in harassment and, therefore, found it fit to quash the FIR against the accused.

36. Id. Counsel for the petitioner has relied upon the Stock statement, wherein it is recorded as under:-

“The behaviour of Sh. M.K. Aggarwal and other points such as no name plate of the company or notice regarding hypothecation of stock to the bank was not

displayed, shows that the stock does not belongs to the company and party is telling us wrong information. In view of above and persisting irregularities in the account, we may immediately write to R.O. and issue legal notice for recoveries pls.

Further, the books of a/cs of the company were called at the Branch on 06.11.1998 and on verification it has been found that the statement of Drs. And Crs. Submitted are incorrect. In the list of S. Drs. There are debtors namely M/s. Nav Prabhat International and M/s. Laxmi Iron & Steel Co. Who are also dealing with our Branch. We discussed the matter with Sh. Pawan Garg on 07.11.1998. In the presence of CM of the Br. & CM (I & C) and requested him to deposit the amount in this account so that liability in the account be reduced. Sh. Pawan Garg told that he has nothing to do with this company and they have not supplied goods to M/s. Nav Prabhat Intt. This shows that the Co. Is willful default and our funds have been diverted from the company.

*VIPIN JAIN
Manager (Loans)”*

37. Further relied upon communication dated 08.06.1998 addressed to the Deputy General Manager, Regional Office, Oriental Bank of Commerce New Delhi by the Chief Manager wherein it is stated as under:

*“*****

*****To cover the proposed limits, they
have offered property i.e. a farm house on plot
admeasuring 6 bighas at Khasra no. 938 Min. (0-5),
925 Min. (1-5) (2 Bighas), Khasra no. 924 Min (2
Bighas) and Khasra No. 1715 Min. (2 Bighas) situated*

at village Rajokri, Tehsil-Mehrauli, New Delhi.

Considering the foregoing and value of collaterals, we recommend for a favourable consideration in the matter and sanction of the desired limits please. We may also mention that the company has though requested for allowing non-fund based limit with 10% cash margin yet we have insisted for 25% margin, which may please be approved.”

38. Ld. Counsel has further relied upon the letter dated 30.06.1998 written by Chief Manager, Oriental Bank of Commerce addressed to its Deputy General Manager wherein it is stated as mentioned:

“Please refer your letter dated 22.06.1998 on the captioned fresh proposal wherein certain queries have been raised. In this respect, we are forwarding herewith the detailed reply submitted the company vide its letter of 25.06.1998.

You are requested for a favour consideration in the matter pls.”

39. Also relied upon the statement under Section 161 Cr.P.C. of Mr. Narendra Garg, Mobile Introducer of M/s. Rasiwaisa India (P) Ltd. wherein it is recorded as under:

“On being asked I am to state that Sh. Mahender Kumar Aggarwal came in my contact since 1997-98 when my cousin brother in law’s son married the daughter of Sh. M.K. Aggarwal. During discussions Sh. M.K. Aggarwal informed me that he is in need of funds for running his factory, in general discussions. Since he was in our relations, I readily agreed to

support him and asked him to accompany with me in OBC, R.O., New Dew Delhi, where I introduced him with the then DGM, Sh. S.K. Khanna. Sh. M.K. Aggarwal discussed the position of his business of both M/s. Rohini Fibers and M/s. Rasiwaisa India Pvt. Ltd. On this Sh. S.K. Khanna directed him to submit all the relevant documents with Branch Manager Sh. G.K. Dhawan, IFB, OBC, New Delhi.

I had introduced the accounts of M/s. Rohini Strips Ltd. and M/s. Rasiwaisa India Pvt. Ltd. in June / July, 1998 and had also introduced with G.K. Dhawan Branch Manager, IFB, OBC, New Delhi. The limits sanctioned to M/s. Rohini Strips Ltd. and M/s. Rasiwaisa India Pvt. Ltd. were not under my pressure.”

40. Ms. Sonia Mathur, Ld. Counsel for the CBI / respondent, on the other hand submitted that petitioner while working as a Manager (Loans) at Industrial Finance Branch, Connaught Place, New Delhi, during the year 1998, entered into a criminal conspiracy with the other accused persons with the object to cheat the bank and to facilitate M/s. Rasiwaisa India (P) Ltd. by processing / recommending various credit facilities to the extent of Rs.2.50 Crores on the basis of false / inflated financial figures by abusing his official position as public servant and caused wrongful gain to M/s. Rasiwaisa India (P) Ltd. and corresponding pecuniary wrongful loss to the Bank to the extent of Rs.1.25 Crores.

41. At the time of seeking loan facilities from the bank, M/s. Rasiwaisa India (P) Ltd. was not known to the bank in any manner and had no account either current or Cash Credit account in the Bank. Despite the clear guidelines of the Bank that the “Selection

of Borrower” is the utmost importance and applicant should have been properly introduced / satisfactory conduct of account and otherwise be known to the Bank.

42. Petitioner Vipin Jain, the then Manager (Loans) processed / recommended and forwarded the loan application to Sh. S.K. Khana, then Dy. General Manager, Regional Office, New Delhi for sanction and concealed this fact deliberately.

43. The unrealistic projected turn over of Rs.1340.12 lacs for the year 1998 – 99 was shown by the firm in “Form-II operating statement” which was accepted both by Sh. G.K. Dhawan, Branch Manager and Petitioner Vipin Jain Manager (Loans) without verifying the facts, credibility, past business history and reputation of M/s. Rasiwaisa India Pvt. Ltd. recommended the loan proposal for sanction with the object to cause wrongful gain to the Company.

44. Petitioner in conspiracy with others and with pre-set mind got the credit facilities sanctioned by suppressing / concealing the actual facts and without following the credit policy guidelines issued by the Head Office, which states that finance to steel sector be discouraged. The calculations of Maximum Permissible Bank Finance (MPBF) made in the process note had not been correctly calculated. Had this been done properly, the actual Net Working Capital (NWC) available with the firm would have been lower.

45. On the basis of false stock statement, accused G.K. Dhawan in connivance with petitioner allowed Drawing Power to the extent of

Rs.21.21.122/- Lacs on 31.07.1998 without physically verifying the stocks and made entries in the Drawing Power (DP) register of the bank in this regard. Petitioner and accused G.K. Dhawan fraudulently and dishonestly made available the Drawing Power to the extent of Rs.21,21,122/- in the said CC account on the basis of bogus and unverified stock statement and debited the required margin money for issue of Letter of Credit (LC). The aforesaid criminal acts of bank officials facilitated accused M.K. Aggarwal to avail an LC for Rs.50 Lacs on 31.07.1998 itself. The Drawing Power (DP) allowed to M/s. Rasiwaisa India (P) Ltd. by petitioner was further countersigned by accused G.K. Dhawan in the DP Register on 31.07.1998. The queries raised by Regional Office in respect of the said loans were not replied by the branch, but with the covering letter of the bank the reply submitted by M/s. Rasiwaisa India (P) Ltd. was enclosed which was jointly signed by petitioner and accused G.K. Dhawan.

46. Petitioner deliberately overlooked the sanction conditions of R.O. for obtaining Balance Sheet as on 31.03.1998 and charging of securities before release of the credit facilities and thus facilitated immediate release of the facilities to M/s. Rasiwaisa India (P) Ltd. without complying the vital sanction condition of obtaining audited balance sheet of the Company as on 31.03.1998. The balance sheet in question was obtained in September, 1998 by Sh. P.C. Sood, Branch Manager, whereas the charge over M/s. Upkar Estates and M/s. Rasiwaisa India Pvt. Ltd. was created with Registrar of Companies on 27th and 28th August, 1998 i.e. after release of the

facilities.

47. After availing the entire LC amount accused M.K. Aggarwal submitted the stock statement of M/s.Rasiwaisa India (P) Ltd. as of 31.08.1998 showing closing stock as Rs.1,33,80,727.50 and purchases of Rs.146.70 Lacs approx. during the month. This stock statement was also not physically verified by petitioner who initialled it. Though both the LCs of Rs.1 Crore had been negotiated by the respective firms viz. M/s. Hind Steel Sales and M/s.Rohini Strips Ltd. by 25th August, 1998, the stock statement dated 31.08.1998 only reflects the receipt of material under one LC i.e. the LC of M/s. Hind Steel Sales and the amount of second LC which was already availed was not deliberately shown in the said stock statement. The amount of said second availed LC should have been deducted from the closing stock which was not done with the sole intention to get further Drawing Power in the Cash Credit (CC) account. Petitioner, considering the chargeable stock of Rs.1,10,91,173/- shown in the said stock statement made the D.P. available in the said CC account to the extent of Rs.50 Lacs. Since the DP was made available by the petitioner on 31.08.1998 accused M. Aggarwal submitted a cheque bearing no. 879415 of Rs.29,00,500/- in the bank for issue of pay order for Rs.29 Lacs favouring SAIL. Petitioner, the then Manager (Loans) used his exceptional power by initialling the said cheque of Rs.29,00,500/- along with the draft application form and thus allowed the withdrawal. On 31.08.1998, a draft for Rs.29 Lacs favouring SAIL was issued by Oriental Bank of Commerce (OBC), IFB, New Delhi which was

fraudulently and dishonestly deposited in SAIL by accused M.K. Aggarwal and his brother Sh. Alok Aggarwal to clear the overdues of M/s. Rohini Strips Ltd. and in fact no material was purchased for M/s. Rasiwaisa India (P) Ltd.

48. Ld. Counsel for the respondent has also relied upon some of the statements and documentary evidence against the petitioner.

49. PW-11 Mr. Anil Sahi, AGM, OBC Mumbai has stated that the forwarding letter of branch dated 08.06.1998 addressed to the DGM, RO, New Delhi vide which the loan was recommended has been counter signed / initialled by Vipin Jain and he identified his initials.

50. PW11 Mr. Anil Sahi and PW30 Mr. S.C. Madan, Chief Manager, Regional Inspectorate, OBC, New Delhi have stated that at the time of seeking loan facilities from the bank in question the firm M/s. Rasiwaisa India (P) Ltd. was not known to the bank in any manner and had no account either current or cash credit account in the bank. Despite the clear guidelines of the Bank in Para 1.4 Page '4' of Advance, Manual – Vol.I, that the "Selection of Borrower" is of utmost importance and applicant should have a property introduced / satisfactory conduct of account or be otherwise known to the Bank. Mr. Vipin Jain, the then Manager (loans) and Sh. G.K. Dhawan, the then Branch Manager recommended and forwarded the loan proposal to Sh. S.K. Khurana, the then Dy. General Manager, Regional Office, New Delhi for sanction and concealed this fact deliberately with the intention to cause wrongful gain to the said firm and wrongful loss to

the Bank.

51. Letter dated 30.06.1998, issued by the Chief Manager, OBC, New Delhi addressed to DGM, RO, New Delhi vide which the reply received from M/s. Rasiwaisa India Pvt. Ltd. has been forwarded to Regional Office which has also been counter signed / initialled by Vipin Jain.

52. While sanctioning the credit facilities Sh. S.K. Khanna, DGM, RO, New Delhi stipulated some conditions in the sanction note for compliance by the branch before release of the facilities. However, the following sanctioning conditions were not complied with before release of the credit facilities:

- “1. Audited Balance Sheet as on 31.03.1998 was not obtained.*
- 2. Charge of M/s. Rasiwaisa India (P) Ltd. and M/s. Upkar Estate Pvt. Ltd. was not created in ROC before release of the facilities.”*

53. PW22, Sh.P.C. Sood, Chief Manager, OBC, New Delhi, the successor of Sh. G.K. Khanna has stated that after his joining only, the audited balance sheet of M/s. Rasiwaisa Ltd. as on 31.03.1998 was collected vide his letter dated 16.09.1998.

54. The audited balance sheet purported to have been shown in Document Register of the Company M/s. Rasiwaisa India Pvt. Ltd., does not find mention in the list of documents in the main body of the document, nine documents have been mentioned therein and this

document i.e. the balance sheet of the company has not been shown anywhere. On the second page of D-29, the financial statement of the company as on 31.03.1998 has been shown as a tenth document, the financial statement is not the same as the balance sheet.

55. PW22 further stated that the stock statement submitted by M/s. Rasiwaisa India Pvt. Ltd. dated 30.08.1998 was not put up before him and it was the Sh. Vipin Jain, Manager (Loans) who dealt with it. He verified the Stock Statement only on 07.11.1998 when the funds had already stood disbursed to the firm in July, 1998.

56. Ld. Counsel for the respondent submitted that on 31.07.1998 and 31.08.1998 the petitioner Vipin Jain initialled the stock statements of M/s. Rasiwaisa India Pvt. Ltd. and remarked "Noted Please" without verifying the stocks and made available the Drawing Power in the bank's Drawing Power Register to the extent of Rs.28.28 Lacs and Rs.50 Lacs respectively on the said two dates. In the stock statement dated 31.08.1998 besides showing closing stocks worth Rs.1,33,80,727/-, stocks worth Rs.49.99 lacs allegedly received from M/s. Hind Steel Sales was shown. Whereas the stocks received from M/s. Rohini Strips Ltd. worth Rs.50 Lacs under second letter of credit was not shown. On the basis of this stock statement petitioner Vipin Jain dishonestly allowed drawing power in the DP Register concealing these facts. The drawing power is allowed only on the basis of chargeable stocks. The value of the stocks received under LC is not considered for allowing further facilities.

57. Ld. Counsel further submitted that the petitioner was well aware the fact that neither the stocks of the firm were inspected nor the statement of stocks were signed by any of the bank officials, deliberately made the drawing power available in the bank's DP Register. In this context statement of PW22 Sh. P.C. Sood is again relevant. He has stated that petitioner Vipin Jain Manager Loans had allowed the maximum DP of Rs.50 Lacs in the CC Account of M/s. Rasiwaisa India Pvt. Ltd. under his signatures and the said entries have not been counter signed by him. He has further stated that before making available the drawing power in the DP Register, Petitioner Vipin Jain should have physically verified the stocks of the firm.

58. PW30, S.C. Madan, Chief Manager, Regional Office, OBC, New Delhi has stated that the branch officials had flouted the condition of the inspection of the stocks. He has categorically stated that the stocks in the godown of the company were never visited by any officer of the branch prior to 07.11.1998 when the account become NPA for recovery. He has further state the Stock Statement as on 31.08.1998 of the company had been received by Vipin Jain on 31.08.1998 which incorporated debtors amounting to Rs.20,95,296.87 and no DP was to be allowed against unfinanced sundry debtors. Statement of PW11 Sh. A.L. Sahi, AGM, OBC is also relevant in this regard who has reiterated the versions of PW22 and PW30.

59. PW22, Sh. P.C. Sood has also stated that the cheque of Rs.29,00,500/- issued by M/s. Rasiwaisa India Pvt. Ltd. dated

31.08.1998 was also not put up before him and the signature appearing on it is of Sh. Vipin Jain, Manager (Loans). Vipin Jain abused his official position by misusing his exceptional powers and without his knowledge, allowed to pass a cheque of Rs.29 Lacs on 31.08.1998, issued by M/s. Rasiwaisa India Pvt. Ltd. favour SAIL without mentioning any specific purpose. No particulars of this transaction had also been submitted in the bank. This amount of Rs.29 Lacs was paid to SIL to clear the outstanding of M/s. Rohini Strips which was also controlled by accused Mahender Kumar Aggarwal.

60. PW25, Sh. Mahender Singh, Manager, OBC, IFB, Connaught Circus, New Delhi has stated that he had passed this cheque of Rs.29,00,500/- dated 31.08.1998 as the same had been initialed and the draft application form was also initialled by Sh. Vipin Jain the then Manager (Loans) which directed him to pass the cheque and Sh. Vipin Jain had allowed the withdrawal through this cheque. Vipin Jain had put his initials having ordered him to pass the said cheque and had used his “exceptional powers” to pass this cheque. D-267 is the said application form. D-280 is the original draft issued by OBC in the sum of Rs.29 Lacs favouring SAIL on the account of M/s. Rasiwaisa India Pvt. Ltd. D-295 is the original letter issued by Sh. C.S. Sharma, Addl. Dir. (Vig.) Steel Authority of India enclosing therewith the details of transactions held between SAIL & M/s. Rohini Strips Ltd. during 1998.

61. It is further submitted that the charges in this case were re-

framed on 15.01.2007 against the petitioner by the Id. Trial Court, New Delhi. There is no incorrectness, illegality, irregularity or ambiguity in the order on charge dated 15.01.2007 passed by the Id. Special Judge and the charges framed on 24.01.2007 against the petitioner / accused herein.

62. Ld. Counsel for the respondent further submitted that the law is very settled by a catena of judicial pronouncements that the stage of framing of charge, the court, on perusal of evidence has only to find out whether there exists sufficient ground so that a prima facie case is made out to proceed against the accused and relied upon (i) *Omwati vs. State* 2001 SCC (Cri) 685, (ii) *State of M.P. vs. Ram Singh* 2000 SCC (Cri) 386, (iii) *State of Maharashtra vs. Som Nath Thapa* (1996) 4 SCC 659, (iv) *Soma Chakraborty vs. State (CBI)*, AIR 2007 Supreme Court 2149 (2007) 5 SCC 403, (v) *Sajjan Kumar Vs. CBI* (2010) 9 SCC 368.

63. On the issue, whether petitioner has been exonerated by the department, Id. Counsel for the respondent has submitted that Sh. A.K. Mishra, Chief Vigilance Officer has recommended minor penalty proceedings against the petitioner which is contrary to the submission that the petitioner has been exonerated. The department concerned has not exonerated the petitioner. “In fact Mr Surjit Singh, Deputy Secretary vide communication dated 18.02.1998 seems to suggest the Bank that the minor penalty proceedings against Vipin Jain may adversely effect against him in the court of law. The Bank may therefore ask to await the decision of the court in respect of Sh.

Jain”. The CVC has advised the Bank to keep the disciplinary proceedings in abeyance till the disposal of the court case vide its letter dated 04.01.2008.

64. The CVO has only suggested to Under Secretary, CVC to consider the case of the petitioner and he may be exonerated. It may be noted that there is no affirmation on the same by any authority concerned.

65. It is further submitted that Id. Special Judge after the directions issued by this court vide order dated 18.08.2006 has gone through the documents and statements and found that there is prima facie evidence against the petitioner and passed the following order:

“In the case of exoneration per se, if the allegations is found to be not sustainable at all and the person held innocent, criminal prosecution on the same facts and circumstances may not be allowed to continue. It may be noted that the petitioner has not been exonerated, in fact from the documents annexed it reflects to the contrary, because the department suggested minor penalty against the petitioner. In fact, communication from the CVC has also suggested the bank to keep disciplinary proceedings in abeyance till the disposal of the court cases.

66. I heard Id. Counsel appearing on behalf of the parties.

67. The case of the prosecution is that petitioner while working as Manager (Loans) at Industrial Finance Branch, Connaught Place, New Delhi during the year 1998 entered into a criminal conspiracy with the other accused persons with the object to cheat the Bank and to

facilitate M/s. Rasiwaisa India (P) Ltd. by processing / recommending various credit facilities to the extent of Rs.2.50 Crore on the basis of false inflated financial figures by abusing his official position as public servant and caused wrongful gain to M/s. Rasiwaisa India (P) Ltd. and corresponding pecuniary wrongful loss to the Bank to the extent of Rs.1.25 Crores.

68. At the time of seeking loan facilities from the bank the aforesaid Company was not known to the Bank in any manner and had no account either current or Cash Credit account in the Bank. Despite the clear guidelines of the Bank “Selection of Borrower” is the utmost importance and applicant should have been properly introduced / satisfactory conduct of account and otherwise be known to the Bank. The petitioner, the then Manager (Loans) processed / recommended and forwarded the loan application to Sh. S.K. Khanna, the then Dy. General Manager, Regional Office, New Delhi for sanction and concealed this fact deliberately.

69. Further case of the prosecution is that unrealistic projected turn-over of Rs.1340.12 lacs for the year 1998 – 99 was shown by the firm in “Form-II operating statement” which was accepted both by Sh. G.K. Dhawan, Branch Manager and Petitioner the then Manager (Loans) without verifying the facts, credibility, past business history and reputation of the company recommended the loan proposal for sanction with the object to cause wrongful gain to the Company. Therefore, the Petitioner in conspiracy with others and with pre-set mind got the credit facilities sanctioned by suppressing / concealing

the actual facts and without following the credit policy guidelines issued by the Head Office, which states that finance to steel sector be discouraged. The calculations of Maximum Permissible Bank Finance (MPBF) made in the process note had not been correctly calculated. Had this been done properly, the actual Net Working Capital (NWC) available with the firm would have been lower.

70. On the basis of false stock statement, accused G.K. Dhawan, fraudulently and dishonestly made available the Drawing Power to the extent of Rs.21,21,122/- in the said CC account on the basis of bogus and unverified stock statement and debited the required margin money for issue of Letter of Credit (CC).

71. Further case of the prosecution against the petitioner is that he deliberately overlooked the sanctioned conditions of R.O. for obtaining Balance Sheet as on 31.03.1998 and charging of securities before release of the credit facilities and thus facilitated immediate release of the facilities to the said Company without complying the vital sanction condition of obtaining audited balance sheet of the Company as on 31.03.1998. The balance sheet in question was obtained in September, 1998 by Sh. P.C. Sood, Branch Manager whereas the charge over M/s. Upkar Estates and M/s. Rasiwaisa India Pvt. Ltd. was created with Registrar of Companies on 27th and 28th August, 1998 i.e. after release of the facilities.

72. Further the case against the petitioner is that after availing the entire LC amount accused M.K. Aggarwal submitted the stock

statement of M/s. Rasiwaisa India (P) Ltd. as on 31.08.1998 showing closing stock as Rs.1,33,80,727.50 and purchases of Rs.146.70 lacs approx during the month. This stock statement was also not physically verified by petitioner who initialled it. Though both the LCs of Rs.1 Crore had been negotiated by the respective firms viz. M/s. Hind Steel Sales and M/s.Rohini Strips Ltd. by 25th August, 1998, the stock statement dated 31.08.1998 only reflects the receipt of material under one LC i.e. the LC of M/s. Hind Steel Sales and the amount of second LC which was already availed was not deliberately shown in the said stock statement. The Petitioner considering the chargeable stock of Rs.1,10,91,173/- shown in the said stock statement made the D.P. available in the said CC account to the extent of Rs.50 Lacs. Since the DP was made available by the petitioner on 31.08.1998 accused M. K. Aggarwal submitted a cheque bearing no. 879415 of Rs.29,00,500/- in the bank for issue of pay order for Rs.29 Lacs favouring SAIL. Petitioner, the then Manager (Loans) used his exceptional power by initialling the said cheque of Rs.29,00,500/- along with the draft application form and thus allowed the withdrawal.

73. On 31.08.1998, a draft for Rs.29 Lacs favouring SAIL was issued by Oriental Bank of Commerce (OBC), IFB, New Delhi which was fraudulently and dishonestly deposited in SAIL by accused M.K. Aggarwal and his brother Sh. Alok Aggarwal to clear the overdues of M/s. Rohini Strips Ltd. and in fact no material was purchased for M/s. Rasiwaisa India (P) Ltd.

74. While sanctioning the credit facilities Sh. S.K. Khanna, DGM,

RO, New Delhi stipulated some conditions in the sanction note for compliance by the branch before release of the facilities. However, the audited Balance Sheet as on 31.03.1998 was not obtained. The Charge of M/s. Rasiwaisa India (P) Ltd. and M/s. Upkar Estate Pvt. Ltd. was not created in ROC before release of the facilities.

75. The audited balance sheet purported to have been shown in Document Register of the Company M/s. Rasiwaisa India Pvt. Ltd., does not find mention in the list of documents in the main body of the document, nine documents have been mentioned therein and this document i.e. the balance sheet of the company has not been shown anywhere.

76. In view of the facts of the case against the petitioner, I am of the considered opinion that petitioner was well aware the fact that neither the stocks of the firm were inspected nor the statement of the stocks were signed by any of the Bank officials, deliberately made the Drawing Power available in the Banks DP Register.

77. I note the charges in this case were reframed against the petitioner on 15.01.2007 by the Id. Trial Court, New Delhi. I find no incorrectness, illegality, irregularity or ambiguity in the order on charge dated 15.01.2007 passed by Id. Special Judge by framing the charge against the petitioner.

78. At this stage, petitioner can be discharged only when there is no evidence against him or whatever the evidence available on record if goes un rebutted, the petitioner cannot be convicted.

79. In my opinion, the present case does not fall in any of the category. I also do not find force in the submission of the petitioner that he has been exonerated by the Department, whereas, in fact Chief Vigilance Commissioner has recommended minor penalty proceedings against the petitioner. Therefore, the case against the petitioner requires full trial.

80. I find no merit in the instant petition.

81. Accordingly, instant petition is dismissed.

82. No order as to costs.

SURESH KAIT, J

MAY 22, 2012

jj