

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

+ Crl. Rev.P. No. 604/2008

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Reserved on: 16th April, 2012
Decided on: 9th July, 2012

ANIL RAI

..... Petitioner

Through: Mr. Sidharth Luthra, Sr. Adv. with
Mr. Puneet Mittal, Mohd. Akram,
Advts.

versus

C.B.I.

..... Respondents

Through: Mr. P.K. Sharma, SC for CBI with
Mr. Uday Prakash, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition the Petitioner challenges the order dated 27th June, 2008 directing framing of charge and the order dated 15th July, 2008 framing charge against the Petitioner for offence under Section 120-B read with Section 420/471 IPC and the substantive offences punishable under Section 420/471 IPC in case titled "CBI Vs. J.R. Gupta & Ors." pending before the Learned ACMM, Karkardooma Courts.

2. Learned counsel for the Petitioner contends that no charge under Section 420 IPC can be framed against the Petitioner as the same requires a dishonest intention at the inception i.e. at the time of applying for loan and sanctioning of the same. There is no evidence on record to show that the Petitioner had any role to play at the time of either applying for loan or the

sanctioning of the same. The role of the Petitioner if any attributed is that after the loan was sanctioned the Petitioner furnished a Deed of Guarantee and a Shortfall Undertaking dated 21st December, 1995. Further there is no evidence on record to attract the offence under Section 471 IPC as there is no allegation that the Petitioner used the forged document with dishonest or fraudulent intention. There is no prior meeting of mind and hence the ingredients of Section 120-B IPC are not attracted. The Petitioner did not sign any document while processing the request for loan. As far as the loan obtained from IDBI amounting to Rs. 20 crores is concerned, co-accused Vinay Rai on behalf of the company requested for loan of Rs.24 crores vide letter dated 20th September, 1996, however, the IDBI sanctioned a sum of Rs. 20 crores on 30th January, 1997. For the other corporate loan of Rs. 20 crores requested from IFCI (Industrial Financial Corporation of India) a request was made by co-accused S.K. Mittal vide letter dated 21st January, 1996 on behalf of the company. This term loan was approved for a sum of Rs. 18 crores on 3rd May, 1997 and the letter of intent was issued on 6th May, 1997. The Petitioner was not involved at any point of time either in making a request for loan or for grant of sanction of the same. There is no allegation against the Petitioner that any amount has been diverted to his personal account or for his personal use. The entire amount was received in the company's account and has been disbursed by the company. The Petitioner has not issued any cheque under his signatures. Further there were two loans of Rs. 50 crores. The first loan was sanctioned on 15th November, 1995 for the modernization scheme envisaging acquisition of new testing equipments. The necessary documents like hypothecation and guarantee deeds were executed and the requisite machinery was purchased and installed even as

per the CBI. This loan was repaid by the company to IDBI vide cheque No. 821768 dated 9th March, 1998. The second loan of Rs. 50 crores was disbursed on 10th March, 1998 by IFCI for “general corporate purposes”. Accordingly new deeds of guarantee/ hypothecation were executed by company Usha India Ltd. (UIL) in favour of IFCI. The second loan of Rs. 50 crores is not part of the present charge-sheet. No vicarious liability can be fastened against the Petitioner under the Indian Penal Code. Reliance in this regard is placed on *Maksud Saiyed Vs. State of Gujarat 2008 (5) SCC 668* and *Ashok Sikka Vs. State 147 (2008) DLT 552*. If two views are possible then at this stage this Court will discharge the Petitioner and permit the trial to proceed only if one view is possible. No witness has alleged any commission of offence against the Petitioner except occasional reference to him, which do not fulfill the necessary ingredients of an offence. The crux of the contention of the Petitioner is that even as per the prosecution case the Petitioner was not looking after the financial work of the UIL group companies and the same was being looked after by his brother Vinay Rai, thus merely because the Petitioner signed a deed of guarantee and a shortfall undertaking will not make him liable as no conspiracy can be alleged. Hence the impugned orders be set aside and the Petitioner be discharged of the offences.

3. Learned counsel for the CBI contends that the Petitioner was the Vice-chairman of M/S. UIL and in-charge of the functioning of the factory on day-to-day basis. The brother of the Petitioner was the Chairman-cum-Managing Director of the company. The company is a family concern and initially incorporated by the father of the Petitioner. The accused persons

hatched conspiracy with the object to defraud M/S. IFCI Ltd. in the matter of sanction and disbursement of financial assistance to M/S UIL. In pursuance to the said conspiracy Suresh Gupta and Sohan Lal Garg mentioned in column No.2 issued fake bills to M/S. UIL without supply of material and the funds received by them against the said materials purported to have been supplied were passed on to Vinay Rai and others. The funds generated in pursuance to the said conspiracy were siphoned off for the personal use, i.e. for purchase of shares of M/S. UIL group companies in benami names. On 15th November, 1995 the Petitioner and co-accused Vinay Rao approached IFCI for financial assistance of Rs. 70 crores for the expansion and modernization of semi-conductor division of UIL. S.K. Mittal, the co-accused vide letter dated 7th December, 1995 agreed as per the terms of letter of intent and requested for immediate disbursement of the facility. A certificate was issued by the auditor stating that UIL incurred Rs. 1954.53 lakhs for modernization scheme. The Petitioner and the co-accused submitted a guarantee deed and shortfall undertaking. PW-3 A.K. Dutta the AGM of IFCI inspected the factory premises and its office on 25th May, 1996 with respect to the utilization of the above facility and submitted its report. According to the learned counsel as per the allegations the Petitioner is one of the main beneficiaries of the siphoned off money. Misrepresentations were made on the basis of project report concerning the factory. Further, in furtherance of the common intention the Petitioner executed a personal bank guarantee along with his brother Anil Rai. The Petitioner is not a stranger to the transaction but an in-house responsible member of the group of companies and looked after the day-to-day functioning of the factory whereupon the project for modernization plan was

submitted to the bank. Hence no case for quashing of the charge is made out.

4. I have heard learned counsels for the parties. Briefly the case of the prosecution is that Vinay Rai, the Chairman and Managing Director of UIL vide letter dated 15th November, 1995 requested IFCI to sanction a term loan of Rs. 70 crores to be repaid in five years with a moratorium of two years. The said request was made projecting a requirement for making semi-conductor chips, new test equipment, automatic handling machine and marking machine as well as complete range of diffusion equipment. The total investment in the plant and machinery was projected to be around Rs. 60 crores. The said request was processed by IFCI and approved on 23rd November, 1995 by the Executive Committee. In pursuance to the approval of the said loan, a letter of intent dated 7th December, 1995 was issued to the company. On 7th December, 1995 S.K. Mittal, Director Project Finance UIL & co-accused conveyed acceptance of terms and conditions as set out in the letter of intent and also requested for immediate disbursement of the facility. M/S. Bansal and company, Chartered Accountants also issued certificates with regard expenditure incurred. As per the allegations set out in the charge-sheet it is stated that for availing this facility, Security documents i.e. subscription agreement, deed of hypothecation and management undertaking on behalf of the company were executed by the co-accused S.K. Mittal and J.R. Gupta. Further the Petitioner and his brother executed the deed of guarantee and shortfall undertaking. The Petitioner and his brother co-accused Vinay Rai were aware of the sanction and disbursement of this facility and from time to time over dues in the account were adjusted on the

basis of utilization certificates issued by the auditors. In all eight disbursements were made by IFCI. It is alleged that besides the fact that the company failed to maintain register regarding utilization of IFCI funds, they did not furnish the NCDs for which extension of time was sought, Rs. 50 crores were disbursed by appropriating the over dues in the account. All these shortfalls were overlooked by the co-accused C.D. Ghosh, G.M. of IFCI. It is further alleged that the disbursement of funds against the sanctioned loan was accepted without compliance of terms of sanction. It was revealed that companies from which these equipments were purchased from Faridabad and Rohtak did not exist at the given addresses during the relevant time. The supporting bills worth Rs. 7 crores from certain companies were found to be non-existent at the addresses mentioned against them. Further vouchers were made available by the company, pertaining to purchase of software by Hexadecimal Computers Pvt. Ltd. through Shri Anurag Chandra Gupta who revealed during investigation that in the year 1995-96 he carried out the billing of the company on the strength of the software bills of M/S. Information Technology India Pvt. Ltd., a group company of UIL and was paid 3% as commission. The cheques were presented by the representatives of the company and he had issued bills of Rs. 5 crores in favour of UIL without effecting any supply of the software. Most of the machineries installed by the company were second-hand machineries purchased from M/S. HBB Lesag, Berlin, Germany and M/S. Hindustan Conductors Ltd., Nadiad, an APAR group company. The UIL group of companies issued vouchers, maintained books of accounts of large number of companies, which were in-house companies at their head office and accounts of all these in-house companies were opened and operated by

the employees of the group company with different banks for the purpose and at the instance and behest of the accused persons including the Petitioner.

5. A perusal of the allegations show that the finances were sought for the purposes of modernization plan of the company. Witnesses have clearly stated that the Petitioner was looking after day-to-day functioning of the factory and no action could be taken in the factory without the permission of the Petitioner. It has come on record that though money was taken for modernization plan, however second-hand machineries were purchased. Since the Petitioner was looking after the day-to-day work of the factory and he also submitted a deed of guarantee and shortfall undertaking, it is not that the Petitioner was not aware of the transaction and that though the term loan was taken for modernization of the factory, second-hand equipments were purchased. Thus in short there is prima facie evidence against the Petitioner and the co-accused that there was fraudulent and dishonest misrepresentation, forged bills of in-house sister companies and non-existent companies were used and the money was diverted to sister concerns and then siphoned off as cash.

6. I find no merit in the contention of the learned counsel for the Petitioner that the Petitioner is being fastened with the liability vicariously in view of the fact that he is the Vice-chairman of UIL. Reliance on *Maksud Saiyed* (supra) is mis-conceived. No liability is being fastened on the Petitioner on account of his position as the Vice-chairman. The decision rendered by this Court in *Ashok Sikka* (supra) is of no avail to the Petitioner as in the said case the only allegation against the Petitioner therein was that

he was a director of the company, whereas in the present chargesheet the entire modus operandi has been set up which shows the connivance of the Petitioner as well. In view of the role assigned to the Petitioner at this stage there is strong suspicion that the Petitioner along with his brother got prepared the modernization plan and after receiving the term loan siphoned of the same. At this stage, I find no reason to interfere with the impugned orders directing and framing charge against the Petitioner.

7. Petition is dismissed. Trial Court Record be sent back.

(MUKTA GUPTA)
JUDGE

JULY 9, 2012
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