

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

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Reserved on: 11th August, 2014
Date of Decision: 13th October , 2014

+ CRL.M.C. 81/2013

V.K. JOLLY

..... Petitioner

Through: Mr. Vikram Singh Panwar, Adv.

versus

C.B.I.

..... Respondent

Through: Ms. Sonia Mathur, Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. By way of present petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') read with Article 227 of the Constitution of India , the petitioner has challenged the impugned order dated 04.09.2012 passed by learned Special Judge, CBI, Tis Hazari Court, Delhi whereby directing framing of charges against the petitioner for the offences under Section 120B r/w Sections 419/420 IPC r/w Section 13(2) r/w Section 13(1) (d) of the PC Act and accordingly the charges were framed on 22.09.2012.

2. The factual matrix of the case are that the petitioner and Sh. D.K. Malhotra served as Senior Manager and Chief Manager during the periods from May 2001 to 08.07.2004 and July 2004 to 10.11.2004 respectively at Azadpur branch of Punjab National Bank. Vide circular No.130 dated 31.12.2002 issued by the PNB, Sr. Manager and Chief Manager had discretionary powers to purchase cheques (DD Discounting) upto Rs.3.75 lakhs and Rs. 20 lakhs respectively. As per the said Circular, Senior Manager/Chief Manager were authorized to sanction advance against the effects (cheques) sent for clearing by the Senior Manager/Chief Manager respectively. The petitioner used to deal with hundreds of such transactions in a month. Further, the petitioner and D. K. Malhotra, the then Chief Manager, PNB, Azadpur branch exceeded their powers very frequently and accommodated the various account holders in violation of the banking norms/rules and regulations. The return of all the cheques had also not been reported to the Regional Office by V K Jolly (petitioner) and D.K. Malhotra. The petitioner had permitted purchase of three cheques from M/s Good Luck Overseas, which were drawn by M/s Keshav Traders bearing no. 967121 dated 20.04.2004 for Rs 2,74,482/-, No. 967124 dated 29.04.2004 for Rs. 2,42,721/- No. 967154 dated 26.05.2004 for Rs 1,52,368/-. It was alleged that all the three cheques were issued by Shri Suraj Goenka himself from his account in the name of M/s Keshav Traders maintained with the Syndicate Bank, Tri Nagar, Delhi. Vide order dated 04.09.2012, learned trial Court found a prima-facie case for the offences under Section 120B r/w Sections 419/420 IPC r/w Section 13(2) r/w Section 13(1) (d) of the PC Act and accordingly

the charges were framed on 22.09.2012.

3. Feeling aggrieved by the said order, the petitioner has preferred the present petition.

4. Learned counsel for the petitioner contended that the petitioner was posted as Senior Manager with Punjab National Bank, Azadpur Branch from May 2001 to 08.07.2004 and thereafter, co-accused D.K. Malhotra had succeeded him. During the tenure of the petitioner, the petitioner had discounted about five thousand cheques of around 150 parties and it was a regular business of the branch. He also submitted that the statement of account of all the cheques purchased by the petitioner indicates that more than 20 cheques were purchased per day. The trial Court framed the charges that the three cheques purchased during the tenure of the petitioner got dishonoured or returned unpaid whereas these cheques were duly encashed. The other cheques which were considered to have caused losses to the bank were purchased during the tenure of co-accused D.K. Malhotra. He further submitted that the petitioner has not misused the powers and the cheques were never purchased beyond the prescribed limit.

5. Per contra, learned standing counsel for CBI urged that the petitioner while working as Senior Manager, Punjab National Bank, Azadpur and his successor Mr.D.K. Malhotra, co-accused in criminal conspiracy with private persons cheated and caused wrongful loss to the bank and wrongful gain to themselves and to the co-accused.

6. Learned standing counsel for CBI pointed out that Punjab and National Bank has issued circulars and guidelines in relation to the power of sanction of credit facility by the officers at various levels. As

per the guidelines issued by Loans and Advances Circular No.130 dated 31.12.2002, Senior Manager and the Chief Manager have the powers to purchase of cheques upto Rs.3.75 lakhs and Rs.20 lakhs respectively.

7. She further pointed out that the petitioner in connivance with the other co-accused persons purchased the cheques which were issued by friends/associates and sister concerns of the borrowers firms having accounts with other banks. The cheques were issued from these accounts without having sufficient funds and the credit generated as a result of the purchase of these cheques in Punjab National Bank, Azadpur, Delhi were withdrawn by the borrowers through cheques drawn on 'self'. She also pointed out that the same continued for 2-3 consecutive days and each time the credit was withdrawn by the borrowers. The credit generated by purchase of cheque in Punjab National Bank, Azadpur, Delhi on the fourth consecutive day was withdrawn and used for depositing as cash in the cheque issuing account of other bank. This was done repeatedly as a result of which the party had cash in hand for 2-3 days and the cash amount of fourth day was put into circulation to get the purchased cheque cleared from the issuing bank and thereby false credit was obtained by exchange and passing of worthless cheques between two or more banks.

8. Learned standing counsel for CBI further submitted that co-accused Ashok Goenka opened accounts in the name of his family members i.e. M/s. Shri Ram Dev Traders through Proprietor Smt. Lata Rani Goenka, M/s. India Trading Company through Proprietor Mayank Aggrawal and M/s. Goodluck Overseas through Proprietor Suraj

Goenka and operation of all the said accounts were controlled by co-accused Ashok Goenka. The sole purpose behind opening of the said accounts was to get more accommodation cheques purchased as the powers of incharge were limited and by increase in number of accounts more cheques could be purchased in each account as per the vested power of incharge. The accused persons needed the accounts in banks other than Punjab National Bank, Azadpur Branch from where they could get cheques issued in favour of the said firms. As a result, the accused persons opened the account in the name of M/s. Keshav Traders through Proprietor Suraj Goenka, M/s. Business Profession through Proprietor Mayur Goenka, M/s. Purnima Marketing through Proprietor Ms. Lata Rani Goenka and M/s. Aggrawal Traders through Proprietor Ashok Kumar. The cheques were issued from these accounts, maintained in Punjab National Bank, Azadpur where the same were purchased in connivance with the petitioner.

9. I have bestowed my anxious thought to the submissions made by learned counsel for the petitioner and standing counsel for CBI and also gone through the material on record.

10. Before advertng to the facts of the present case, it would be appropriate to consider the scope of interference in a petition under Section 482 Cr.P.C. The Apex Court in '**Amit Kapoor vs. Ramesh Chander & Anr.**', (2012) 9 SCC 460, while dealing with the issue of interference at the stage of charge in a petition under Section 482 Cr.P.C. observed as under:-

“27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction,

now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a “civil wrong” with no “element of criminality” and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie*.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist.

[Ref. *State of W.B. v. Swapan Kumar Guha* [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949] ; *Madhavrao Jiware v. Scindia* v. *Sambhajirao Chandrojirao Angre* [(1988) 1 SCC 692 : 1988 SCC (Cri) 234]]”

11. The aforementioned principles clearly show that inherent powers while quashing criminal proceedings should be exercised very sparingly and with circumspection. Framing of charge is an exercise of jurisdiction by the trial Court in terms of Section 228 of Cr.P.C., unless the accused is discharged under Section 227 of Cr.P.C. Once the facts and ingredients of the Section with which the accused is charged exist, the Court would be well within the right in presuming that there is a ground to proceed against the accused and frame charge accordingly. The satisfaction of the Court in respect of constituents of an offence and facts leading to that offence is a *sine qua non* for exercise of such jurisdiction. This presumption is not a presumption of law as such.

12. It is a settled provision of law that at the stage of framing of charge, the Court is concerned with a strong suspicion that the accused has committed an offence which, if put to trial, could prove him guilty. The final test of guilt is not to be applied at that stage. Framing of charge is a kind of tentative view that the trial Court forms in terms of Section 228 of Cr.P.C. which is subject to final culmination of the proceedings.

13. The offence of criminal conspiracy is not only a substantive crime, it serves as a basis for holding one person liable for the crime of

others. One who enters into conspiratory relationship is liable for every reasonable forceable crime committed by every member of the conspiracy in furtherance of its objectives, whether or not he knew of the crime or aided in their commission. All the conspirators must not know each and every detail of the conspiracy so long as they are conspirators not main object of the conspiracy.

14. In '**Hardeo Singh vs. State of Bihar & Anr.**' (2000) 5 SCC 623, Mr. Ved Prakash Agrawal applied for loan and filled up only the amount of finance required by him leaving all the other particulars including the nature of business blank in the loan application form. Shri S.K. Roy, Branch Manager sanctioned Rs.10,000/- cash credit open limit on ad hoc basis pending regular proposal and sanction. Mr. S.K. Roy also fraudulently and dishonestly allowed the party to draw to the extent of Rs.2,57,655.55 without knowing the nature of business and without obtaining the financial statement, financial report, inspection report and stock statement. The appellant in the said case was not named in the FIR, but subsequently after investigation, charge-sheet was submitted by CBI stating that the appellant had made application for sanction of loan of Rs.14 lakhs for urgent payment to labourers in contract work and the Branch Manager had given sanction and allowed a total amount of overdraft facility to the extent of Rs.21,50,000/- on different dates to the appellant, even though he had no power to grant overdraft facility beyond a sum of Rs.10,000/-. The Special Judge found a prima facie case for framing of charges. The Hon'ble Supreme Court observed that some connecting link or connecting factor somewhere would be good enough for framing of

charge since framing of charge and establishing the charge of conspiracy cannot possibly be placed at par. To establish the charge of conspiracy, there is cogent evidence required for 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.

15. In the present case, the basic allegations against the petitioner are that the petitioner and Sh. D.K. Malhotra served as Senior Manager and Chief Manager during the periods from May 2001 to 08.07.2004 and from July 2004 to 10.11.2004 respectively at Azadpur branch of Punjab National Bank. Vide circular No.130 dated 31.12.2002 issued by the PNB, Sr. Manager and Chief Manager had discretionary powers to purchase cheques (DD Discounting) upto Rs.3.75 lakhs and Rs. 20 lakhs respectively. As per the said Circular, Senior Manager/Chief Manager were authorized to sanction advance against the effects (cheques) sent for clearing by the Senior Manager/Chief Manager respectively. The petitioner and D. K. Malhotra, the then Chief Manager, PNB, Azadpur branch exceeded their powers very frequently and accommodated the various account holders in violation of the banking norms/rules and regulations. The return of all the cheques had also not been reported to the Regional Office by the petitioner. The petitioner had permitted purchase of three cheques from M/s Good Luck Overseas, which were drawn by M/s Keshav Traders. At this stage, it cannot be said that the allegations are ex-facie perverse, untenable or malicious.

16. In view of the aforesaid discussion, this Court in view of the law laid down by the Hon'ble Supreme Court does not find it to be a fit case for interfering with the impugned order. Accordingly, the petition is dismissed.

(VED PRAKASH VAISH)
JUDGE

OCTOBER 13, 2014/gm