* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 31.08.2015
Date of decision: 07.09.2015

\+ **W.P.(CRL) 1537/2012**

S V CHAUHAN ..... Petitioner
Through: Mr.Gurbaksh Singh, Advocate.

versus

CBI/EOU-2 ..... Respondent
Through: Mr.Narender Mann, SPP for the CBI with Ms.Utkarsha Kohli, Advocate.

\+ **W.P.(CRL) 611/2014**

LAJPAT CHANDOLIA ..... Petitioner
Through: Mr.Jos Chiramel, Mr.Ramesh Kumar and Mr.Arpit Dwiwedi, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION ..... Respondent
Through: Mr.Sanjeev Bhandari, SPP for the CBI

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR , J.

1. Both the petitions have been heard together and are being disposed of by a common order.

2. The challenge is against the common order dated 20.7.2012 passed by the learned Special Judge, CBI-05, Patiala House Courts, New Delhi in R.C No.4E/2008/CBI/EOU-II/New Delhi arising out of

CC No.38/12 whereby charges have been framed against the petitioners under Section 120B read with Sections 420/468/471 of the IPC and Section 13(2) read with Section 13(i)(d) of the Prevention of Corruption Act, 1988.

3. A complaint was lodged on 15.9.2008 by Sh.B.S.Maan, Chief Manager, Punjab National Bank, Paharganj branch, Delhi alleging that S.V.Chauhan, PNB House, Hazrat Ganj, Lucknow (petitioner in W.P(Crl) No.1537/2012), while posted as Chief Manager, Punjab National Bank, Paharganj, Delhi from 16.5.2006 to 29.4.2008, acted unlawfully and in conspiracy with Ranjan Kashyap and Y.N.Kashyap, directors of M/s.R.R.Automotive Components (Pvt) Ltd, sanctioned and disbursed an amount of Rs.390 lakhs to them under various credit facilities after taking over of their existing credit facilities from Bank of India, Mayur Vihar, Phase-I, New Delhi and thereby caused unlawful gain to them and corresponding unlawful loss to the Punjab National Bank.

4. Lajpat Chandolia, who at the relevant time was manager (loans) is alleged to have processed and recommended the loan proposals of the aforesaid two persons namely Ranjan Kashyap and Y.N.Kashyap, without verifying the genuineness of the statements regarding their financial strength and collateral security of the two properties situated in Faridabad namely property No.89, Sector 24, Faridabad and property No.1361-P, Sector 14, Faridabad. In the conveyance deed of one of the properties offered as collateral security namely property No.1361-P, Sector 14, Faridabad, it was clearly stated that the transferee would have no right to transfer by way of sale, gift,

mortgage without previous permission in writing of the Estate Officer, Haryana Urban Development Authority (HUDA). The petitioners namely S.V.Chauhan and Lajpat Chandolia were, therefore, charged with dishonestly and fraudulently, in connivance with the accused persons namely Y.N.Kashyap and Ranjan Kashyap, processing and sanctioning the loan facilities without taking permission from the aforesaid Estate Officer, HUDA, Faridabad. It has been alleged that the panel advocate, in his legal search report dated 23.3.2007, had suggested certain conditions, which too were not fulfilled and undue favour was accorded to the co-accused persons Rajan Kashyap and Y.N.Sabharwal. The aforesaid grant and sanction of credit facilities was in utter violation of the banking norms and guidelines.

5. Rajan Kashyap and Y.N.Kashyap, the two directors of M/s.R.R.Automotive Components (Pvt) Ltd made a request to S.V.Chauhan (petitioner in W.P(Crl) No.1537/2012) while he was posted as Chief Manager, Punjab National Bank, Paharganj for taking over of their existing credit facilities from Bank of India, Mayur Vihar, Phase-I, New Delhi and sanction additional credit facilities. Necessary declarations of the borrowers about their not enjoying any credit facilities from other banks was not obtained by the petitioners. The petitioners did not make any actual assessment of the credit requirements of the borrowers. The authenticity of balance sheets for the year 2004, 2005 and 2006 and provisional balance sheet of 2007 of M/s.R.R.Automotive Components (Pvt) Ltd was not verified. The aforesaid balance sheet was certified by one Mahesh Kumar, Chartered Accountant and a statutory auditor of the company. The

necessary particulars and registration of the Chartered Accountant was found to be missing from the letter head of the reports of the chartered accountant.

6. During the course of investigation, it came to light that the petitioners, by their acts, permitted the diversion of funds of the credit facilities for meeting of personal requirements. The flow of fund to the borrower account of the co-accused persons was not monitored and the interest of the bank was completely abandoned at pre-sanction and post-sanction stages.

7. It has been urged on behalf of the petitioners that the order impugned whereby charges have been framed against them is devoid of any merit and is not based on any objective assessment of the facts on record. The facts of the case, it was argued, did not make out any case of conspiracy between the petitioners and the other co-accused persons. Before the account of the co-accused persons were taken over, a confidential letter was sent to the Chief Manager of Bank of India, Mayur Vihar, Phase-I, New Delhi to check the credentials of the co-accused persons. In response to such a letter by petitioner No.1, information was provided that mortgage overdraft was given to the co-accused persons in the year 2005 and the terms of sanction were complied and the account was conducted satisfactorily. The letter from the Bank of India clearly stipulated that the Bank of India was having charge over the property which was offered as collateral security. It is submitted that once such information was received from another bank, there was no reason for the petitioners to have harboured any doubt

over the genuineness of the collateral security which was offered by the co-accused persons.

8. It has further been submitted that before the takeover of the credit facilities from the Bank of India, a report also was obtained from Credit Information Bureau (India) Ltd (hereinafter referred to as 'CIBIL') wherein the details and the credit history of the operation was provided and the report did not speak about any infirmity of any kind. By way of abundant precaution, it is stated, information was also sought from the Registrar of Companies regarding charges of bank other than the Bank of India with respect to M/s.R.R.Automotive Components (Pvt) Ltd.

9. It is stated on behalf of Lajpat Chandolia, petitioner in W.P(Crl) No.611/2014 that he never dealt with the account of the company namely M/s.R.R.Automotive Components (Pvt) Ltd on any date prior to 23.4.2007. It was further argued that the documents suggested that one M.K.Gupta, Senior Manager (Credit) was dealing with the proposal of the company and he had visited the properties in question and had submitted his report. The proposal which was sent to the zonal office for approval was signed by different persons in the capacity of Senior Manager (Credit) and Deputy Manager (Credit). It has further been urged that the collateral security offered by the co-accused persons were the same which was accepted by the Bank of India and in the event of the title deeds of such property being later found to be fake, the officials of the bank who have performed their job diligently could not have been charged for any offence.

10. The above petitions have been contested by the CBI on the ground that the materials on record per se are sufficient for framing of charges against the petitioners. It has further been argued on behalf of CBI that at the time of framing of the charge, the Court is not expected to hold a mini trial and delve deep into the matter for the purposes of appreciating the evidence and the evidence can only be weighed when the entire material is brought before the Trial Court. All that the Court is required to see at the time of framing of charge is whether a strong suspicion exists for commission of the offence. Since a strong suspicion appeared against the petitioners, no fault could be found with the order impugned whereby charges have been framed against the petitioners.

11. It has also been submitted on behalf of CBI that out of 34 cited witnesses, 12 prosecution witnesses have already been examined and, therefore, no interference at this stage is called for by this Court.

12. The learned Trial Court after taking into account the materials available before it, directed for framing of charges against the petitioners under Sections 120B IPC read with Sections 420, 468 and 471 IPC and Section 13(2) read with Section 13(i)(d) of the Prevention of Corruption Act, 1988.

13. There are sufficient materials justifying the framing of charges by the Trial Court. The details and particulars regarding the respective role of the petitioners have been drawn in the charge sheet which makes the case against the petitioners triable. By no stretch of imagination, can it be said that the materials available against the

petitioners, taken to be ex facie true do not constitute the offences alleged.

14. By the present petition the inherent powers of this Court under Section 482 Cr.P.C read with Article 226 of the Constitution of India has been invoked. The inherent powers under the aforesaid provisions are only meant to be applied *ex debito justitiae* in order to render real and substantial justice, for the administration of which alone the Courts exist, or to prevent the abuse of the process of the Court.

15. It has been repeatedly held by the Supreme Court that the extraordinary powers under Section 482 Cr.P.C has to be exercised sparingly and with great care and caution.

16. In R.P.Kapur vs. State of Punjab, AIR 1960 SC 866 the Supreme Court summarized some of the categories of cases where inherent powers could be exercised for quashing the proceedings. The categories were listed in the aforesaid judgment viz. if there is a legal bar against institution of proceeding or when the allegations at their face value do not constitute the offence alleged or where the allegations constitute an offence but there is no legal evidence adduced clearly, the inherent power could be exercised.

17. True it is that there are no fetters on the plenitude of the power under Section 482 of the Code of Criminal Procedure but the same cannot be used for stifling a legitimate prosecution. In State of Haryana vs. Bhajan Lal, 1992 Suppl. (1) SCC 335, the Supreme Court though clarified that no inflexible guidelines or rigid formulae could be framed for all kinds of cases where such powers could be exercised but enumerated certain categories of cases by way of illustration

wherein the powers under Section 482 could be exercised in order to prevent the abuse of the process of the Court or to otherwise secure the ends of justice. The Supreme Court in Bhajan Lal (Supra) has thus listed the conditions as hereunder:-

> *"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.*
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> *2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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.*
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> *4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of 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.*
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> *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 and personal grudge."

18. In Janata Dal vs. H.S.Chowdhary, (1992) 4 SCC 305, the same principles were reiterated.

19. The learned Court below after neatly listing the parameters which ought to weigh in the mind of the Court at the time of framing of charge, and after applying them to the facts of the case directed for framing of charges against the petitioners.

20. No fault can be found with the aforesaid order.

21. It is noticed that the allegations against the petitioners are of serious nature namely abusing the official position, bye-passing the rules and guidelines of the bank for providing credit facilities to borrowers and thereafter causing unlawful gain/advantage to the co-accused persons and corresponding unlawful loss to the bank. The petitioners are alleged to have conspired with the beneficiaries and enhanced their credit facilities.

22. The trial of the case has progressed substantially and 12 prosecution witnesses have been examined uptil now.

23. This Court is, therefore, reluctant to interfere with the order framing charges against the petitioners.

24. The petitions are, therefore, dismissed.

SEPTEMBER 07, 2015 **ASHUTOSH KUMAR, J**

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