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

*Judgment delivered on: 24<sup>th</sup> February, 2016*

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**CRL.M.C. 2339/2013**

VK MAHESHWARI

..... Petitioner

Represented by: Mr. Anoop J Bhambhani,  
Senior Advocate with Mr. Bhaskar Tiwari &  
Mr. Rohit Tripathy, Advs. with petitioner.

Versus

CENTRAL BUREAU OF INVESTIGATION

..... Respondent

Represented by: Mr.Narender Mann, Spl.  
Public Prosecutor with Mr.Manoj Pant, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KAIT**

**SURESH KAIT, J.**

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**CRL.M.C. 2339/2013**

1. By way of the present petition filed under Section 482 read with Section 397 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as 'Cr.P.C.'), petitioner seeks directions thereby setting aside the order dated 29.11.2012 passed by the Id. Trial Court whereby charge under Sections 120B/409 of the Indian Penal Code, 1860 (hereinafter to be referred as 'IPC') read with Section 13 (1) (d) and 13 (2) of the Prevention of Corruption Act, 1988 (hereinafter to be referred as 'PC Act') have been framed against the petitioner. Consequently, Crl. Case No. 51/11 pending before the Trial Court and RC. No. 5 (E)/01 titled as CBI v. V.K.

Maheshwari & Ors. also be quashed.

2. Mr. Anoop J. Bhambhani, Id. Sr. Counsel appearing on behalf of the petitioner submitted that the aforesaid FIR was registered on 24.08.2001 and charges were framed vide order dated 29.11.2012. There were total six accused in the case, wherein petitioner is accused no.1. Accused no.2 Ratan Bagaria has been declared PO whereas proceedings against accused no.3, i.e., Rajan Bagaria have already been quashed by this Court vide order dated 29.04.2009 passed in CrI. M.C. No.3331/2007. Accused no. 4 is Ratan Exports and Industries Ltd. (hereinafter to be referred as 'Company'). Accused no.5 Mr. M.K. Basu, posted as General Manager (Credit), United Bank of India at Head Quarter, Kolkata, had passed away and proceedings against him was abated vide order dated 01.10.2011. The FIR and proceedings thereto against accused no. 6, i.e., Kashibatla Ramakrishna, posted as Regional Manager, United Bank of India, have been quashed by this Court vide order dated 16.04.2012 passed in CrI. M.C. No.160/2010.

3. Id. Sr. Counsel further submitted that accused no. 6 Kashibatla Ramakrishna had joined the United Bank of India Delhi Branch in May, 1992, whereas the petitioner had joined the aforesaid Bank as Branch Manager on 12.08.1993. The case of prosecution as per the chargesheet dated 26.03.2004 is that business of the aforesaid Company was mainly export of Natural Bristles, Brushes and Canned Food Products to erstwhile USSR and the Company was a 100% Export Oriented Unit. The said Company was earlier granted overall credit limit of Rs.1250 Lacs on 14.07.1988 by the Bank, which was subsequently enhanced to the tune of

Rs.1,672 Lacs by the Board of Directors of the Bank in its meeting held on 19.11.1991.

4. Accused no. 2, Ratan Lal Bagaria being the Managing Director of the Company submitted an application dated 28.05.1992 for further enhancement of Working Capital Limits ('WCL') of the Company from Rs.1672 Lacs to Rs.4442 Lacs for achieving the projected turnover of Rs.200 Crores. The proposal submitted by the Branch was recommended by accused no. 6 Kashibatla Ramakrishna, the then Deputy General Manager at the Janpath Branch, New Delhi, vide his letter dated 27.06.1992 without keeping the interest of the Bank in mind. The present net worth of the Directors of the Company was very low while collateral security of Rs.57 Crores provided by the Company for covering the recommended limits was inadequate. There was ongoing turmoil in USSR starting from the year 1992, which had led to the trade squeeze by the exporters.

5. Mr. M.K. Devraj (since deceased), the then Deputy General Manager (Credit), Head Office, prepared a note for the Board of Directors, United Bank of India for sanction of enhanced limit to the Company which was approved by accused no.5, Mr. M.K. Basu, the then General Manager (Credit). The packing credit cum FOBP sub-limit to be released for the merchandise unit of the Company at New Delhi to the extent of Rs.1600 Lacs was only against the D.P. Bills, backed by confirmed orders, letters of credit and details of the document as specified in the contract. However, accused no. 6 Kashibatla Ramakrishna directed Mr. M.K. Basu (A-5) on 12.12.1992 to purchase and discount the Foreign Export Bills of the

Company on Documents Against Acceptance Basis (DA Basis) which was contrary to the terms and conditions of the sanction of limits dated 07.11.1992. Accused no. 6 Kashibatla subsequently sent a fax message dated 14.12.1992 to General Manager (Credit), Head Office, Kolkata, for amendment of the terms and conditions of the sanction letter dated 07.11.1992 so as to include the discounting of Foreign Export Bills on DA Basis also. Mr. Shantanu Guha, the then Chief Manager (Credit Operation-H) in league with accused Kashibatla sought the approval of accused M.K. Basu, the then General Manager (Credit & I.B.) vide his note dated 28.12.1992, who approved the said note dishonestly. He further failed to obtain the approval of the competent authority for such amendment which, in this case, was the Board of Directors. Consequently, Mr. Shantanu Guha sent a telex message dated 31.12.1992 to accused no. 6, Kashibatla thereby falsely intimating that in terms of his recommendations, the competent authority had agreed to modify the FOBP sub-limit of the Company by including purchase of bills of unexpired usage or 60 days backed by confirmed orders / letter of credit and other documents as specified in the contract on DA Basis knowing well that the company was indulging in the “in House” business.

6. Learned Senior Counsel submitted that the petitioner remained posted as Chief Manager, Janpath Branch, New Delhi, from 12.08.1993 onwards and then remained posted at the newly opened overseas branch from 12.09.1995 till May, 1997, from where various credit facilities to the Company were released.

7. Further submitted that accused no.2 Ratan Lal Bagaria further

obtained misleading certificate dated 26.11.1992 from the Chartered Accountant of M/s.R. Niwas Aggarwal and Company to the effect that the Company had already employed the funds to the extent of Rs.1450 Lacs from its knowingly accrual towards its contribution / margin as on 30.09.1992 and submitted the same to the Bank for release of limits. The said certificate did not confirm to the conditions stipulated by the Company in its sanction letter dated 07.11.1992. However, the petitioner willfully, knowingly and dishonestly accepted the said certificate while releasing the credit facilities to the Company and thereby caused the undue pecuniary benefits to the Company.

8. Ld. Sr. Counsel for the petitioner further submitted that as per the charges in the chargesheet, accused no. 2 Ratan Lal Bagaria dishonestly and deceitfully submitted Foreign Export Bills which were drawn by the Company owned and controlled by his brother Rajan Bagaria (accused no.3), who at one time was the Director of the Company. The petitioner in conspiracy with Ratan Lal Bagaria (accused no.2) and in active connivance with Kashibatla Ramakrishna, (accused no.6) allowed the purchase of Foreign Bills on DA Basis which were earlier submitted by the Company on Documents Against Purchase Basis (DP Basis) and made available the advances/ finances against these foreign bills under the cover of the above-said illegal and unauthorized amendment of sanction letter dated 07.11.1992. The total amount US\$ 8,86,280.11 against such 44 foreign bills purchased on different dates had remained an outstanding which is equivalent to Rs.3,15,57,073.00. The petitioner had allowed the discounting of these 44 bills when the Concurrent Auditor of the Bank had

already adversely commented in respect of discounting of bills in the account of the Company. Despite, the petitioner had continued to purchase the Foreign Export Bills of the Company when the amount against the earlier discounted / purchased bills had remained outstanding for payment of these facts were well within the knowledge of accused no. 6 Kashibatla Ramakrishna. Further allegations are that the petitioner, accused M.K. Basu and accused Kashibatla Ramakrishna had entered into a criminal conspiracy with each other and with Ratan Lal Bagaria (accused no.2) and Rajan Bagaria (accused no.3) of the Company in the matter of purchase of discount of Foreign Exchange Bills on DA Basis contrary to the sanction of the limits.

9. Ld. Sr. Counsel submitted that nowhere in the chargesheet it is alleged that the petitioner has demanded money or bribe or was paid in any manner. Despite, the ld. Trial Court vide order on charge dated 29.11.2012 framed charges under Section 120 B IPC read with Section 13 (1) (d) read with Section 13 (2) PC Act and read with Section 409 IPC against the petitioner. Whereas while framing the charge vide order dated 29.11.2012, ld. Trial Judge has observed that the allegation is not that any of the Officers of the Bank had been deceived either by the Company (accused no. 4) or Ratan Lal Bagaria (accused no.2), Managing Director of the Company. Here, the allegation is that being the Chief Manager of the Bank and the custodian of the money of the Bank, petitioner had dishonestly favoured the Company by causing pecuniary advantage to it by passing his position.

10. Ld. Sr. Counsel further submitted that accused no. 6 Kashibatla

Ramakrishna, the then Regional Manager of the Bank at New Delhi since 1992 has been discharged by this Court vide order dated 16.04.2012, whereas the petitioner joined as a Branch Manager on 12.08.1993. As per the hierarchy of the Bank Officers from Board of Directors downward, the petitioner is at the bottom and below him is the Deputy Manager and an Officer (Advance). The recommendation in question was sent by Mr. M.P. Sharma, the then Branch Manager to the Regional Manager. Thereafter forwarded by the Regional Manager to accused no. 6 Kashibatla Ramakrishna who further forwarded the same to the Chief Manager (Credit) at Head Office. Thereafter, forwarded to the Assistant General Manager then to the Deputy Manager and again to General Manager (Credit) then to the Executive Director, thereafter to Chairman-cum-Managing Director and finally to the Board of Directors. Before the petitioner, Mr. M.P. Sharma, was the then Branch Manager and thereafter Mr. S. Bose Roy. However, the Director or CMD or the Executive Director are not prosecuted and if that is so, then how the petitioner can be dragged in criminal prosecution for a decision which was finally taken and approved by the Board of Directors and which travelled through Senior Officers of the Bank. Moreover, the control of the account was with the Head Office. When all the conditions were fulfilled, only then the petitioner had released the amount.

11. Ld. Sr. Counsel further submitted that from the charges as mentioned in the chargesheet, the whole conspiracy moved around accused no. 6 Kashibatla Ramakrishna, who challenged the chargesheet before framing of the charge and his petition has been allowed by this Court vide

order dated 16.04.2012. If accused Kashibatla has been discharged, then how the allegations are substantiated against the petitioner, who joined the Bank as Branch Manager on 12.08.1993 and before him there had been two Branch Managers, namely, M.P. Sharma and S. Basu Roy as mentioned above. Moreover, the CBI has not challenged the discharge order of accused Kashibatla passed by this Court.

12. The petitioner had served the Bank for 20 years with clean record. Moreover, letters dated 07.12.1993 and 04.01.1994, shows that petitioner had written to the Zonal Manager that he had not been discounting the bills of the Company as the said bills were not in accordance with the mandate of the Superior Officers. As specifically stated by accused no.6 Kashibatla, because of the efforts of petitioner the crystallized overdue bills had been reduced from 15000 to Rs.780 Lacs by January, 1994. The Company had made a complaint that the petitioner was not discounting the bills not supported by a letter of credit.

13. To strengthen his arguments, Id. Counsel for the petitioner has relied upon a judgment dated 22.11.2013 passed by this Court in ***Crl. M.C. 2384/2011*** titled as ***A.K. Ganju v. CBI*** wherein this Court has observed as under:-

*“114. As regards the charge under Section 13(1)(d) of the PC Act, the violator should have obtained a valuable thing or pecuniary advantage for himself or for any other person. In the present case, in chargesheet, there are no allegations of any kind, whatsoever, of any demand, acceptance or giving of any bribe by anybody to anyone. For such an offence, the prosecution has to establish that the accused has obtained the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant*

*and that too without the aid of statutory presumption available to him. In other words, in the absence of proof of demand or request from the public servant for a valuable thing or pecuniary advantage, the offence under Section 13(1) (d) of the PC Act cannot be held to be established.*

*”115. In the case of **Subhash Parbat Sonvane Vs. State of Gujarat (2002) 5 SCC 86**, it is held that in Sections 7 and 13(1) (a) and (b) of the Act the Legislature has specifically used the words 'accepts' or 'obtains'. As against this there is departure in the language used in Clause (1) (d) of Section 13 and it has omitted the word 'accepts' and has emphasized the word 'obtains'. The ingredient of Sub-clause (i) is that by corrupt or illegal means, a public servant obtains any valuable thing or pecuniary advantage; under Clause (ii) he obtains such thing by abusing his position as public servant and Sub-clause (iii) contemplates that while holding office as the public servant he obtains for any person any valuable thing or pecuniary advantage without any public interest. Therefore, for convicting the person under Section 13(1)(d), there must be evidence on record that accused obtained for himself or for any other person any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or he obtained for any person any valuable thing of pecuniary advantage without any public interest.*

*116. Case of the CBI is that there was conspiracy between the Builder, Architect and the officers of the MCD. However, there is no statement of any witness which refers to or which alleges that there was active collusion and conspiracy between the aforementioned persons. To constitute an offence of conspiracy, meeting of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition that existence of conspiracy is to be deduced from the circumstances and each circumstance should be established by reliable evidence and the circumstances must form a chain of events from which the only irresistible conclusion would be against those persons. The criminal conspiracy is an independent*

*offence in the Indian Penal Code. The unlawful agreement is a sine-qua-non for constituting an offence under the Indian Penal Code and not an accomplishment. In the case in hand, there is nothing to connect the petitioners inter se and there are no allegations which could form a chain of any conspiracy.”*

14. Also relied upon a case of **Amit Kapoor Vs. Ramesh Chandra and Anr. (2012) 9 SCC 460** wherein it is 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:*

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*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.*

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*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.*

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*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 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.”*

15. While concluding his arguments, Id. Sr. Counsel submitted that if it is believed that there was a conspiracy of the Bank Officers with the Company and its Directors, but the proceedings against accused no. 3 Rajan Bagaria and accused no. 6, Kashibatla Ramakrishna have been quashed by this Court vide orders dated 29.04.2009 and 16.04.2012. Thus, the chain of the conspiracy has broken. Moreover, Mr. M.K. Basu, accused no. 5 has passed away and the only accused remained from the Bank is the petitioner. Thus, by any stretch of imagination, the petitioner cannot be held guilty for the charges framed against him and on parity with accused no. 3 Rajan Bagaria and Kashibatla Ramakrishna, accused no. 6 whose discharges have been accepted by the CBI, therefore, the proceedings against the petitioner may also be quashed.

16. On the other hand, learned counsel appearing on behalf of the

respondent/Central Bureau of Investigation ('CBI') submitted that charge against the petitioner is that while working as Branch Manager from May, 1995 to December, 1995, being the public servant, he had abused his position and obtained pecuniary advantage to the tune of Rs. 3,15,57,073/- for co-accused Company and thereby committed an offence punishable under Section 13(1)(d) read with Section 13(2) PC Act. Consequently, he allowed the said Company to misappropriate the amount mentioned above and thereby committed an offence punishable under Section 409 IPC.

17. Learned counsel further submitted that for the offence punishable under Sections 13(1) (d) and 13(2) PC Act, it is not necessary that petitioner should obtain pecuniary advantage for himself, but if he has obtained pecuniary advantage for the Company, even then the petitioner is liable to be punished for the said offence.

18. Ld. Counsel for CBI submitted that on conspiracy, the learned Trial Court has framed charge against the petitioner on the ground that the petitioner in the year 1995 or any time before was the party to a criminal conspiracy with Ratan Lal Bagaria (Proclaimed Offender), Managing Director of the Company with the object to commit offence being public servant, consequently, dishonestly and fraudulently allowed the Company to misappropriate funds of the Bank which were under the control and domain of Kashibatla Ramakrishna, (A-6). Accordingly, he committed the offence punishable under Section 120-B IPC and Section 13(1) (d) read with Section 13(2) PC Act.

19. Further allegations against the petitioner are that as per the statement of Mr.R.K. Kaldhar, Officer Scale-II of the Bank, the petitioner had prepared a chart in respect of 44 bills showing outstanding amount in respect of the said bills. The said chart shows that petitioner had approved purchase of these bills when payments of the previous export bills were already due specifically in respect of the same Firms. The act of the petitioner of continuing discounting the bills when the borrower's account had already dues on account of non-receipt of payments from foreign buyers through their Banks was highly irregular and prejudicial to the interest of the Bank.

20. As per the statements of Mr. P.Basu, General Manager (Credit & IB) and Mr. Gopinath Das Gupta, Chief Manager, Corporate Accounts, it is established that as per the prevalent practice ECGC coverage for past shipment bills used to be obtained by the borrower and that was required to be ensured by the concerned Branch Manager. In this case, the Company was required to obtain ECGC coverage and it was the responsibility of the Branch Manager, i.e., petitioner to ensure that such coverage was available before discounting of bills by the Branch Manager. As per the records, ECGC coverage was not taken in respect of the bills of the Company.

21. Learned counsel further submitted that as per the statement of Mr.G.N.Gupta, Chief Manager, Corporate Accounts, in a number of instances it was found that the funds were released in packing credit accounts only to adjust the packing credit account of the borrower, which was highly irregular and meant only to favour the Company. ECGC cover was an important consideration for the Bank to safeguard the interest of the

Bank. It was, therefore, important that before the bills were discounted, it was required to be ensured that the shipments to be made had proper ECGC cover and that the conditions thereof were complied with. The 44 shipments referred in this case related to three buyers, namely, M/s Continental Trading Co., M/s Arvee International Pvt. Ltd. and M/s Interlog Pvt. Ltd. The buyer-wise policy which was taken from ECGC was only in respect of M/s Interlog Pvt. Ltd. As per the statement of Sh. G.M.Ganpati, General Manager, ECGC, in respect of M/s Arvee International Pvt. Ltd. ECGC cover was refused and also no ECGC cover was granted in respect of M/s Continental Trading Co. Moreover, as per the statement of Sh.H.C.Vaze, Branch Manager, ECGC as per the terms and conditions of the ECGC policy, the policy would be effected only if export had been made when no bill of the same buyer was pending for payment within the stipulated time. Also the ECGC policy would be effected in respect of any consignment within the insured amount. According to him, in the instant case, as per chart, the Company (A-4) made exports to M/s Interlog Pvt. Ltd. one after another even when a number of payments from the same Firm were not received by the Bank making the insurance policy ineffective. Further, as per the chart, exports had been made one after another sometimes totalling more than Rs. 75 Lakhs and since the policy cover was only for Rs.75 Lakhs on DA Basis, question of getting benefit, if any, from ECGC for the exports for more than Rs.75 Lakhs does not arise.

22. However, the petitioner had accepted 44 bills mentioned above when previous payments were there. In this manner, the petitioner had

extended pecuniary advantages to the Company (A-4). To strengthen his arguments, learned counsel for the respondent has relied upon the case of ***Subash Parbat Sonvane Vs. State of Gujarat (2002) 5 SCC 86***, whereby the Supreme Court held that in Sections 7 and 13(1)(a) and (b) PC Act, the Legislature has specifically used the words 'accepts' or 'obtains'. As against this, there is departure in the language used in clause (1)(d) of Section 13 PC Act and it has omitted the word 'accepts' and has emphasized the word 'obtains'. Further, the ingredient of sub-clause (i) is that by corrupt or illegal means, a public servant obtains any valuable thing or pecuniary advantage; under clause (ii) he obtains such thing by abusing his position as public servant; and sub-clause (iii) contemplates that while holding office as the public servant, he obtains for any person any valuable thing or pecuniary advantage without any public interest. For convicting the person under Section 13(1)(d) PC Act, there must be evidence on record that accused 'obtained' for himself or for any other person any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or he obtained for any person any valuable thing or pecuniary advantage without any public interest.

23. I have heard the learned counsel for the parties.

24. It is not in dispute that Kashibatla Ramakrishna (A-6) assumed charge as Zonal Manager, New Delhi, in the mid of May, 1992. The Company (A-4), which was maintaining its account for more than a decade, vide its letter dated 01.06.1992 recommended sanction of enhancement limit. The Head Office was already following up the matter, as the account was 'Head Office Controlled Account' and process was

initiated by Head Office itself, vide letter dated 28.04.1992 addressed to Janpath Branch, Delhi, and copies endorsed to the Regional Manager and Zonal Manager.

25. Sh. Adesh Kumar (PW24) stated that he had seen the sanction loan dated 10.09.1992, which was sanctioned by the Board of Directors on 07.11.1992. The sanction relates to sanction of limits of the Company (A-4). In the said sanction note, limit for bill purchase was sanctioned by the Board of Directors against DP facility, i.e., bills were to be purchased against payment. This system was going on in the Branch when Kashibatla Ramakrishna (A-6) joined the Bank. Accordingly, the said accused also prepared vouchers after the purchase of bills were approved by the petitioner against acceptance.

26. PW24 further stated that there were clear and repeated instructions of the petitioner, Branch Manager and Kashibatla Ramakrishna (A-6), DGM, UBI, New Delhi, that under no circumstances the bills of the Company (A-4) should be delayed for discounting and for this account routing procedure need not be followed strictly.

27. Mr. G.S. Trikha (PW41) stated that account of the Company (A-4) was used to be treated by their Bank as an important and VIP account and corroborated the version stated by PW24 that routing procedure was not required to be followed strictly in the case of Company. Admittedly, during the pendency of the proceedings, the Company (A-4) settled all its accounts with the Bank by way of compromise/settlement duly approved by the Managing Committee of the Board of Directors on 24.08.2007 by

paying Rs.865.04 Lakhs and thereby the account was closed w.e.f. 24.08.2007. Thereafter, the Bank issued “No Due Certificate” as well besides realizing all collateral securities held by it as security for advance. Vide order dated 18.10.2007, the Debt Recovery Tribunal (‘DRT’), Delhi, had also confirmed the withdrawal of Suit filed by the Bank consequent upon the settlement including all dues of the borrower Company.

28. It is important to note that vide judgment dated 29.04.2009, this Court quashed the criminal proceedings against Sh. Ratan Bagaria observing therein that it has not been disputed that the amount had already been paid to the Bank and the settlement includes all dues of the borrowers Company.

29. From the record, it is revealed that vide letter dated 28.04.1992, Head Office had advised the Branch Manager (petitioner herein) to obtain requisite documents from the Company for forwarding enhancement proposal of the Company. The petitioner assumed office on 12.08.1993, whereas all the sanctions were taken place before his joining. Moreover, Kashibatla Ramakrishna (A-6), who joined the Bank in May, 1992, has been discharged by this Court vide order dated 16.04.2012 and said order has attained finality.

30. I note, the Head Office was already following up the matter as the account was ‘Head Office Controlled Account’ and the process was initiated by the Head Office itself, vide letter dated 28.04.1992. Thereafter, the Head Office by way of detailed “*Draft Board Note*” signed by the General Manager and Deputy Manager (Credit) recommended for enhancement of Overall Credit Limits on 09.10.1992, which was approved

by the Chairman and Managing Director. It is further noted that the Board of Directors in Addendum Note dated 23.10.1992 sought approval from Reserve Bank of India ('RBI') in respect of aforesaid facility.

31. I further note that the Board of Directors principally agreed for increasing the Overall Credit Limit of the Company from Rs.1672.00 Lakhs to Rs.4442.00 Lakhs. Accordingly, RBI, per Telex No. 5709 dated 16.10.1992 advised the Board of Directors to dispose of the case in the light of their instructions conveyed to their Bank per Telex No. 5520 dated 09.10.1992. Thereafter on 07.11.1992, the said approval Board Note was then placed before the Board of Directors, consisting of six Directors from various walks of life, who finally approved the proposal for sanction of enhancement credit to the tune of Rs.4442.00 Lakhs in its meeting dated 07.11.1992. Accordingly, the Head Office conveyed enhanced sanction to the Zonal Manager with intimation to the Branch Manager, i.e., the petitioner and the Regional Manager (A-6).

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

getting abnormally delayed. Thereafter, the account of the accused company became NPA as on 31.03.1996. Accordingly, the account was seriously followed up by Kashibatla Ramakrishna (A-6) consequent upon the abolition of Zonal System of administration, arising out of the organization restricting w.e.f. March, 1994, as well as the Branch and Head Office. As a result, payments of worth more than Rs.11 Crores by way of bill realization and otherwise were received during 1996 to 1997.

33. In the case of *Central Bureau of Investigation, SPE SIU (X), New Delhi Vs. Duncans Agro Industries Ltd., Calcutta, (1996) 5 SCC 591*, the Supreme Court observed that if the officer of the Bank has not acted properly because of the fact that ultimate decision was taken by the Board of Directors, it cannot reasonably be held that some of the Officers of the Bank connived and misled the Board, more precisely, then there is no allegation against the members of the Board.

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

35. The law is well settled that the standard of proof required to establish the guilt in a criminal case, is far higher than the standard of proof required to establish the guilt in the departmental proceedings. But the evidence in the criminal proceedings is one and the same. I am conscious of the fact that power of quashing the criminal proceedings

should be exercised very sparingly and with utmost circumspection and that too in the rarest of rare cases. The Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint or in the charge-sheet and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

36. Law has been settled in the case of ***R.P. Kapur Vs. State of Punjab AIR 1960 SC 866***, where the allegations in the First Information Report or complaint taken at their face value and accepted in their entirety do not constitute the offence, the High Court in its inherent power can and should exercise to quash the proceedings.

37. In the case of ***State of Karnataka Vs. L. Muniswamy and Ors. (1977) 2 SCC 699***, the Supreme Court held that to quash the proceedings under Section 482 Cr.P.C. when it comes to the conclusion that allowing the proceedings to continue would be an abuse of process of Court or that the ends of justice require that the proceedings ought to be quashed. It is also for the court to take into consideration any special features which appears in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue.

38. It is not out of place to mention here that Mr. V.N. Bhattacharya (PW21) stated that most of the Irregularity Reports submitted by the petitioner were seen by Kashibatla Ramakrishna (A-6) as those contain his signatures and instructions to regularize the account. The above facts imply that position of the account of the accused Company (A-4) was brought to the notice of DGM by the petitioner in the Irregularity Reports.

39. The petitioner has already suffered for 14 years and till date, the trial is not concluded. The facts and circumstances of the case in hand is squarely covered by the decision rendered by the Supreme Court in the case of ***State of Haryana and Ors. Vs. Bhajan Lal & Ors. (1992) Supp (1) SCC 335***. Additionally, the present case is also covered by the judgments in the cases of ***Duncan's Agro, R.P.Kapur*** and ***L.Muni Swamy (supra)***, as discussed above.

40. In the case of ***M. Mohan Vs. State (2011) 3 SCC 626***, the Supreme Court observed and held as under:-

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

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

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

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

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55. This Court in ***State of Karnataka v. L. Muniswamy and Ors. (1977) 2 SCC 699***, observed that the wholesome power under Section 482 Code of Criminal Procedure entitles the

*High Court to quash a proceeding when it comes to the conclusion that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice requires that the proceedings ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In this case, the court observed that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the Legislature. This case has been followed in a large number of subsequent cases of this Court and other courts.*

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

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

*consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.*

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

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

*Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely: (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent*

*powers of the High Courts. All courts, whether civil or criminal, possess in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, conceditur et id sine quo res ipsa esse non potest (when the law gives a person anything, it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.*

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

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

41. After going through the legal position discussed above and the facts and circumstances of the case, it is noted that allegations are against the two officers, i.e., the petitioner and Kashibatla Ramakrishna (A-6), who has already been discharged by this Court vide judgment dated 16.04.2012, which has attained finality as the same has not been challenged by the CBI. Moreover, case of the petitioner is on better footing than the case of Kashibatla Ramakrishna (A-6) for the reason the latter joined the office as Regional Manager prior to the petitioner in May, 1992, whereas the petitioner joined on 12.08.1993 as Branch Manager. All the sanctions had taken place much prior to joining of the petitioner. Thus, after going through the evidence of all the witnesses, the settled law and submissions of the counsel for the parties, I am of the considered opinion that if the trial is allowed to go on and even if the evidence on record remains as

unrebutted, then also, the petitioner cannot be held guilty. Therefore, there would be no purpose to proceed with the trial against the petitioner as it will promote injustice. In such an eventuality, jurisdiction of this Court under Section 482 Cr.P.C. comes to rescue.

42. Keeping in view the legal position discussed above and the facts and circumstances of the case, the present petition is allowed.

43. Accordingly, the order dated 29.11.2012 and the consequent proceedings in Criminal Case No.51/11 & RC. No.5(E)/01 under Sections 120B/409 of the Indian Penal Code, 1860 and Sections 13(1) (d) and 13(2) of the Prevention of Corruption Act, 1988 with emanating proceedings against the petitioner are hereby quashed.

**Crl.M.A.No.8976/2013 (for stay)**

With the disposal of the petition itself, the present application has become *infructuous*. The same is dismissed accordingly.

**SURESH KAIT  
(JUDGE)**

**FEBRUARY 24, 2016**

*jg/sb*