**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**
**CRIMINAL REVISION APPLICATION NO.682 OF 2016**

**Bharat Atmaram Patel & Ors. )...APPLICANTs**

**V/s.**

**1 Central Bureau of Investigation & Anr. )...RESPONDENTs**

Ms. Laxmi P. Rao, Advocate for the Applicant.

Mr. H.S.Venegaonkar, Advocate for CBI.

Ms. S.V.Gavand, APP for the Respondent - State.

**CORAM : A. M. BADAR, J.**

**DATE : 5th JANUARY 2017.**

**P.C. :**

By this Revision Application, the Revision Applicants-Accused in Criminal Case No.1027/PW/2009 for the offence punishable under Section 120-B and Sections 420, 467, 468, 471 read with 120-B of the IPC are challenging the judgment and order passed by the learned Additional Sessions Judge, Greater Bombay in Criminal Revision Application No.1253 of 2015 thereby rejecting challenge to the order passed by the learned Trial Court rejecting an application under Section 319 of the Code of Criminal

Procedure, 1973 moved by the Revision Applicants/Original Accused seeking impleadment of three officers of the Union Bank of India as accused in the said Criminal Case.

2 Heard learned counsel appearing for the Revision Applicants. By drawing my attention to the FIR, it is argued that names of K V S Shyam Sunder, General Manager, M S Sundara Rajan Assistant General Manager and Kalyanasundaram Manager of the Union Bank of India were mentioned in the FIR. By relying on office memo dated 15.4.1995 of the bank, it is sought to be argued that by scratching figure of Rs.2 Crores, figure of Rs.1.5 Crores was written in the proposed cash credit facility sought by the borrower/revision applicant no.3-Mrubhee Exports Imports Private Limited. The learned counsel for the Revision Applicants argued that if the cash credit facility sought by the borrower exceeds an amount of Rs.2 Crores then, such proposal is required to be forwarded to the committee appointed by the bank for processing and sanctioning the same. By taking me through the evidence of P.W.1-Sambandam Balkrishnan Officer of Union Bank of India, the learned counsel for the Revision Applicants argued

that an admission given by this witness in the cross-examination shows that K V S Sham Sunder General Manager of the Bank ought to have forwarded an application for cash credit facility to the committee of the bank called as New Business Group of the bank. It is also argued that though the sanction was granted on 15.4.1995, the amount was disbursed in favour of Revision Applicant No.3- Mrubhee Exports Imports Private Limited on 16.1.1995 and 23.1.1995. With this, the learned counsel for the Revision Applicants/Original Accused argued that it was necessary for the trial Court to implead three officers of the bank as accused persons to face trial along with Revision Applicants.

3 I have also heard learned counsel appearing for the Respondent-CBI. He supported the impugned judgment and order passed by the Revisional Court. By drawing my attention to the paragraphs 11 and 12 thereof, learned counsel for CBI argued that though the names of proposed accused/employees of the bank were there in the FIR but ultimately after investigation of the crime in question, no material was found against them and therefore, they were not charged.

4 I have also heard learned APP appearing for the Respondent No.2.

5 At this juncture, it is appropriate to quote provisions of Section 319 of Code of Criminal Procedure, 1973.

> *"319. **Power to proceed against other persons appearing to be guilty of offence**-(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.*
>
> *(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.*
>
> (3) ..............*"*

Bare perusal of this provision of the Code of Criminal Procedure, 1973 shows that when from the evidence on record, it appears to the Court that any person not impleaded as accused has committed any offence for which he needs to be tried together with impleaded accused then the Court may proceed against such person for the offence which he appears to have committed.

6 In the case in hand, after perusal of the charge-sheet on 15.10.2013 the learned Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai has framed the charge against the Revision Applicants for the offences punishable under Sections 120-B, Sections 420, 467, 468, 471 read with Section 120-B of the IPC. Allegations against the Revision Applicants/Original Accused are to the effect that they have entered into criminal conspiracy with an object to cheat Union Bank of India as well as Industrial Finance Branch in the matter of packing credit facility and foreign bill purchase by concealing important facts from the bank. It is alleged that Revision Applicants/Original Accused diverted credit amount for other purpose and submitted bogus bills to the bank. By this mode and manner, it is alleged by the prosecution that the Revision Applicants/Original Accused have cheated Union Bank of India and caused wrongful loss of Rs.1.78 Crores and made corresponding gain.

7 In the light of prosecution case as reflected from the charge framed by the learned Additional Chief Metropolitan

Magistrate, it becomes clear that allegations against the Revision Applicants/Original Accused are in respect of use of money obtained by seeking cash credit facility for some other purposes by diverting credit amount. Even if it is assumed that proposal for cash credit facility was to the tune of Rs.5 Crores or more and that such proposals exceeding the cash credit limit of Rs.2 Crores are to be submitted to the committee of bank, in the case in hand, it is not seen that officers of the bank, who are proposed to be impleaded as accused have sanctioned cash credit facility of more than the limit for which they were having powers to sanction. It is seen from the sanction order that ultimate sanction was only for Rs.1.50 Crores. Nothing is placed on record to show that officers of the bank were not competent to sanction even the amount of less than Rs.2 Crores which they have done in the instant case. In this context, admissions given by the P.W.1- Sambandam Balkrishnan officer of the bank are to be viewed. Even if it is considered that some lapses are committed by the officers of the bank they need to be proceeded departmentally as granting cash credit facility up to the limit with which they were empowered cannot be termed as criminal offence.

8 Perusal of the impugned judgment and order of the Revisional Court goes to show that learned Revisional Court has rightly considered the matter. No case of procedural irregularity, perversity or illegality is shown from the impugned judgment and order. In this view of the matter, Revision Application is devoid of merits and the same is dismissed.

**(A. M. BADAR, J.)**