

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRR No.752 of 2021 (O&M)
Decided on: 02.11.2021**

Nand Lal Sehgal

....Petitioner

Versus

Central Bureau of Investigation

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Abhishek Sindhwani, Advocate
for the petitioner.

Ms. Shubhra Singh, Advocate
for the respondent – CBI.

ARVIND SINGH SANGWAN, J.

Prayer in this revision petition is for setting-aside the order dated 18.02.2021 passed by the Special Judge (CBI), Panchkula, vide which the application filed by the petitioner under Section 227 of the Criminal Procedure Code (in short 'Cr.P.C.') for discharge was dismissed as well as the order dated 18.02.2021, the trial Court has framed charges under Sections 120-B read with Sections 420, 468, 471 of the Indian Penal Code, 1860 (in short 'IPC') and Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, against the petitioner.

Brief facts of the case are that the co-accused Subhash Wadhwa, proprietor of M/s. Prashant Enterprises, Faridabad, had applied for Cash Credit Limit with the Allahabad Bank, NIT Branch, Faridabad, on 20.01.2010, with a takeover–cum–enhancement proposal

from Central Bank Branch Faridabad.

It is the case of the prosecution that the aforesaid borrower has submitted certain fabricated documents like financial statements, Capital Infusion Certificate dated 05.02.2010 through Sudhir Praveen & Associates and the Liquidation Certificate dated 05.02.2010 issued by Central Bank of India, Faridabad and on the basis of the said fabricated documents, submitted by Subhash Wadhwa on behalf of M/s. Prashant Enterprises, Allahabad Bank sanctioned the Cash Credit Limit of Rs.4.60 crores vide Account No.CC 50025421780 on 02.02.2010 for the purpose of trading in electronic goods.

It is further the case of the prosecution that the borrower Subash Wadhwa, fraudulently got the loan sanctioned and later on, transferred the whole Cash Credit Limit to various firms including sister concerns, which were unrelated to the business activity of trading in electronics, with an intention to siphoned off the funds, though, the firms to which the amount was transferred were not creditors in the balance sheet of the borrower firm.

It is also the case of the prosecution that simultaneously the borrower continued his Cash Credit Limit with Central Bank of India vide Account No.3002986861, though, he has already submitted a false certificate dated 05.02.2010 as takeover-cum-enhancement proposal from Central Bank of India to Allahabad Bank for availing the aforesaid Cash Credit Limit from Allahabad Bank.

In this process, the borrower – Subhash Wadhwa even after availing the loan from Allahabad Bank continued enjoying the Cash Credit Limit of Rs.1.25 crores from the Central Bank of India,

Faridabad as well, which he was enjoying since 05.03.2007.

It is further the case of the prosecution that while submitting the fabricated documents with Allahabad Bank, Subhash Wadhwa in criminal conspiracy with the other accused persons has fabricated certain documents to cheat Allahabad Bank and later on, siphoned off the entire loan amount of Rs.4.60 crores to other sister concerns without having any dealing with M/s. Prashant Enterprises.

Counsel for the petitioner has submitted that the role of the petitioner, as per the charge-sheet submitted before the trial Court, is which the petitioner (referred to as accused No.10), in the capacity of an empaneled valuer of the Bank has given inflated valuation of the 02 properties offered by Subhash Wadhwa as collateral securities and thus, the petitioner has facilitated the borrower to avail the Cash Credit Limit from the Bank. It is further submitted that there was a difference in the valuation done by the petitioner than the value as given in the registered sale deed of the properties.

It is also submitted that Property No.1, which is a plot had the value of Rs.18,72,000/- on 02.12.2009, as per sale deed whereas the petitioner has assessed its value as Rs.1.35 crores and similar second valuation was given by Subhash Chand Sharma (before sanction of the loan) as Rs.1.35 crores. Both these valuation assessments were made before sanctioning of the loan amount whereas after the loan account was declared NPA, the valuation in the year 2013 was found to be Rs.55,40,000/-. Similarly, the property No.2 another plot, on the date of sale deed dated 23.11.2009 value was Rs.65,52,000/- whereas the petitioner has valued the same as Rs.4.60 crores and the second valuer

Subhash Chand Sharma has assessed its value as Rs.4 crores 72 lacs and 50 thousand, prior to sanction of the loan amount and after the account was declared NPA, one Pawan Kumar Nagpal has assessed its value as Rs.1.54 crores.

Counsel for the petitioner has submitted that in nutshell the allegation against the petitioner is that prior to sanction of the loan, the petitioner has given inflated rates while giving the valuation report whereas as per the procedure/rules, the Bank obtain 02 valuation report from 02 valuers and the second valuer i.e. Subhash Chand Sharma, has given even higher rate than the petitioner.

Counsel for the petitioner has also argued that there is no conspiracy between the petitioner and the principal borrower – Subhash Wadhwa, before sanctioning the loan as the petitioner has only assessed the value which the Bank was to verify from the second valuer and than as per the standard procedures and norms of the Bank, number of officials from different branch of Allahabad Bank re-assessed the entire properties and then the loan was sanctioned.

Counsel for the petitioner has also submitted that in number of cases when the valuation report is prepared, the Bank even declined to grant loan for various reasons. It is submitted that property No.1 is a 1000 sq. yds. plot which was in the name of Madhu Wadhwa, wife of Subhash Wadhwa and the second property is also a plot measuring 2730 sq. ft. with construction and therefore, on the date of valuation, the correct report was prepared. It is also submitted that the valuation by a Bank empaneled valuer is done as per the market value which varies from time to time. It is further submitted that the value as

shown in the sale deed is always on a lower side as the same is made on the circle rates, fixed by the Deputy Commissioner/Collector of the District and cannot be termed as the correct value as the valuation is done on the basis of the market value at that time and the valuation report so relied upon by the CBI after 03 years nowhere depicts that the valuation has been done on the basis of the 2010 rates as it pertains to the year 2013.

Counsel for the petitioner has next argued that it has come in the investigation that as per the Allahabad Bank rules and norms, the valuation report of the petitioner along with the second valuer Subhash Chand Sharma, was relied upon by the Bank as the rule provides that in case of any dispute or doubt regarding the actual value of the property, there is a provision to seek the report from a 3rd valuer, however, the same was never done as the Allahabad Bank officials were satisfied with the valuation report submitted by the petitioner.

Counsel for the petitioner has also submitted that before sanctioning the loan, the senior officials of the Bank have duly verified all the documents and except for the valuation report, the petitioner cannot be held guilty of any conspiracy with the main accused with regard to any other documents like the takeover-cum-enhancement proposal from the previous Bank i.e. Central Bank of India, financial statement or capital infusion certificate, etc. and it was for the officials of the Allahabad Bank to verify the same from the Central Bank of India, whether the said documents were only at the very initial stage, when the petitioner has given the valuation report which was less than the valuation done by the other accused Subhash Chand Sharma. It is

also submitted that even after the valuation, the Bank obtains a report from their legal retainer/Advocate regarding verification of all the documents including the report from the revenue officials/municipal council, etc. and only thereafter, the loan is sanctioned.

Counsel for the petitioner has relied upon the judgment “*Central Bureau of Investigation, Hyderabad vs K. Narayana Rao*”, 2012(4) RCR (Criminal) 601, wherein the Hon'ble Supreme Court has held that if some person hatched criminal conspiracy or obtain loan from a Bank, a person who has given his legal opinion on the basis of the documents cannot be shown to be criminally liable that he has given any wrong advice. The Hon'ble Supreme Court, with reference to the ingredients of criminal conspiracy has held as under:-

“19) Mr. Venkataramani, learned senior counsel for the respondent submitted that in support of charge under Section 120B, there is no factual foundation and no evidence at all. Section 120A defines criminal conspiracy which reads thus:

“120A. Definition of criminal conspiracy.- When two or more persons agree to do, or cause to be done,-

1) an illegal act, or

2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.”

Section 120B speaks about punishment of criminal conspiracy. While considering the definition of criminal conspiracy, it is relevant to refer Sections 34 and 35 of IPC which are as under:

“34. Acts done by several persons in furtherance of common intention.-

When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

“35. When such an act is criminal by reason of its being done with a criminal knowledge or intention. -

Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.”

Counsel for the petitioner has also submitted that there is no prima facie evidence that the petitioner had any meeting of mind to enter into a criminal conspiracy with the principal borrower/accused Subhash Wadhwa, who as per the prosecution version, was availing the Cash Credit Limit from the Central Bank of India and by furnishing certain documents including takeover-cum-enhancement proposal from the said Bank to Allahabad Bank again availed further Cash Credit Limit. It is further submitted that in this aspect of the case, the petitioner has absolutely no role as he is not a beneficiary in any manner by either of the Bank.

Counsel for the petitioner has also argued that there is nothing on record to show that on the basis of the valuation report done

by the petitioner, there was any intention to defraud the Bank as it is settled norm that the Bank obtain valuation report of 02 valuer and if still not satisfied, the opinion of the 3rd valuer is taken which is followed by taking the verification report from the Bank Advocate and then after doing physical verification, the senior Bank official makes verification and then sanction the loan. It is further argued that in the entire process, the petitioner has no role and therefore, he cannot be held liable for any criminal conspiracy with the principal borrower, who has cheated the 02 Banks.

Similar view has been taken by the Madras High Court in ***“L.N. Rajagopalan vs State by The Additional Superintendent of Police, SPE/CBI/ACB/Chennai”***, passed in **Crl. R.C. No.1063 of 2008**, decided on 10.08.2009, that merely because a valuer has given its report on higher side, he cannot be held liable for cheating or other charges with the principal borrower as the valuers are appointed by the Bank and they are referred to valuation proposal by the Bank and not by the borrower.

Counsel for the petitioner has then referred to the judgment of this Court ***“Kulwant Singh vs CBI, New Delhi and another”***, **2014(3) RCR (Criminal) 292**, wherein a similar view has been taken that if an Advocate gives a legal advice on the basis of some forged title deeds produced by the other accused on the basis of which the Bank has sanctioned the loan, in the absence of any evidence to show that there was any conspiracy with the other accused to commit the offence, he cannot be held liable for conspiracy and the FIR was quashed.

Counsel for the petitioner has also submitted that in terms

of the judgment of the Hon'ble Supreme Court in ***K. Narayana Rao's case (supra)***, it is held that the exercise of jurisdiction under Sections 227/228 Cr.P.C., by the Magistrate is not a formality. The observation of the Hon'ble Supreme Court in the said case, reads as under:-

“Exercise of jurisdiction under Sections 227 and 228 Cr.P.C.

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond

reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

Counsel for the petitioner has also relied upon the judgment of the Delhi high Court passed in **CRL. M.C. No.3302 of 2013**, titled as “**A. Kumar Sharma vs CBI**”, wherein the Delhi High Court while relying upon the judgment of the Hon'ble Supreme Court in **K. Naryana Rao's case (supra)**, has observed as under:-

“21. It is a settled law that the High Court is competent to quash the proceedings under Section 482 Cr.P.C. in appropriate cases to prevent the abuse of process of court or to secure ends of justice. The inherent power is to be exercised by the High Court, "ex debito

justitiae" which means, 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 result into injustice, the court has power to prevent abuse. 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 the exercise of its powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to an abuse of the process of court or the quashing of these proceedings would otherwise serve the ends of justice. High Court in its inherent powers is not only competent to quash the proceedings in which there is a legal bar against the institution or continuance of the criminal proceedings in respect of the alleged offence, it can also quash proceedings where the allegations in the FIR or the complaint, even if they are taken at their face value, do not constitute the offence alleged.

22. In „K. Ramakrishna and Others v. State of Bihar and Another', (2000) 8 SCC 547 the Hon"ble Supreme Court while assessing the extent of inherent powers of the High Court under Section 482 of Cr.P.C. held, "3. The inherent powers of the High Court under Section 482 of the Code of Criminal Procedure can be exercised to quash proceedings, in appropriate cases either to prevent the abuse of process of any court or otherwise to secure the ends of justice. Ordinarily the criminal proceedings which are instituted against the accused must be tried and taken to logical conclusions under the Code of Criminal Procedure and the High Court should be reluctant to interfere with the proceedings at an interlocutory stage. However, there may be cases where the inherent jurisdiction to quash proceedings can and should be

exercised. Where there is a legal bar against the institution or continuance of the criminal proceedings in respect of the alleged offence, the High Court should not be reluctant to exercise the inherent jurisdiction. Similarly where the allegations in the FIR or the complaint, even if they are taken at their face value do not constitute the offence alleged, or without appreciating the evidence but only merely by looking at the complaint or the FIR or the accompanying documents, the offence alleged is not disclosed, the person proceeded against in such a frivolous criminal litigation has to be saved."

23. In the case before this court the allegations against the petitioner are that he failed to point out the discrepancies in the sale deed and even so that the deed was false. He gave a non-encumbrance certificate dated 21.07.1998 wherein he certified that the said non-existing property was free from all encumbrances which he could have observed as not to be the case on perusal of the deed. No doubt the petitioner has committed an error in not noticing these facts however as I have observed above, in light of the decisions in 'CBI v K.Narayana Rao' (Supra) and 'Nita Rastogi' (Supra) that mere negligence or want of greater professional care and competence on the part of an advocate would not make him liable for a criminal offence in an absence of tangible evidence.

24. It was also alleged that the petitioner entered into a conspiracy with the other accused to cheat the bank by submitting forged/fake documents stating that the property was free from all encumbrances.

However no material is produced on record to the effect that the petitioner was part of any conspiracy pursuant to which a fraud was committed on the bank. In the absence of any prima facie evidence, the submission that the petitioner was engaged in a conspiracy seems like

a blatant allegation against him. A perusal of the record shows that the legal search report dated 21.07.1998 was submitted by the petitioner and the said loan was sanctioned by the accused in 1997, enhanced on 04.07.1998 and disbursed on 07.07.1998. Furthermore, the charge was created on the property in question on 14.07.1998. Clearly, the bank gave the credit facilities and created a charge on the said property much before the legal search report was submitted by the petitioner. It cannot be said that the bank acted on the report of the petitioner. This fact leaves no reason to disbelieve the averment of the petitioner that the complainant bank sanctioned credit facilities without going through his search report.”

Counsel for the petitioner has, lastly, argued that there is no record or evidence collected by the investigating agency to show that the petitioner at any point of time was having any meeting of mind with the principal borrower for committing the offence as it is only the self-drawn conclusion of the CBI that the petitioner was in conspiracy with the principal borrower, though, the petitioner was appointed by the Bank and not by the borrower to assess the value of the petitioner.

Counsel appearing for the respondent – CBI has, however, opposed the prayer on the ground that the petitioner has done the value over and above the value which was shown at the time of the registration of the sale deed pertaining to the year 2009 whereas in the year 2010, the valuation was done on a much higher side by the petitioner and the second valuer Subhash Chand Sharma which in the year 2013 was shown to be on lesser side by the other valuer and the account becomes NPA. It is submitted that since the petitioner has

given an inflated report, the Bank has sanctioned higher loan, however, it is not disputed that except for the valuation part, there is nothing on record to show that the petitioner had any conspiracy as he is not a beneficiary of the loan amount.

Counsel for the respondent – CBI has further submitted that the trial Court has rightly dismissed the application under Section 227 of Cr.P.C. and further framed the charge against the petitioner. Counsel for the respondent has further could not show any document which is collected by the CBI during the investigation to primarily show the element of conspiracy between the petitioner and the principal borrower – Subhash Wadhwa.

However, it is not disputed that there is no tampering with the valuation report and the only allegation is that the inflated value has been given.

Counsel for the respondent – CBI also could not dispute that as per the Bank rules and norms, after the valuation report is submitted by an empaneled valuer, the Bank get report from the 2nd valuer and in case of any doubt even the report of a 3rd valuer is called, which is not called in the present case by the Allahabad Bank and only, thereafter, the legal opinion is sought with regard to verification of the documents and then after doing the physical verification by the senior bank officials, the loan is sanctioned as per the slab of the loan.

In reply, counsel for the petitioner has submitted that a perusal of the impugned order as well as the order framing charge, show that primary charge are against the co-accused that they have obtained Cash Credit Limit from the Allahabad Bank by showing the

forged documents and the valuation report of the petitioner is not termed as forged document and it is only termed as a document showing inflated rates.

Counsel for the petitioner has also submitted that while doing the valuation, number of facts are noticed including the nature of construction, quality of construction, year of construction as well as the location of the property its approach by public, proximity with hospitals, schools, bus-stands, etc., which varies as per the market value from time to time and the only evidence against the petitioner is that 03 years after the valuation report, prepared by the petitioner, some other valuer, while assessing the market value of the property has decreased it during that period and the report of the valuer in the year 2013 nowhere states that he has assess the value as in the year 2010 rather the value has been assessed as per the 2013 norms.

After hearing the counsel for the parties, I find merit in the present revision petition, for the following reasons:-

(a) The petitioner was not appointed as an empaneled valuer by the principal borrower – Subhash Wadhwa and rather he was on the panel of the Bank and was appointed/hired by the Bank to assess the valuation at the beginning of the process of sanctioning of the loan, therefore, there is nothing on record to show that the petitioner has any meeting of mind with the principal borrower/co-accused – Subhash Wadhwa, in giving any inflated value report.

(b) Even otherwise except the charge of

conspiracy, there is nothing on record that at any subsequent stage, the petitioner was involved by the Bank for the purpose of sanctioning of loan or that he was a beneficiary, in any manner. The petitioner gave his valuation report on 20.01.2010 whereas loan was sanctioned on 05.02.2010, after due verification by the Bank officials.

(c) There is nothing on record to show that the CBI has recorded any statement of the co-accused, who is the principal borrower, to show that he has paid any illegal gratification to the petitioner, in any manner for seeking an inflated valuation report and therefore, in the absence of any such evidence collected by the CBI, it cannot be held that the valuation report submitted by the petitioner is part of a criminal conspiracy with the other accused.

(d) The only evidence against the petitioner is that subsequent to his valuation report in the year 2010, (prior to sanction of loan), later on, in the year 2013 another valuer has assessed the value of 02 properties (after loan account was declared NPA), on a lower side.

However, nothing has come on record to show the value assessed in 2013 was made on the basis of market value in the year 2010 as it varies from time to time.

(e) It is the case of the CBI that the principal borrower – Subhash Wadhwa, on one hand has obtained Cash Credit Limit from Central Bank of India to the tune of Rs.1.25 crores and by preparing false documents

of takeover-cum-enhancement proposal, financial statements and capital infusion certificate, etc., he has further succeeded in obtaining Cash Credit Limit of Rs.4.60 crores from Allahabad Bank and in that process, the co-accused has committed offence under Sections 420, 468, 471 IPC.

(f) It is not the case of the CBI that the report of the petitioner is fabricated and therefore, the petitioner in the aid of Section 120-B IPC cannot be held liable for conspiracy for commission of offence under Sections 420, 468, 471 IPC.

(g) In the absence of any evidence, in the shape of a disclosure of any co-accused that any gratification was paid to the petitioner even the charge under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, is also not sustainable.

In view of the judgment of the Hon'ble Supreme Court in *K. Narayana Rao's case (supra)*, which is followed by other High Courts, I find that the trial Court has not decided the application under Section 227 of Cr.P.C. in correct perspective as there is no evidence on record against the petitioner even as per the reply filed by the CBI to an application under Section 227 of Cr.P.C., wherein the only allegation is that the petitioner has given an inflated valuation report without there being any corroborating disclosure statement of co-accused or any document to prove this fact.

Accordingly, this revision petition is allowed and the

impugned orders dated 18.02.2021 dismissing application for discharge under Section 227 Cr.P.C. as well as framing charge against the petitioner, are set-aside and the petitioner stands discharged.

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

02.11.2021
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No