* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 08.01.2021

% Pronounced on : 05.02.2021

\+ **CRL.REV.P. 323/2020**

ASHUGHOSH KUMAR NIRMAL

.....Petitioner

Through: Ms. Geeta Luthra, Sr. Adv. with Mr. Amit Singh Rathore, Mr. Varun Deewan, Ms. Reena Rathore, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION

....Respondent

Through: Mr. Anupam S Sharrma, SPP for CBI with Mr. Prakarsh Airan and Ms. Harpreet Kalsi, Advocates.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. By this order, I shall dispose of the present revision petition U/s 397 Cr.P.C R/w Section 401 Cr.P.C R/w Section 482 Cr.P.C. filed by the petitioner seeking setting aside of the impugned order on charge dated 23.11.2019 and the charge dated 21.12.2019, passed by Ld. Spl. Judge CBI, Rouse Avenue Courts, New Delhi.

2. In brief, it is stated that petitioner is a registered valuer and is running his sole proprietorship firm in the name and style of M/s Satguru Valuers. According to the prosecution, Raj Kumar Karanwal, is the Director of M/s Lancer Healthcare Pvt. Ltd. and proprietor of M/s R.S. Distributors and Manish Kumar Karanwal is the Director of M/s Lancer Healthcare Ltd. and proprietor of M/s Manish Kumar & Company. In the month of February 2013, Raj Kumar Karanwal met one Y.P. Singh, Chartered Accountant and there they discussed the matter of loan to Raj Kumar Karanwal from some banks. Sometime in the month of March, 2013 Raj Kumar Karanwal, Y.P. Singh and S.K. Verma discussed the matter of loan in the office of Raj Kumar Karanwal who informed them about his various CC Limits and deposits of his various properties title deeds with the banks.

3. The allegations in the charge sheet against the petitioner Ashugosh Nirmal, M/s Satguru Valuers, Delhi, on Panel Corporation Bank are that the property of Karanwal's were assessed by him vide valuation report No. SV/IP/CB/166/13 and SV/IP/CB/166/16 even before the actual application by Karanwal's was moved to Corporation Bank, Vasant Vihar, New Delhi. The petitioner claimed that he had prepared the valuation report on the asking of Corporation Bank, Branch Manager, Aali Gaon but the record shows that report was never deposited with Aali Gaon and was deposited in Vasant Vihar Branch of the bank. It is also alleged against the petitioner that the properties

valued for mortgage against combined loan for M/s Lancer Healthcare Pvt. Ltd., M/s Manish Kumar and company and M/s R.S. Distributors were Plot No. 1, 2, 3 and Nagar Nigam No. 4729, Village Nasarpur, Pargana Loni, Tehsil and District Ghaziabad UP on which Ruby Hotel and Banquet is constructed. It is alleged that M/s Satguru Valuers falsely exaggerated/inflated the value and valued the properties at Rs. 42,71,60,100/-. It is further alleged that another property Plot No. 1/18, First Floor, Kirti Enclave, Model Town, Tehsil & District Ghaziabad (flat) was also falsely exaggerated/inflated by the petitioner and he valued the same at Rs. 84,94,200/-. Therefore, it is alleged against the petitioner, who is the proprietor of M/s Satguru Valuers that he joined conspiracy with co-accused Raj Kumar Karanwal and others and facilitated him to take loan illegally by highly inflating the value of the properties offered by co-accused Raj Kumar Karanwal against the CorpVyapar OD Limit Loan in the name of M/s Lancer Healthcare Pvt. Ltd., M/s Manish Kumar & Co. and M/s R.S. Distributors, from Corporation Bank.

4. It is urged by the Ld. counsel for the petitioner that the charge is erroneous as the allegation of conspiracy is not supported by the statement of witnesses or the material filed alongwith the charge sheet. Ld. Sr. Counsel further urged that all the transactions are purely business transactions done through the bank accounts and there is nothing to suggest that the transactions were tainted in nature. Ld. Sr.

counsel for the petitioner further urged that the alleged valuation report No. SV/IP/CB/166/13 was never submitted by the petitioner in Vasant Vihar Branch, which is apparent from the said valuation report and it was submitted at Aali Gaon Branch of Corporation Bank, while the internal page No. 1 of each of valuation report shows that at the top right hand side of the valuation report Aali Gaon has been removed by use of fluid. Ld. Sr. counsel further urged that the other valuation report No. SV/IP/CB/166/16 does not even exist and the valuation report which has been filed on record by the respondent bears the number SV/IP/CB/168/13 pertains to Plot No. 1/8 First Floor, Kirti Enclave, Model Town, Tehsil & Distt. Ghaziabad, which shows that the investigation has been done in inept manner.

5. Ld. Sr. counsel for the petitioner has further argued that the alleged valuation reports on which the respondent is relying to show the involvement of the petitioner in the instant case, does not qualify as sufficient evidence as valuation report No. SV/IP/CB/166/13 & valuation report No. SV/IP/CB/168/13 are photocopies and charge cannot be framed on the basis of these documents and she place reliance upon ***"Srichand P. Hinduja & Others Vs. CBI"*** ILR (2005) II Delhi 111. She further argued that the two valuation reports i.e. valuation report No. SV/IP/CB/166/13 & valuation report No. SV/IP/CB/168/13 are completely missing in the loan file prepared by the branch which clearly shows that the valuation reports were never

relied upon by the branch level officials while sanctioning the loans. Ld. Sr. counsel further submitted that there is no material on record to show that any bill was raised by the petitioner with Vasant Vihar Branch which clearly shows that the reports were never submitted in Vasant Vihar Branch of Corporation Bank but the bill dated 15.03.13 raised with the Aali Gaon Branch by the petitioner is on record which shows that the valuation of the properties was done at the instance of Manager of Corporation Bank Aali Gaon Branch. She further argued that the authenticity of the bill dated 15.03.2013 raised with the Aali Gaon Branch remained unchallenged in the charge sheet.

6. She further argued that the valuation repots does not contain any false information which is quite apparent from the statement of witnesses relied upon by the respondent who did the valuation in the year 2017 and even their statements are contradictory to each other on the issue of fall in the property prices since, which shows that the down fall in the property prices is a variable figure and the valuation report is nothing but an opinion which differs from valuer to valuer. She further argued that the valuation report of PW 21 and PW 23 does not qualify as sufficient evidence for the purpose of framing the charge. She further argued that there is no evidence to show that the petitioner had any nexus with other co-accused in committing the alleged offence of cheating in conspiracy with the bank officials and borrower. She further argued that the valuation report submitted by the petitioner

satisfies the conditions as prescribed in the circular No. 828/2011 dated 08.12.2011 of the Corporation Bank.

7. On the other hand, it is submitted by the Ld. SPP for the respondent (CBI) that the investigation has revealed that the petitioner was one of the bank empanelled valuer and he alongwith other co-accused persons is a part of conspiracy to get sanctioned and disbursed CorpVyapar OD Limit Loan amounting to Rs. 27 Crores to M/s Lancer Healthcare Pvt. Ltd. and the petitioner alongwith other co-accused is a member of a larger conspiracy where the forged and fabricated documents were prepared of the firms/companies by inflating/exaggerating the financial records, tailor made to ensure sanction of desired loan of Rs. 27 Croes. He further argued that the petitioner who was the empanelled valuer submitted false, inflated/exaggerated valuation reports to facilitate loan to the borrower co-accused. He further argued that as a part of the loan procedure the branch had to obtain and submit the valuation report from the bank empanelled valuer and the valueer should give market value, registered value and distress value of the property. He further argued that the bank is to call for valuation report and the valuation report dated 15.03.2013 of the petitioner was accepted with the applications for loan by the Corporation Bank Vasant Vihar Branch, although the bank was not in receipt of any application for loan till that date and as such, there was no occasion for the bank to ask its empanelled valuer to submit the

valuation report. He further argued that the valuation reports were fabricated even prior to the submissions of the loan applications by inflating the value of the properties to be more than Rs. 43 Crores in order to sanction the loan illegally of the desired amount of Rs. 21 Crores, since as per rules of CorpVyapar Scheme, loan can be given only to the extent of 65% of the property rate/value.

8. He further argued that the investigation has revealed that the petitioner had done the value of the properties in respect of 3 loans and claimed that request for valuation was made by the then Branch Head, Corporation Bank Aali Gaon branch but there is no evidence in this regard. He further argued that there is no evidence that the valuation report was sent by Corporation Bank, Aali Gaon Branch to Vasant Vihar branch and a deliberate eraser of the name of the Branch in the report with white fluid further establish the culpability of the petitioner. He further argued that during investigation the properties were got valued and assessed by independent valuers, empanelled with the Corporation Bank which establishes that the properties were worth around Rs. 23-24 Crores only and the difference in the valuation done by the petitioner and the independent valuer is too much and even if there was a 4 years gap between the two valuation, the same cannot be justified.

9. Ld. A.S.J., vide impugned order dated 23.11.2019 framed the charges in the case. While framing the charge against the petitioner, the Ld Trial Court did so on the following reasons:

> "91. I have considered the contentions of Ld. counsel for accused No. 10. It is noted that accused No. 10, although stated that his report was not submitted to Vasant Vihar Branch of Corporation Bank, however, the valuation report is addressed to AGM/Senior Manager, Corporation Bank, Vasant Vihar, New Delhi. Further, there is nothing on record to show that Aali Gaon Branch of Corporation Bank asked for any such report from accused No. 10 for valuation of said properties of accused persons and also there is nothing on record to show that this report was sent by Aali Gaon Branch of Corporation Bank to Vasant Vihar Branch of Corporation Bank. There is nothing on record to show that Aali Gaon Branch made any payment to accused No. 10. As per prosecution the removal of word "Aali Gaon" with the help of fluid is done by accused. Even otherwise same hardly has any effect on the case of prosecution particularly when it is clear that the accused No. 10 has given exaggerated valuation of the properties to facilitate grant of loan to accused No. 3, 4 and 12 and that the said report is with regard to properties of aforesaid accused persons and was given in connection with term loan/CC Limit applied by the accused No. 3, 4 and 12. Further the date of the report is 15.03.2013 while applications for loan were filled on 19.03.2013 and 20.03.2013. The accused No. 10 has valued the property no. Plot No. 1, 2 and 3 Nagar Nigam No. 4729, Village Nasarpur Pargana, Loni, Tehsil & District Ghaziabad, UP to be Rs. 42,71,60,100/- while independent government approved valuer gave valuation of said property to be Rs. 21 Crore and further the

property Plot No. 1/8, First Floor, Kirti Envlave, Model Town Tehsil & Distt. Ghaziabad was valued at Rs. 84,94,200/- while the independent government approved valuer gave valuation of the said property to be Rs. 54.45 Lac. There is a huge difference in valuation amount and same is not justified. It is worthwhile recording that as per CorpVyapar Scheme loan can be given against property to the extent of 65% of valued property. The valuation of the property to the tune of Rs. 42,71,60,100/- justifies the loan amount of Rs. 27 Crore. It clearly indicate the reason for giving said false report by the accused No. 10. The accused No. 10 being approved vlauer in the list of Corporation Bank was bound to protect the interest of the bank. The accused No. 10 has given exaggerated report in favour of accused/borrower and thereby caused loss to the bank and there must have been corresponding gain to the accused persons. It has already been discussed that 5% of loan amount was settled as commission which was to be paid to accused persons. The valuation done by accused No. 10 and by independent approved valuer has too much difference and cannot be justified even if there is four years gap between the two valuations.

92. The accused No. 10 has given false valuation report and deceived the bank by misrepresenting the facts regarding value of property and caused bank to part with loan amount to accused No 3, 4 and 12 who are not otherwise entitled and thus caused loss to the bank. The aforesaid facts clearly shows that accused No. 10 conspired with other accused persons and gave incorrect valuation of the property to facilitate grant of loan to accused No. 3, 4 and 12. The judgment cited by accused does not help his case."

10. In ***"Amit Kapoor Vs. Ramesh Chander and Ors."*** MANU/SC/0746/2012 , the Supreme Court has observed as follows :

> 19. 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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> 1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.
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> 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.

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

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

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

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

7) The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

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.

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

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

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

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

13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility

and reliability of the documents or records but is an opinion formed prima facie.

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

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.

11. It is well settled law that at the stage of framing of charge, the court has power to shift and weigh the evidence for the limited purpose of finding out whether or not a prima-facie case against accused has been made out. When the material placed before the court discloses great suspicion against the accused which has not been properly explained, the court will be justified in framing charge. No roving inquiry into the pros and cons of the matter and evidence is not to be weighed as if a trial was being conducted. If on the basis of materials on record a court could come to the conclusion that commission of the offence is a probable consequence, a case of framing of charge exists.

12. To put it differently, if the courts were to think that the accused might have committed the offence it can frame a charge, though for conviction the conclusion is required to be that accused has committed the offence. At the stage of framing of a charge, probative value of the

materials on records cannot be gone into, the material brought on record by the prosecution has to be accepted as true at that stage. The truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged, nor any weight is to be attached to the probable defence of the accused. It is not obligatory for the judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not.

13. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at this stage of deciding the matter under Section 227 or under Section 228 of the Code. But at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. While deciding the question of framing of charge in a criminal case, the court is not to apply exactly the standard and test which it finally applies for determining the guilt or otherwise.

14. What is required to be seen is whether there is strong suspicion which may lead to the court to think that there is ground for presuming that the accused has committed an offence.

15. The allegations against the petitioner, who is stated to be one of the empanelled valuer of the Corporation Bank is that he prepared inflated valuation reports in regard to the properties offered for mortgage by the borrowers. When the respondent got the same properties valued from the independent valuers, there was a huge difference between the valuation given by the petitioner and those independent valuers.

16. It has been argued by the Ld. Sr. counsel for the petitioner that after a period of 4 years, the rates vairy and the report is based on the basis of opinion. Now in my opinion, it is not always that the value of the properties goes up after the passage of time. The property when one says has a variable price, it also include dip in the prices, so all these contentions as raised with regard to the opinion based reports of the valuers, is a matter of evidence.

17. The observations made by the Ld. Trial Court against the petitioner in the impugned order dated 23.11.2019 are all matter of evidence which cannot be decided unless and until the evidence is led in this case.

18. As far as the arguments of the Ld. Sr. counsel for the petitioner that the valuation reports are photocopies which cannot be relied upon, the Ld. Sr. counsel for the petitioner has relied upon *"Srichand P. Hinduja & Others Vs. CBI"* ILR (2005) II Delhi 111. But in my

opinion, this judgment is not applicable to the facts of the present case as in that case the original documents were not at all available with the CBI which is not the case here. In the present case, as per letter dated 18.12.2017 issued to Sh. A.S. Tariyal, Dy. SP. CBI by the Manager/Officer, Corporation Bank, Basant Lok, Vasant Vihar, New Delhi, the Original Valuation Report dated 15.03.2013 by M/s Satguru Valuers were available and submitted with DRT-I, New Delhi.

19. Therefore, in view of the discussions mentioned hereinabove, I find no infirmity in the impugned order on charge dated 23.11.2019 and the charge dated 21.12.2019 passed by the Ld. Trial Court, the same are therefore, upheld. Consequently, the revision petition is dismissed.

20. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

FEBRUARY 5, 2021
Sumant