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

Date of decision: 19th APRIL, 2022

IN THE MATTER OF:

\+ **CRL.REV.P. 42/2022 & CRL.M.A. 1284/2022 (Stay)**

SAMADHAN MANAGEMENT SERVICES PVT. LTD AND ANR.

..... Petitioner

Through Mr. Vinay Kumar Garg, Mr. Rajiv K. Garg and Mr. Rohan Garg, Advocates

versus

CENTRAL BUREAU OF INVESTIGATION

..... Respondent

Through Mr. Ripudaman Bhardwaj, SPP-CBI with Mr. Kushagra Kumar, Advocate

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition has been filed under Section filed under Section 397 Cr.P.C. read with Section 482 Cr.P.C. challenging the chargesheet dated 22.03.2019 filed by the Respondent herein under Sections 120-B of the Indian Penal Code, 1860 (*hereinafter,* "IPC") read with Section 420 IPC, Section 471 IPC, and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (*hereinafter,* "PC Act") as well as the Order on charge dated 27.10.2021 in C.C. 246 of 2019 passed by the Ld. Special Judge, Rouse Avenue District Court Complex, New Delhi.

2. The facts, in brief, leading up to the filing of the petition are as follows:

a) It is stated that an FIR dated 21.06.2017 had been registered on the basis of written complaint No. ZO/OR/CBI-STF/07/2017-18 dated 01.06.2017 received from one S.K. Mehta, Deputy General Manager, Corporation Bank (*hereinafter,* "the Bank"), that had been addressed to the Deputy Inspector General of Police, CBI, STF. New Delhi.

b) Allegations in the said complaint were that accused private person, along with public servants of the Bank, through its proprietorship firm M/s White Metals through its proprietor Sunny Kalra (*hereinafter,* "the borrower"), had defrauded the Bank, Vasant Kunj branch, to the tune of Rs. 4 crores issued to the said borrower as the same had not been utilised the credit facilities for the purpose for which it had been sanctioned under the Corp Vyapar Overdraft Loan of Rs. 7.6 crores.

c) It is stated that Sunny Kalra had gotten close to one Robin Davis, the then Branch Manager of the Bank's Vasant Kunj branch, and that through Davis, he met one A.R.K. Prasad, DGM, and other Zonal Officers, and entered into a criminal conspiracy with them to secure the loan by rendering false documents and information. Robin Davis, while holding a post of Senior Manager at Retail Hub, where all proposals in the retail loan category would be examined, processed and sanctioned, would guide the Due Diligence Agencies in verifying loan proposal papers of borrowers and writing verification reports (Due Diligence Reports).

d) It is stated that M/s Samadhan Management Services Private

Ltd. (Petitioner No.1 herein) through its authorized signatory, Mr. Amit Aggarwal (Petitioner No. 2 herein) had been engaged by the Bank as a Due Diligence Agency since 19.05.2011. The Petitioner issued a positive Due Diligence Report to Robin Davis with respect to the borrower, however, the same was replete with infirmities as it was found that no proper verification had taken place.

e) The allegations against the Petitioner firm are that the dishonest verifications conducted by the Petitioner at the behest of Bank personnel and the positive report issued thereafter allowed the borrower to receive an undeserving loan. Moreover, Petitioner No.2, the authorized signatory, had overseen the entirety of the verifications and was culpable in the conspiracy to ensure that Sunny Kalra and his proprietorship firm obtained the loan through fraudulent means as well.

f) With the aforementioned findings, chargesheet dated 22.03.2019 was filed without the arrest of the Petitioners, and *vide* Order dated 27.10.2021, charges were framed against the Petitioner. Aggrieved by the same, the Petitioners have now approached this Court by way of the instant revision petition.

3. Mr. Vinay Kumar Garg, learned Counsel appearing for the Petitioner, submits that the Petitioner firm had been in the service as a Due Diligence Agency at the Bank since 2011, with the Credit Consultancy Service Agreement being renewed regularly on account of the work being done by the Petitioner firm. He further submits that since 2011, the Petitioner firm has executed over 6000 due diligence activities in the span of almost four

years, with no infirmities found in the same.

4. Mr. Garg, the learned Counsel for the Petitioner, states that the standard verification process that is to be conducted by the Petitioner firm is confined to verification of the documents that are provided to the Bank by the borrowers, and that there is no necessity on the part of the Petitioner to verify the source of the said documents. He submits that the officials at the Bank had purposely supplied false documents to the Petitioner firm to verify and that despite having access to the borrower's bank for ascertaining correctness of the information supplied, the Bank officials failed to do so. He also brings to the notice of this Court the fact that the collateral property provided by the borrower was overvalued and that the admitted value of the same was Rs. 3.91 crores. He states that, as per RBI guidelines, the Bank could not have sanctioned a loan facility of Rs. 7.62 crores against the said property.

5. Mr. Garg states that Petitioner No.2 was merely a signatory and had no role to play in the conduct of investigation or in the preparation of the Due Diligence Report. He further states that Petitioner No.2 has been solely been made vicariously liable on the basis of his designation as a Manager/Authorized Signatory and that this goes against settled law. He further submits that the sanctioning of the loan and its recommendation for approval had been done by the Bank on 18.10.2013 and 21.10.2013 before due diligence was conducted by the Petitioner firm.

6. The learned Counsel for the Petitioners submits that the Ld. Trial Court *vide* its impugned Order 27.10.2021 failed to appreciate that the charges against the Petitioner firm pertaining to conspiracy and forging of documents is not made out, and that there was no unjust enrichment on

behalf of the Petitioner firm. Mr. Garg also goes on to state that the Ld. Trial Court did not take into consideration the fact that the Petitioner firm was not in charge of the documents that formed the basis of the loan sanction granted to the borrower M/s White Metals, and was only provided details of Sunny Kalra and his wife. He also states that one of the main accused, Robin Davis, was not granted sanction for prosecution as well, despite orchestrating the alleged fraud. He states that no charges are made out against the Petitioner herein, and therefore, the impugned Order as well as the chargesheet *qua* the Petitioners are liable to be set aside.

7. Mr. Ripudaman Bhardwaj, learned SPP appearing for the CBI, submits that the Ld. Trial Court made no error in framing charges against the Petitioners, and that the trial cannot be thwarted at this stage as the matter relates to loss of public money and it is important to ascertain the role of the Petitioners in order to unearth the extent of the conspiracy. He submits that the impugned Order on framing of charges has considered the material on record against the Petitioners and has proceeded to framing of charges only after finding sufficient material to do so.

8. The learned SPP further submits that the investigation which led to the filing of the chargesheet against the Petitioners indicates that the Petitioners were complicit in the loan being disbursed to the accused borrowers despite the fraudulent documents provided by them. He states that the activity as per the service agreement between the Bank and the Petitioner firm showcases that the Petitioner deliberately failed to perform due verification of the documents provided on behalf of the borrower, and that this indicates the complicity of the Petitioner in enabling the loan facility being extended to the accused borrowers.

9. Heard Mr. Vinay Kumar Garg, learned Counsel for the Petitioner, Mr. Ripudaman Bhardwaj, learned SPP for the CBI, and perused the material on record.

10. A perusal of the chargesheet reveals that the proprietorship firm (borrower), M/s White Metals, was shown to be doing business of iron, steel and construction equipment, and was sanctioned an overdraft/CC limit of Rs. 7.6 crores, out of which Rs. 4 crores, had been disbursed to the firm on the basis of allegedly false documents that had been submitted by using exaggerated valuation reports. The chargesheet states that the proprietor of the firm, Mr. Sunny Kalra, had gotten in touch with Mr. Robin Davis, the then Branch Manager of the Bank, much before applying for the loan. Various accounts of Kalra's family members were opened at the Bank and KYC documents of the family members were applied, and ultimately, these KYC documents were used to open fake shell companies in order to avail huge loans by way of cheating banks.

11. The chargesheet states that the processing of credit proposal is divided into three stages, i.e. booking of the proposal, processing of the proposal, and sanction of the proposal. A Due Diligence Agency is engaged for the purpose of verification of loan proposal documents. In the instant case, Mr. Robin Davis obtained an independent positive due diligence report from the Petitioner which was forwarded by the branch of the Bank to the Zonal Office *vide* email dated 27.10.2013. As per the credit consultancy service agreement executed on 09.05.2012 between the Petitioner and the Bank, the following activities were covered under the due diligence exercise:

Sl.No.	Particulars
1.	Telephone Verification of Residence/Office of Applicant, co-applicant & Guarantor.
2.	Field Verification of Residence/Office of Applicant, co-applicant & Guarantor.
3.	Verification of the Vendors of the Property/Site/Flat/Builder or the property offered as Security and site verification.
4.	Income Tax Returns verification with Income Tax Office.
5.	Salary slip/certificate verification of the applicant/co-applicant.
6.	Balance sheet/Auditor's Report verification.
7.	Trade license and other verifications (Telephone Bill/Electricity Bill/Office identity/Voters Card/Driving License.)
8.	Bank Account Verification.

12. The chargesheet states that the investigation revealed that the main Director, Mr. Rajesh Goyal, with the help of Petitioner No.2, had facilitated the fraud loan proposal without verifying the vital mandatory areas and fields. Further, one Mr. Vikas Gupta, a field executive, merely conducted field verification of the given addresses and provided oral information for the preparation of the report at the behest of Rajesh Goyal and Petitioner No.2. Vikas Gupta revealed that both Goyal and Petitioner No.2 prepared the typed report, signed it and forwarded it to the Bank. Investigation further revealed that the Petitioner firm neither verified the bank account statement of the borrower with the existing banker nor verified the ITRs and balance sheet with the Income Tax Office or the CA. The guidelines of the Bank stipulated in HO Circular No. 435/2013 dated 29.07.2013 which directed for

verification of various aspects were deliberately bypassed by the Petitioner firm.

13. The roles of the Petitioner firm through its Director Rajesh Goyal, Rajesh Goyal and Petitioner No.2 have been carved out in the chargesheet as follows:

> *"(2) M/s Samadhan Management Services Pvt. Ltd (Due Diligence Agency) through its Director Rajesh Goyal— (A-3) Sh. Rajesh Goyal signed the memorandum with the bank for performing DDA work. It is established that he has dishonestly given false DDA report to illegally support the bogus, fraud and non-deserving client to get huge loan from the bank. The vital parameters of the proposal and necessary documents which. were to be meticulously checked and verified were not at all diligently done by the company in order to extend undue benefit to the fraud and undeserving party. Hence, he played a role of the facilitator In the loan fraud.*
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> *****
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> *(7) Sh Rajesh Kumar Goval, (Director M/s Samadhan Management Services Pvt Ltd),(A,9) the oral and documentary evidence prove that Sh Rajesh Goyal being director of the Due Diligence Company facilitated the corrupt public servants of the banks and the accused borrower while giving false and incorrect Due Diligence report defeating the very purpose of verification of the loan proposal by independent outer agency which helped the undeserving borrower to get huge loan from the bank as a result a huge loss to the bank and government exchequer is caused. He did not test check the financials and other vital details of the bogus borrower and on the contrary gave positive report with a recommendation to release the loan to the borrower. He failed to perform his duties of the outsourcing agency given by the Bank transparently as*

evident in the agreement signed by him with the bank. He dishonestly with a clear motive to facilitate the bogus financial and other documents of the private client extended favour by way of giving positive report to the Bank about the client and in this way dishonestly helped the undeserving fraud borrower to get huge loan. His plea that he was having the Retail Hub proforma to give the report as a precedence does not have any justified logic as it was his utmost duty to check and verify each and every documents of the loan proposal before giving any favorable report. Even as per the retail hub proforma, the vital point of verification of the Bank statement from the existing bank, balance sheets of the clients through the concerned Chartered Accountant and other details of office, residence and go down etc were not at all checked and verified by the agency properly. It is clear from the report that it was pre-decided to give a positive report for the client which was meant just to complete the mandatory paper formality to give loan amount to the undeserving party. Accused Rajesh Goyal has played the role of the facilitator in the instance and as he instead of obstructing the Illegal acts and finding deficiencies in the loan documents helped the accused borrower in their activities to make them successful in their conspiracy and avail huge loan on bogus and non-existing papers. There is ample evidence available on record to prove criminal role played by him in this instance.

<u>(A-8) Amit Aggarwal, Manager/Authorised signatory, M/s Samadhan Management Services Ltd (A-8)</u>:- He was working as Manager and Authorized signatory of the Due Diligence Agency i.e. M/s Samadhan Management Services Pvt. Ltd. As an employee of the company it was his duty to check the vital information and documents of the loan proposal on the basis of the guidelines of the agreement signed between the bank

and the company. He instead of performing his duties diligently supported his owner by way of signing positive report in favour of the accused borrower which helped him to get undue huge loan on the basis of forged and fake documents. He did not check and verify the financial documents of the client and instead facilitated the corrupt bankers and borrower by illegally supporting his company's Director in giving and signing a positive report on behalf of the company without checking the vital documents of the client against the signed agreement by the company with the bank: The sole motive of the empanelment of the outer agency is defeated in this instance when the third party/outer agency also entered into criminal conspiracy with the corrupt bankers and supported the illegal activities which resulted in huge financial loss to the exchequer and undue gain to the private party. He signed the incorrect report without verifying the records to extend undue help although he was bound to examine the documents of the proposal before issuing the report. He dishonestly facilitated the loan proposal by way of Issuing favoring report in support of the client which gave clear way to the borrower and corrupt bankers to consider the undeserving loan proposal. Therels enough evidence available on record to prove his lapses."

14. The Supreme Court has time and again dealt with the aspects that must be borne in mind while considering framing of charges under Section 228 Cr.P.C. or discharge under Section 227 Cr.P.C. In Amit Kapoor v. Ramesh Chander, **(2012) 9 SCC 460**, the Supreme Court noted the following:

*" **17**. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of*

the Code. Under both these provisions, the court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

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19. *At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well-settled law laid down by this Court in State of Bihar v. Ramesh Singh [(1977) 4 SCC 39 : 1977 SCC (Cri) 533] : (SCC pp. 41-42, para 4)*

"4. Under Section 226 of the Code while opening

the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If 'the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing', as enjoined by Section 227. If, on the other hand, 'the Judge is of opinion that there is ground for presuming that the accused has committed an offence which— ... (b) is exclusively triable by the court, he shall frame in writing a charge against the accused', as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight 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. 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 the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or *whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. 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. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.""*

15. It was categorically noted by the Supreme Court that a Judge was not a mere post office that was to frame the charge at the behest of the prosecution, but had to sift through the material on record and exercise his judicial mind to the facts of the case before arriving at the conclusion that there was sufficient ground for proceeding against the accused. In P. Vijayan v. State of Kerala, **(2010) 2 SCC 398**, the Supreme Court observed as under:

> *"**10**. Before considering the merits of the claim of both the parties, it is useful to refer to Section 227 of the Code of Criminal Procedure, 1973, which reads as under:*
>
> > *"227. Discharge.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."*
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> *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. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities*

> *which is really the function of the court, after the trial starts.*
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> ***11**. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."*

16. Therefore, at the stage of framing of charges, the Court possesses the power to sift and weigh the evidence for the limited purpose of ascertaining as to whether or not a *prima facie* case has been made out against the accused. The Court must exercise its judicial mind and consider the material placed before it comprehensively before arriving at the conclusion that the material placed before it satisfies the ingredients of the offence that has been alleged to have been committed by the accused. If the Court finds that the material on record does not make out any offence, the Court has the liberty to discharge the accused from being prosecuted under the said offence.

17. In the instant case, the Petitioners have been charged with offences under Sections 120-B read with 420, 471 IPC, and Section 13(2) read with Section 13(1)(d) of the P.C. Act. The provisions under the IPC brought against the Petitioners stipulate that the Petitioner committed the act of cheating and fraudulent/dishonestly used as genuine certain documents of whose falsity they were aware. The Petitioners have also been charged under the P.C. Act for abusing their position as a public servant in order to obtain a pecuniary advantage for another person without any public interest and

thereby committing criminal misconduct.

18. As per the investigation stipulated in the impugned Chargesheet 22.03.2019, the Petitioners assumed a position of power as a Due Diligence Agency which could be wielded to recommend sanction for loan proposals. The credit consultancy service agreement executed between the Petitioner firm and the Bank delineates the exact functions that were to be performed by the Petitioner firm and the HO Circular No. 435/2013 dated 29.07.2013 categorically notes that the Due Diligence Agency must visit the bank/branch to ascertain whether the bank account of the borrower is actually in their name and whether the statement provided is genuine. The chargesheet states that these functions were deliberately left unattended by the Petitioner firm and a positive report was rendered nonetheless which benefited the accused borrower.

19. In view of the above, being a Due Diligence Agency, the Petitioner firm cannot resort to the defence that the documents provided by the Bank itself were fraudulent in nature as it was the duty of the Petitioner firm to ascertain whether the documents were genuine or not as well as to conduct field verifications. Furthermore, the aspect of non-sanction for prosecution of Robin Davis is immaterial to the Petitioner firm's case as the roles of the two accused stand on different footing and the Petitioner firm has evidently faltered in performing its duty.

20. The scope of a revision petition under Section 397/401 Cr.P.C. read with Section 482 Cr.P.C. has been succinctly explained in <u>Amit Kapoor v. Ramesh Chander</u> (supra) wherein the Supreme Court has noted that revisional jurisdiction must only be invoked when the decision that has been challenged is grossly erroneous, there is no compliance with the provisions,

the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.

21. A perusal of the impugned Order dated 27.10.2021 wherein the Ld. Trial Court has framed charges against the Petitioners under Sections Sections 120-B read with 420, 471 IPC, and Section 13(2) read with Section 13(1)(d) of the P.C. Act indicates to this Court that the Ld. Trial Court has duly sifted through the material before it and found sufficient ground to proceed against the Petitioner. Charges are to be framed on the basis of strong suspicion and a detailed appreciation of evidence is not required at the stage of framing of charges. This Court finds that there is a strong possibility of the Petitioners having a role to play in the facilitation and sanction of the loan proposal to the accused borrower on the basis of fraudulent documents. The Ld. Trial Court has painstakingly waded through the material and taken all the submissions into account before arriving at its conclusion. There is no legal infirmity or lack of application of judicial mind in the impugned Order dated 27.10.2021 or the Chargesheet dated 22.03.2019 that warrants the interference of this Court and, therefore, this Court does not deem it fit to exercise its jurisdiction under Sections 397 Cr.P.C. read with Section 482 Cr.P.C. to set the same aside.

22. In light of the above observations, the instant petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J.

APRIL 19, 2022
Rahul