IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.11.2022
PRONOUNCED ON : 24.05.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.18455 of 2022 and
Crl.M.P.No.12191 of 20221
and
Crl.R.C.Nos.1340 & 1504 of 2022

Baljit Kaur ... Petitioner/A4 in Crl.O.P.No.18455 of 2022
Sandeep Maloo ... Petitioner/A6 in Crl.R.C.No.1340 of 2022
Ritesh Burad ... Petitioner/A7 in Crl.R.C.No.1504 of 2022

Vs.

State rep by
The Central Bureau of Investigation,
EOW, Chennai. ... Respondent in Crl.O.P.No.18455 of 2022

State Rep. by
Additional Superintendent of Police,
Central Bureau of Investigation,
EOW, Chennai. ... Respondent in Crl.R.C.No.1340 of 2022

State Represented by
The Inspector of Police,
Central Bureau of Investigation,
EOW, Chennai. ... Respondent in Crl.R.C.No.1504 of 2022

PRAYER in Crl.O.P.No.18455 of 2022: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.5231/2017 pending on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai and quash the same.

PRAYER in Crl.R.C.No.1340 of 2022: Criminal Revision Case is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order dated 4.8.2022 passed in Crl.M.P.No.2530 of 2017 in C.C.No.5231 of 2017 pending on the file of Addl. Chief Metropolitan Magistrate, Egmore, Chennai – 600008 and discharge the petitioner from the above calender case.

PRAYER in Crl.R.C.No.1504 of 2022: Criminal Revision Case is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the Order in Crl.M.P.No.22468 of 2022 in C.C.No.5231/2017 dated 06.09.2022, on the file of the Learned Addl. Chief Metropolitan Magistrate, Egmore, Chennai – 600008.

For Petitioners	:	Mr.K.P.Anantha Krishna in Crl.O.P.No.18455 of 2022 Mr.B.Sathish Sundar in Crl.R.C.No.1340 of 2022 Mr.R.Vijayaraghavan in Crl.R.C.No.1504 of 2022
For Respondent	:	Mr.K.Srinivasan, Special Public Prosecutor for CBI Cases in all petitions.

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COMMON ORDER

Crl.O.P.No.18455 of 2022 filed by the petitioner/A4 to quash the proceedings in C.C.No.5231 of 2017, pending on the file of the Additional Chief Metropolitan Magistrate Court, Egmore, Chennai.

2.Crl.R.C.Nos.1340 & 1504 of 2022 are filed by the petitioners/A6 & A7 to set aside the orders, dated 04.08.2022 & 06.09.2022, made in Crl.M.P.Nos.2530 of 2017 & 22468 of 2022 in C.C.No.5231 of 2017 by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai.

3.Since all these petitions are arising out of C.C.No.5231 of 2017, the issue raised are similar and there are common contentions, hence, this Court decides to dispose of these petitions by way of Common Order.

4.For the sake of convenience and clarity, the petitioners are referred to as Accused as per their ranking in the charge sheet in C.C.No.5231 of 2017.

5.The gist of the case is as follows:-

(i)The respondent, namely, Central Bureau of Investigation, Economic Offence Wing, Chennai, registered case on 13.11.2014 in RC 10E/2014/CBI/EOW/Chennai against A1 to A7. A1 is M/s.PCH Agencies Private Limited, Hyderabad and A2 is M/s.PCH Lifestyle Private Limited, Hyderabad. Both A1 and A2 are registered companies with Registrar of

Companies, Hyderabad. A3-Balvinder Singh and A4-Baljit Kaur are the Managing Director and Director of A1 and A2 and they are the guarantors for the Cash Credit Facilities obtained by A1 and A2. A5-Bhavesh R.Vithlani is a practising Chartered Accountant at Hyderabad, A6-Sandeep Maloo & A7-Ritesh R.Burad are the practising Chartered Accountants at Mumbai, they facilitated the fraud and got benefited.

(ii)A1 intended to avail cash credit facilities of Rs.10 Crores from Punjab and Sind Bank, George Town Branch, Chennai to meet the working capital needs for A1. Hence, A3 and A4, the Promoter/Directors, Key Managerial Personnels of A1, submitted loan application, dated 14.11.2009 to the Manager Loan, Punjab and Sind Bank, George Town, Branch, Chennai seeking for the sanction of Cash Credit facilities of Rs.10 Crores. The said loan application was processed by the branch office of Punjab and Sind Bank George Town Branch, Chennai and the Chief General Manager, Punjab and Sind Bank, Head Office at New Delhi, sanctioned Cash Credit facilities of Rs.10 Crores to A1 vide Sanction No.CGM/16/2010-11, dated 17.05.2010. After execution of loan documents and invoking personal guarantee of A3 and A4 on 22.07.2010, the branch opened Cash Credit A/c.No.1125 in the name of A1 and allowed the borrowers to utilize the Cash Credit facilities from 18.09.2010.

(iii)Similarly, A2 intended to avail cash credit facilities of Rs.10 Crores from Punjab and Sind Bank, George Town Branch, Chennai to meet the working capital needs for A1. Hence, A3 and A4 who are the Promoter/Directors, Key Managerial Personnels of A2, submitted loan application, dated 15.02.2010 to the Chief Manager, Punjab and Sind Bank, George Town, Branch, Chennai, seeking sanction for Credit facilities of Rs.10 Crores. The said loan application, processed by Punjab and Sind Bank, George Town Branch, Chennai and the Chief General Manager, Punjab and Sind Bank, Head Office at New Delhi, sanctioned Cash Credit facilities of Rs.10 Crores to A1 vide Sanction No.CGM/45/2010-11, dated 17.08.2010. After execution of loan documents and invoking personal guarantee of A3 and A4, On 22.09.2010, the branch opened Cash Credit A/c No.1126 in the name of A1 and allowed the borrowers to utilize the Cash Credit facilities from 03.01.2010.

(iv)A1 to A4 entered into criminal conspiracy with A5 to A7 in the matter of availing Cash Credit Facilities from Punjab and Sind Bank, George Town Branch, Chennai. In furtherance of the above said criminal conspiracy, with dishonest and fraudulent intention to cheat the bank, A3 and A4 submitted documents like appraisal note, dated 18.08.2009 of Canara Bank, Somajiguda Branch, Hyderabad for Rs.10 Crores, Project Report, Certificate of Incorporation, Provisional Balance Sheet as on 30.09.2009 of M/s.PCH Retial Limited signed by A3 and A4, CMA data for assessment of working capital requirement for M/s.PCH Agencies Private Limited, Income Tax Returns for assessment year 2007-08, 2008-09 and 2009-10 of M/s.PCH Retail Limited as well as A3 and A4, Net Worth Statements of A3 for Rs.3,731.23/- and A4 for Rs.1,410.07/- and Chartered Accountant Certification in order to obtain the above said loans. In fact, the borrowers did not have much of business and had majorly transacted with fictitious firms/companies opened only for doing, financial transaction for commission and whose line of activities were of different in nature from the activities of A1 engaged in wholesale and distribution of Crockery Electronics etc. Further, the business transactions prior to the financial year 2009-10 in the name of groups companies found to be false as, A3 and A4 shown bogus sale turn over by transferring the fund from loan accounts to shell firms/companies, generating the sale/purchase invoice between the firms/companies to accommodate fund transfers and adjustments in their books of accounts of various companies. A3 and A4 managed to build up strong financial statements only with an intention to raise funds from banks and financial institutions without doing any genuine business and thereby to cheat the bank, to gain wrongful in their favour. The Punjab and Sind Bank had sanctioned the Cash Credit facilities of Rs.10 Crores to A1 based upon the above documents submitted by A3 and A4, and believing to be a genuine business. A1 to A4 made to believe the bank that the above documents were genuine and they were running good business knowing fully well that the above documents are not genuine and they did not have much business as projected by them.

(v)A1 to A4 entered into criminal conspiracy with A5 to A7 in the matter of availing Cash Credit Facility from Punjab and Sind Bank, George Town Branch, Chennai. In furtherance of the above said criminal conspiracy, with dishonest and fraudulent intention to cheat the bank, A3 and A4 had submitted false and fabricated documents like Certificate of

Incorporation, Provisional Balance Sheet as on 30.01.2010 of M/s.PCH Lifestyle Private Limited signed A3, Income Tax Returns for assessment year 2007-08, 2008-09 and 2009-10 of A3 and A4, Net Worth Statements of A3 for Rs.3,731.23/- and A4 for Rs.1,410.07/- Project Report, Sales Projections in order to obtain the above said loans. In fact, the borrowers did not have much of business and had majorly transacted with fictitious firms/companies opened only for financial transaction for commission whose line of activities were of different in nature from the activities of A2 engaged in wholesale and distribution of ready garments etc. Further, the business transactions prior to financial year 2009-10 in the name of groups companies found to be false as A3 and A4 had shown bogus sale turn over by transferring the fund from loan accounts to shell firms/companies, generating the sale/purchase invoice between the firms/companies to accommodate fund transfers and adjustments in their books of accounts of various companies. A3 and A4 managed to build up strong financial statements only with an intention to raise fund from banks and financial Institutions without doing any genuine business and thereby to cheat the bank, to gain wrongful in their favour. The Punjab and Sind Bank had sanctioned the Cash Cash facilities of Rs.10 Crores to A2 based upon the above documents submitted by A3 and

A4 by believing that they had genuine business. A1 to A4 made believe the bank that the above documents were genuine and they are running good business knowing fully well that the above documents are not genuine and they did not have much as projected by them.

(vi)The transactions during the period from 18.09.2010 to 30.06.2012 in the Cash Credit A/c No.1125 of A1 held with the Punjab and Sind Bank, George Town Branch, Chennal shows that A3 and A4 had requested the branch to disburse the loan amount in favour of different fictitious firm/companies at Mumbai, Hyderabad. The disbursements were made at the request of A3 in favour of M/s.Fight Trading Private Limited, M/s.Preet Mercantile Private Limited, M/s.Doar Trading Private Limited, M/s.Casper Enterprises Private Limited, M/s.Vishwa Agencies, M/s.Subhankar Delcomm Private Limited, M/s.Vardhaman Enterprises, Ms.Authentic Enterprises, M/s.Polaris Sales Agencies Private Limited, M/s.Candy Home Appliances & Solutions Private Limited, M/s.Shreeji Corporation, etc., after submission of written requests by the borrowers from time to time who opened the above firms/companies only for doing financial transactions without conducting business. Subsequently, the A3 and A4 had also transferred a huge amount to different firms/companies during the relevant period. In fact the above companies did not supply any goods to A1 company at any point of time. A3 and A4 had falsely shown as their companies have business dealing with the above said firms/companies only with an intention to rotate the funds and get back the funds transferred by them from the Cash Credit account to their companies account held at various banks. By the above acts A3 & A4 had diverted the entire Cast Credit facilities sanctioned to them, without doing any genuine trade. Further, there were several credits into the account of A1 company during the relevant period from different firms/companies namely Ms.Nanshi Mercantile Private Limited, M/s.Linux Sales Agencies Private Limited, M/s.Part Enterprises, M/s.Ashtavinayak Sales Agency, M/s.Blueline Enterprises, M/s.Subhdhan Pratisthan Private Limited, M/s.Jain Trading Company, M/s.Vani Enterprises, M/s.Pundit Business Private Limited, M/s.Nucleus Home Appliances, M/s.Shree Balaji Enterprises, M/s.Virat Corporation, M/s.Mahi Sales Private Limited which shows that A3 & A4 managed to get back the funds transferred to other fictitious firms/companies from Cash Credit account of A1 and utilized the same for their own personal use.

(vii)The transactions during the period from 03.01.2011 to 30.06.2012 in the Cash Credit A/c No.1126 of A1 held with the Punjab and Sind Bank, George Town Branch, Chennai shows that A3 and A4 had requested the branch to disburse the loan amount in favour of different fictitious firm/companies Mumbai, Hyderabad. The disbursements were made at the request of the borrowers in favour of M/s.Happy Collections Private Limited, M/s.Santrangi Textile Company, M/s.S.B.Marketing, M/s.Aqua Trading Company, M/s.Orbit Corporation, M/s.Cand Home Appliances & Solutions Private Limited, M/s.Nakoda Trading Company, M/s.Malvika Traders, M/s.Shree Ganesh Traders, etc., after submission of written requests by the borrowers from time to time who opened the above firms/companies only for doing financial transactions without conducting business. Subsequently, A3 & A4 had also transferred a huge amount to different firms/companies during the relevant period. In fact the above companies did not supply any goods to A2 company at any point of time. A3 & A4 had falsely shown as their companies have business dealing with the above said firms/companies only with an intention to rotate the funds and get back the funds transferred by them from the Cash Credit account to their companies account held in various banks. By the above acts, A3 & A4 had diverted the entire Cash Credit facilities sanctioned to them, without doing any genuine trade. Further, there were several credits Into the account of A2 company during the relevant period from different firms/companies namely M/s.Manjeera Marketing, M/s.Arihant Corporation, M/s.Happy Collections Private Limited, M/s.Crystal Corporation, M/s.Nucleus Home Appliances Private Limited, M/s.Dhanlaxmi Trading Company, M/s.Simplex Traders etc., which shows that A3 & A4 managed to get back the funds transferred to other fictitious firms/companies from Cash Credit account of A2 and utilized the same for their own personal use. Ultimately the A3 & A4 failed to repay the Cash Credit facilities availed by them in the name of A1 and A2 and caused a wrongful financial loss of Rs.22.15 as on 31.07.2014 including interest to Punjab and Sind Bank, George Town Branch, Chennai and corresponding wrongful gain to themselves.

(viii)A5 is the Chartered Accountant & Partner of M/s.B.Vithlani and Company, Hyderabad, also an Auditor to A2 since incorporation. In furtherance of the above said criminal conspiracy dishonestly and fraudulently had floated various fictitious firms and companies at Hyderabad in the names of his relatives and others. During 2009-10, he had floated firms/companies namely Ms.C.B.Electronics, M/s.Ram Agencies, M/s.Shreeji Enterprises, M/s.Sal Ram Distributors, M/s.Maruthi Traders, M/s.Tulsi Electronics, M/s.Parth Enterprises, M/s.Cholera Corporation, M/s. Vishwa Agencies, M/s.Puna Enterprises, M/s.Ramesh Agencies, M/s.S.B.Marketing, M/s. Manjeera Marketing, M/s.Meher Marketing, M/s.Candy Home Appliances & Solutions Private Limited, M/s.Treasure Home Requirements Private Limited, M/s.Nucleus Home Appliances Private Limited, M/s.Spark Home Appliances Private Limited, M/s.Versant Home Appliances Private Limited etc., in order to facilitate transfer of loan funds availed by A3 and A4 from various banks to the above firms and companies. He obtained VAT Registrations for the above firms/companies from Commercial Tax Departments and Registrar of Companies, Hyderabad inspite of the fact the above firms/companies were fictitious and not doing genuine trade. He utilized the service of his employees Shri.Chandan R.Baradia, Shri. Mohd Arshad, Shri.Puna Aravind for doing financial transactions in the bank accounts in the names of fictitious firms/companies opened by him only for the purpose of rotating the funds of A1 company and its groups. He also instructed his client's namely Shri.Satish Ahuja, Proprietor of M/s/Ekta Builders, Shri.Rajnikant Lalji Tanna, Proprietor of M/s.Rajnikant Lalji Tanna and Shri.Mohd Islamia, Proprietor of M/s.Isla a Cloth Store for introducing the accounts of M/s.Shreejl Enterprises with State Bank of Indore, Abids Branch, Hyderabad, M/s.Cholera Corporation with Bank of India, Bank Street, Hyderabad and M/s.Puna Enterprises with Canara Bank, Abids Branch, Hyderabad which were are all non-trading firms. Accordingly, they have introduced the above firms to the banks.

(ix)A6 is a Chartered Accountant in Mumbai & Managing Director of M/s.Mangal Credit & Fincorp Limited, Mumbai, in pursuance of the above criminal conspiracy, dishonestly and fraudulently had first used the accounts of his friend Shri.Praveen Kumar Jain engaged in diamond business at Mumbai as well as his relative business accounts for rotation of funds of A1 and A2 and group accounts for commission. Subsequently, A6 requested his friend Shri.Praveen Jain to introduce some more accounts for his business and agreed to pay commissions to the Proprietors/Directors introduced by Shri.Praveen Kumar Jain. Accordingly, Shri.Praveen Kumar Jain introduced his friends Shri.Chandra Prakash, Shri.Dilip Kumar and Shri.Nilesh Navneet Rai Mehta to Shri.Sandeep Maloo who agreed to pay 0.15% commission. Thereafter, Shri.Chandra Prakash introduced Shri.Narendra Dilip Khatri, Proprietor of M/s. Vani Enterprises, Shri.Dilip Kumar introduced Shri.Ramesh Kumar Bhanwarial, Proprietor of M/s.Vardhaman Enterprises, and Shri.Nilesh Navneet Rai Mehta his own firm account in the name of M/s.Borny Enterprises and also introduced, M/s.Pramod S.Churiwala, Proprietor of M/s.Shree Balaji Enterprises, Shri.Shailesh Pandey, Proprietor of M/s. Virat Corporation and Shri.Soneji Bhargav D, Proprietor of M/s.Shreeji Corporation. A6 knowingly fully well that the above firms are non trading entities had utilized the bank accounts of said firms held with ING Vysya Bank at Mumbai various banks for routing the loan amount of A1 and M/s.PCH Lifestyle Pvt Ltd and diverted the funds to the companies and personal account of A3 & A4 after getting commission for the same knowing full well that the above firms were only name sake firms without having genuine business transactions.

(x)A7 is a Chartered Accountant in Mumbai had in furtherance of the above said criminal conspiracy had floated various Private Limited Companies at Mumbai in the names of his employees and others for the purpose of only fund transactions without any business. Further, A7 obtained PAN card In the names of his employees and made believe the employees that he is insisting to open bank accounts to the sake of paying salaries to them. Since Shri.Om Prakash Sharma and Shri.Rajendra Bhimarajaka were trading agents for commission they knew that A7 had few companies under his control, they approached A7 proposed him to financial transactions on commission basis for a dealer in crockery, textile and electronics at Hyderabad and A7 agreed. Accordingly, A7 had utilized the accounts of M/s.Fight Trading Private Limited, M/s.Pundits Business Private Limited, M/s. Preet Mercantile Private Limited, M/s.Nanshi Mercantile Private Limited etc and received commissions for the fund transactions done by him without the knowledge of his employees. Thus, the aforesaid acts of A1 to A7 had resulted in wrong loss to Punjab and Sind Bank, George Town Branch, Chennai to the tune of Rs.22.15 Crores including interest as on 30.07.2014 and corresponding unlawful / wrongful gain to themselves. Thus charge sheet came to be filed against seven persons including the petitioners for offence under Section 120-B read with 420 of I.P.C.

6. The petitioner in Crl.O.P.No.18455 of 2022 is A4. The contention of the accused is that there is no specific averment or specific role attributed against this accused as seen from the statement and materials produced,

except for the fact that she was one of the directors of A1 and A2 company. There is no evidence to show that A4 was incharge and responsible for the conduct and business of the company. She was only a non-executive Director as could be seen from the statements of the witnesses. These accused except for signing the documents as per the requirements of the company, not taken part in any active role in submitting the documents, interacting with the bank officials and thereafter obtaining the loan. Even after obtaining the loan / cash credit facilities, she has not taken part in any of the activities thereof. The statement of bank officials, namely, L.W.1-Zonal Manager of Punjab and Sind Bank, L.W.2- Chief Manager, L.W.3-Branch Manager, L.W.4-the Officer, who served in the Geroge Town Branch as well as zonal office of the Punjab and Sind Bank and L.W.5-the Assistant Registrar of Registrar of Companies would prove that the accused/A4 had not taken part in the day-to-day activities of A1-M/s.PCH Agencies Private Limited, Hyderabad and A2-PCH Lifestyle Private Limited, Hyderabad. Apart from this accused, there are other Directors. The prosecution had adopted a pick and choose method and this accused had been falsely implicated on the charge of conspiracy just for the reason that A3-the other Director is the husband of the petitioner/A4.

7. From the reading of statement of bank officials, it is seen that no one had whispered anything against the petitioner except that A4 had given personal guarantee and executed guarantee documents in this regard. Other than that this accused had nothing to do with the functioning of business of A1 and A2 company. Further submitted that A4 had resigned from the directorship of PCH Corporation on 01.12.2011. The same was accepted by the Directors and Form-32 has been filed with the Registrar of Companies on 04.12.2011. Hence, she has got nothing to do with the companies.

8. In support of her contention, learned counsel for petitioner/A4 relied upon the decision in the case of ***Kalanithi Maran vs. Joint Commissioner of Income Tax*** reported in ***(2014) SCC Online Mad*** for the preposition that mere position cannot be the basis to rope a person as an accused and say that person is incharge and responsible. Further relied upon the decision of Hon'ble Apex Court in the case of ***Sunil Bharti Mittal vs. C.B.I.*** reported in ***(2015) 4 SCC 609*** for the point that it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so. In this case, there is no deeming provision to mechanically array A4 as an accused. Further, this petitioner gave personal guarantee to

facilitate the loan process to the limited extent of personal guarantee. This accused can be proceeded with for this reason only. Further, civil suit has been filed before the Debt Recovery Tribunal (DRT) under the SARFAESI Act. Further submitted that to rope a person with an aid of conspiracy, there needs to be some action done by the accused along with others. The ingredients of criminal offence of conspiracy is that there should be an agreement between the persons who are said to have conspired in pursuant to the said agreement and have committed an illegal act or by illegal means and act by itself. The act of giving personal guarantee would not amount to conspiracy. In support of his contention he relied upon the decision in the case of ***C.B.I. Hyderabad vs. K.Narayana Rao*** reported in ***(2012) 9 SCC 512***.

9. The contention of petitioner/A6 in Crl.R.C.No.1340 of 2022 is that, from the reading of entire materials including the allegations made in the charge sheet, it is obvious that the accused herein had only a limited role in the transaction of A1 and A2 company. A3 one of the directors of A1 and A2 company approached this accused to introduce certain known persons for developments of his business and accordingly A6 introduced L.W.46-

Praveen Kumar Jain and this introduction is post sanction of loan/credit facilities by the de-facto complainant M/s.Punjab and Sind Bank. The said Praveen Kumar Jain in turn had introduced his friends to A1 and A2. Hence, this accused not conspired with the other accused in availing loan/credit facilities and cheating the bank. It was further submitted that the amounts from A1 and A2 to other entities were later re-transferred to the accounts of A1 and A2, hence it was only a book accommodation and nothing more. He further submitted that the accused/A6 for introduction of Praveen Kumar Jain/L.W.46 and others had received a small commission from A3 and A4.

10. From the reading of statement of L.W.46/Praveen Kumar Jain, L.W.48, L.W.49, L.W.50, L.W.51, L.W.52, L.W.54 and L.W.91 it is seen that all these witnesses knew L.W.46/Praveen Kumar Jain and on his request certain accommodations were made. In view of the same, the petitioner being part of the conspiracy along with other accused could not arise. Further submitted that from the charge sheet it is seen that the allegations are primarily made against A1 to A4. The petitioner/A6 has been implicated in this case on the charge of conspiracy. Though it is settled preposition that the trial Court is not expected to undertake a mini trial but evaluation of the

materials to the limited extent is permissible in a discharge petition. In this case, on this limited evaluation it is clear that there is nothing even to remotely infer about any conspiracy between these accused with that of the other accused. It was further submitted that this accused had no role in processing or obtainment of the loans by A1 and A2 through A3 and A4. This accused is not a signatory or party to any certification from his part as Chartered Accountant with regard to any claims made by A1 which is not disputed by C.B.I. The petitioner is never a part of any larger conspiracy to defraud the interest of de-facto complainant. Further submitted that the beneficiaries by rerouting and transferring of funds who got benefited all been cited as witnesses, on the contrary, the petitioner for the mistake of identifying L.W.46/Praveen Kumar Jain and the said Praveen Kumar Jain identifying the others have been shown as witnesses. Further the loans already sanctioned by the Bank officials. In this case for the reasons best known, none of the bank officials made as an accused, despite in the F.I.R. unnamed bank officials mentioned and there is no reason given in the charge sheet for what reason they have been deleted.

11. Further in support of his contention, the learned counsel relied on

the decision of the Hon'ble Apex Court in the case of ***Union of India vs. Prafulla Kumar Samal and another*** reported in ***(1979) 3 SCC 4*** for the principles of scope and ambit of consideration during discharge. In the case of ***State of Madhya Pradesh vs. Sheetla Sahai and others*** reported in ***(2009) 8 SCC 617***, it was held that, to consider the question as to whether the Court should proceed on the basis of the materials brought on record even if taken on face value and taken to be correct in their entirety. Further relied upon the decision in the case of ***Kanchan Kumar vs. State of Bihar*** reported in ***(2022) 9 SCC 577***, wherein the Hon'ble Apex Court following the principles on discharge by referring to the citation in ***Dipakbhai Jagdishchandra Patel vs. State of Gujarat*** and held that the trial Court does not to act as a mere post office. It is to sift the materials before it and find out whether a case has been made out for the accused to stand trial. Though strong suspicion suffices, it must be founded on some material. In this case, there is no such materials available against the accused/A6.

12. The contention of petitioner/A7 in Crl.R.C.No.1504 of 2022 is that, taking into account the entire materials produced by the prosecution without any addition or subtraction, it is seen that no offence is made against

this accused. The trial Court not properly applied its mind to the statement of witnesses and documents, merely by re-producing the counter filed by C.B.I. dismissed the discharge petition. He further submitted that except L.W.66 and L.W.67, no other witnesses implicated the petitioner. Even in the 161 statement of L.W.66 and L.W.67, if taken as a whole, this accused had only introduced them to the other accused thereafter had done nothing. Further from the reading of the statements and entire materials produced by the prosecution there is nothing to show that there was any conspiracy by this accused with that of the others. The allegation against this accused is that he had received commission from various companies in Mumbai without any materials. The documents relied on by C.B.I. do not disclose any complicity of the accused. Further, with the above material the petitioner cannot be roped on the charge of conspiracy.

13. Learned Special Public Prosecutor opposes the contention of the petitioners and filed his counter separately to each of the petitioners/accused. Further referring to the statement of witnesses submitted that there are enough materials to prove that the petitioners have all joined together conspired to cheat the bank/public money of more than Rs.22.15 crores. The

initiation of recovery proceedings under the SARFAESI Act before DRT-2, Chennai in O.A.No.47 of 2013 and O.A.No.48 of 2013 would not absolve the accused from the offence of cheating and conspiracy. In this case, the accused are charged for offence under Section 420 of I.P.C. as well as for conspiracy. It is settled position that conspiracy is generally hatched in secrecy and it would not be available in open. The conspiracy has to be seen or inferred from the materials and documents produced. In this case, the bank officials and others have categorically stated the role played by all the accused. A1 and A2 are the companies which availed loan / cash credit limit from the bank. A3 and A4 are the Directors of A1 and A2 company which is not denied. The contention of A4 that she had resigned from the company on 01.12.2011 and the same has been filed with the Registrar of companies on 04.12.2011 cannot be a ground for quashing of the case. A4 was a Director at the time of availing loan for A1 and A2 along with A3, her husband. She had executed loan documents to the bank, gave personal guarantee for the loans. After availment of the loan/cash credit facilities the amounts have been diverted through various companies and most of the companies are shell companies which facilitated the diversion of funds. Due to the diversion of funds, the loans became Non-Performing Assets (NPA) and now recovery proceedings initiated.

14. The Zonal Manager of M/s.Punjab and Sind Bank lodged a complaint and a case in Crime No.10 of 2014 was registered on 13.11.2014 against A1 to A4, unknown public servants and others. On completion of investigation, charge sheet filed on 21.07.2017 against seven accused. In this case, A1 and A2 are company. A3 and A4 are its Directors. A5, A6 and A7 are the Chartered Accountants, who had taken active part in diversion of funds. As regards A4, in pursuant to the conspiracy, A4 along with A3 had executed documents for availing cash credit facility from M/s.Punjab and Sind Bank, George Town Branch in the name of A1 and A2. The loan application dated 14.11.2009 and 15.02.2010, respectively submitted, at that time, the project report, certificate of incorporation, provisional balance sheet, Credit Monitoring Arrangements (CMA) data for assessment working capital requirement, Income Tax returns and Net worth statement of A3 and A4 submitted. After execution of loan documents and invoking personal guarantee the branch opened Cash Credit Account Nos.1125 in the name of A1 and 1126 in the name of A2. A5 is the Chartered Accountant and Auditor to A2. A6 and A7 are Chartered Accountants in Mumbai. The majority of the

transaction were with the fictitious company floated by A6 and A7, whose line of activities were different to the business of A1 and A2 company. Many of the firms companies as well as shell companies were projected with the intention to route the funds to these accounts and got diverted to fictitious accounts held in various banks. The details of the routing of funds to various accounts have been spoken to by the witnesses and connected documents collected. The initial submission of project report and projection thereof and documents produced by the primary accused would clearly show that all the documents were got up documents for the purpose of availing loan. Hence, even at the stage of inception the intention of cheating was there for which A6 and A7 had actively connived and facilitated the cheating. Hence, all the accused have conspired.

15. As regards A4, the statement of L.W.5, Document Nos.D3 and D4 would prove that A4 is the key promoter and Director in A2 company from incorporation till 30.01.2012. The resignation and Form-32 is an after thought to escape from the liability and from clutches of Law would itself prove the criminal intent of A4. Since the criminal intent and action of A4 confirmed, the contention of A4, relying upon the above judgments and

citations are not applicable to the case of A4. Further submitted that A4 was holding substantial shares in both A1 and A2 company. She had signed in various documents apart from executing personal guarantee. The balance sheet and report all signed by A4 which would prove that she was actively taking part in the business and she is not just an non-executive Directer or a name sake director.

16. As regards A6, the learned Special Public Prosecutor submitted that during investigation several witnesses were examined whose testimony clearly implicates complicity of accused/A6. From the statement of L.W.46-Praveen Kumar Jain it is seen that he was lured to get into the accommodation business of A1 and A2 by A6. L.W.46 confirms that A6 and he were collage mates and known to each other for quite some time and it was A6 who introduced to him the A1 and A2 company. Further L.W.46 deceived by the statement of A6 had given details of M/s.Sumukh Commercial Private Limited, M/s.Arihant Corporation, M/s.Ratan Agarwal, M/s.Casper Enterprises Private Limited, M/s.Vanguard Jewels Limited, M/s.Duke Business Private Limited and others and also introduced his employee L.W.54 to coordinate with A6. L.W.47, L.W.50 were also

introduced. A6 agreed to pay 0.15% commission for the transactions of book adjustment made in their respective business. Further certain of the documents were handed over to A6, which was submitted to the banks. Thus using these documents, amounts were transferred. L.W.24 and L.W.26, the Managers (Accounts) of the A1 and A2 company confirm the active role played by A6, who used to visit A1 and A2 company, had interaction with other accused during the process of diversion of funds, A6 gave particulars for diversion of funds. Based on the particulars furnished by A6 and also on the instructions of the other accused the amounts were diverted to the various accounts identified by A6. The statement of L.W.47, L.W.48, L.W.49, L.W.50, L.W.51, L.W.52, L.W.53, L.W.54, L.W.55, L.W.76, L.W.83, L.W.84, L.W.85, L.W.86 and L.W.91 including the bank officials confirms the diversion of funds. The majority of the diversion of funds taken the route map given by A6. Hence, A6 had merely introduced L.W.46 is not sustainable, there are enough materials to show connivance and active participation of A6 along with other accused. Further the decision relied on by A6 are not applicable to the facts of the case. In this case A6 had played an active role against the principles, guidelines and ethics of a Chartered

Accountant.

17. As regards A7 he submitted that though he is a Chartered Accountant by profession, he has floated various companies in Mumbai in the name of his employees for the purpose of diversion of funds without any business. L.W.66 and Doc.Nos.29 and 33 would prove that during the year 2010, A7 made L.W.66 as a Director in two companies floated by him, namely, M/s.Nanshi Mercantile Pvt. Ltd. and M/s.Preet Mercantile Pvt. Ltd. by promising L.W.66 promised a sum of Rs.15,000/- per month would be paid to him. Thereafter on luring L.W.66, PAN card copy and address proof of Satyapal Daga were obtained and signatures obtained in the ROC documents. Further signatures were obtained in the Bank Account opening forms of Dhanalakshmi Bank, Mumbai and the amounts routed through this bank channel. L.W.67-Gajanan Kashiram, another employee of A7 had provided his ration card, PAN card to facilitate A7 to open the bank accounts and L.W.67 believing A7 had signed in all the documents given to him. Signatures obtained in blank cheque book and RTGS vouchers, which were used to transfer funds in the name of M/s.Fight Trading Pvt. Ltd. and M/s.Pundits Business Pvt. Ltd. L.W.57, L.W.58 and L.W.60 all confirmed

the role played by A7. Thus, A7 had actively taken part in diversion of funds. From the above it is clear that all the accused have conspired in diversion of funds in various of the firms and companies, without any business but only for the purpose of diversion of funds and thereby got enriched and ultimately the public money has been cheated and lost thereby the accused have made unlawful gain.

18. He further submitted that in the case of ***R.Venkatakrishnan vs. C.B.I***. reported in ***2010 / SCC (Cri) 164-166***, the Hon'ble Apex Court held that conspiracy is generally hatched in secrecy. Direct evidence is therefore difficult to become available and criminal conspiracy can be proved on the basis of circumstantial evidence and/or by necessary implication, smaller conspiracy may be a part of larger conspiracy. Further relied upon the decision in the case of ***Ram Narayanan Popli vs. C.B.I.*** reported in ***2003/SCC (Cri) 871-880***, wherein the Hon'ble Apex Court observed that no overt act to be required in furtherance of criminal conspiracy. In the case of criminal conspiracy it can be proved by direct evidence which is rarely available or by way of circumstantial evidence or by both, inference can be drawn for the circumstantial evidence. He further relied upon the decision in

the case of ***Amit Kapoor vs. Ramesh Chander and another*** reported in ***(2012) 9 SCC 460***, wherein, Hon'ble Apex Court held that at the stage of discharge, the Court is not expected to form even a firm opinion but tentative view that would evoke the presumption referred to under Section 228 of the Code. The Court should be loath to interfere at the threshold to throttle the prosecution in exercise of its inherent powers. Therefore, strongly opposed for allowing these petitions. Further submitted that due to the pendency of the above petitions the trial is getting delay. Thus, he prayed for dismissal of all these petitions.

19. Considering the submissions and on a perusal of the material, it is seen that it is not in dispute that A4 Director in A1 and A2 company along with A3. She gave the resignation letter dated 01.12.2011, which was accepted by the Directors and Form-32 filed with the Registrar of Companies on 04.12.2011. It is admitted in this case that A1 had made loan application on 14.11.2009 and the loan was sanctioned on 17.05.2010 and the same was utilised from 18.09.2010. As regards A2, loan application was made on 15.02.2010 and the loan was sanctioned on 17.08.2010 and utilised from 03.01.2011. Application of the loan, execution of documents, availment of

loan facility, utilisation of the same were well before the submission of the resignation letter. In view of the same, the subsequent resignation and filing of Form-32 would not be any unveil to A4. On the contention of A4 that she was only a non executive Director / nominal Director, not taken part in day-to-day affairs of A1 and A2 company proved to be false. The resignation letter which is a document produced by A4 herein reads as follows:

> *" Due to my pre-occupation and health reasons, I am not in a position to devote my time to the affairs of the company. Accordingly, I am submitting my resignation as Director of the company with immediate effect"*

The above letter on the face of it shows that she is unable to devote any time to the affairs of the company which proves that she has constrained to participate in the affairs of the company from 01.12.2011 onwards only not earlier. Nowhere in the resignation letter it is stated that she was a name sake Director or non executive Director. Apart from it, she had executed several of the documents to the banks, filed the statutory documents with ROC and she is also holding substantial shares. In view of the above, the citations relied on by the petitioners are not applicable to the facts of the above case. Hence, the quash petition as regards A4 is liable to be dismissed.

20. As regards A6, it is seen that A6 merely introduced L.W.46 and thereafter done nothing further cannot be accepted. L.W.24 and L.W.26, the Managers (Accounts) of A1 and A2 company clearly state about A6 active role played in scouting of various persons for the purpose of diversion of funds and A6 and his representatives would give instructions and also do the follow up with regard to the diversion of funds. Apart from that the other witnesses, namely, L.W.46, L.W.47, L.W.49, L.W.50, L.W.51, L.W.52, L.W.54, L.W.55, L.W.56 and the officials of Union Bank of India, Kotak Mahindra Bank, Bank of India, Vysya Bank have all stated about the active role played by A6.

21. As regards A7, L.W.58, L.W.60, L.W.66, L.W.67 and other witnesses have stated about the diversion of funds through M/s.Fight Trading Private Limited, M/s.Pundits Business Private Limited, M/s. Preet Mercantile Private Limited, M/s.Nanshi Mercantile Private Limited and the commissions received by A7 using his employees as name lenders and taking active part in diversion of funds. Thus, it is found that there are enough materials against the accused. The trial Court by a well reasoned order had

rightly rejected the discharge petitions of A6 and A7. This Court finds no reason to interfere with the same. Hence, the revision petitions stand to be dismissed.

22. The Hon'ble Apex Court in the case of ***Rajeev Kourav vs. Baisahab and others*** reported in ***(2020) 2 SCC (Cri) 51*** had held that the High Court committed an error in quashing criminal proceedings by assessing the statements under Section 161 Cr.P.C. Further, the Hon'ble Apex Court in the case of ***Amit Kapoor vs. Ramesh Chander and another*** referring to various judgments, had discussed the scope and jurisdiction under Section 397 and 482 of Cr.P.C., enlisted the principles, which the Court should exercise and held that the power of quashing of criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly, only in case of 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. In such circumstances, interference can be made otherwise no undue interference to be made by 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. The High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers. Further, the Courts must be primarily concerned with the allegations taken as a whole whether they will constitute an offence or not, which would amount to abuse of process of Court leading to injustice, otherwise, the Court may be will within its jurisdiction to frame a charge. In this case, there are enough and more materials to proceed against the petitioners. In view of the same, both, the quash petition of A4 and revision petitions of A6 and A7 are hereby dismissed.

23. It is made clear that the observations made herein is only for the purpose of disposing of the above petitions. The trial Court uninfluenced with the above observations of this Court shall decide the case on its own merits and in accordance with law.

24.05.2023

Speaking order/Non-speaking order
Index: Yes/No
Neutral citation : Yes/No
rsi/vv2

To

1.The Additional Chief Metropolitan Magistrate Court,
Egmore, Chennai.

2.The Additional Superintendent of Police,
Central Bureau of Investigation,
EOW, Chennai.

3.The Special Public Prosecutor for CBI Cases,
High Court, Madras.

M.NIRMAL KUMAR, J.

rsi/vv2

PRE-DELIVERY ORDERS IN
Crl.O.P.No.18455 of 2022 and
Crl.R.C.Nos.1340 & 1504 of 2022

24.05.2023