IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

C.R.R. No. – 2602 of 2018

IN THE MATTER OF

Bimalendu Mallick
Vs.
Central Bureau of Investigation & Anr.

For the Petitioner	:	**Mr. Abhra Mukherjee, Adv.,** **Mr. Sauradeep Dutta, Adv.,** **Mr. Arpayan Mukherjee, Adv.,** **Mr. S.Kumar Mondal Adv.**
For the CBI	:	**Mr. Anirban Mitra, Adv.,**
Reserved On	:	**18.04.2024**
Judgment on	:	**17.05.2024**

<u>Subhendu Samanta, J.</u>

1. This is an application u/s 482 of the Code of Criminal procedure for quashing a proceeding of Special (CBI) Case No. 12 of 2011pending before the Learned Judge, Special Court, No. 4, Bichar Bhaban Calcutta arising out of RC No. 0102010A0010 whereby the Learned Special Judge, has rejected the application of the petitioner u/s 239 Cr.P.C. on 18.07.2018 and framed charge against the petitioner u/s 120B/420/417 of IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act 1988.

2. The brief fact of the case is that the instant criminal case was initiated on the basis of written complaint lodged by Canara Bank on 30.03.2010 alleging inter alia that the present petitioner while posted as Branch manager of Canara Bank, Sarat Sarani, Hooghly Branch during 2004-09 entered into a criminal conspiracy with Prabhunath Singh of M/s. M.K. Enterprise, Hooghly, Rajesh Singh of M/s. Sri Mahakali Enterprise Hooghly and others in pursuance of the said conspiracy they cheated Canara Bank to the tune of Rs. 25.89 Lakhs by availing credit facilities on the basis of the forge and fabricated financial papers, false valuation report, legal security report in respect of the properties mortgage to the Bank.

3. After completion of investigation the CBI submitted charge sheet against the present petitioner and three others before the Learned Special Court, CBI.

4. The present petitioner preferred an application for discharge u/s 239 Cr.P.C. The Learned Special Court after hearing the parties as rejected the said petition by passing the impugned order dated 29.06.2017 and framed charge against the petitioner including the other accused persons u/s 120B/420/471 of IPC and Section 13(2) read with Section 13(1)(d) of PC Act 1988.

5. Hence this revision.

6. Learned Advocate Mr. Mukherjee for the petitioner submits that the Learned Special Court has failed to appreciate the facts and circumstances of this case and mechanically rejected the prayer for discharge of the

petitioner. He further submits there no sufficient ground to frame charge against the present petitioner still then the charge has been framed against the present petitioner. He further argued that the Learned Special Court failed to appreciate or applied his judicial mind to the materials collected by the CBI. He submits the allegation made in the FIR as well as in the charge sheet even if taken at their face value and accepted in their entirety do not make difference a prima facie case against the present petitioner. He further submits that an allegation made against the present petitioner is nothing but to bring out the complicity of the present petitioner with regard to the commission of offence as alleged. There is no material to establish the involvement of the present petitioner regarding his involvement in the alleged offence with the other accused persons. He submits that if the said proceeding is allowed to be continued the state would be tantamount to be an abuse of process of court.

7. Learned Advocate Mr. Mukherjee for the petitioner further submits that the present petitioner was a Branch Manager of the Canara Bank Sarat Sarani Branch from 28.07.2001 to 25.08.2004, after that he was transferred to another Branch. During his tenure at Sarat Sarani Branch he sanctioned two (2) OCC loan in favour of (i) M/s. MK Enterprise of Rs. 10 lakh on 07.02.2004 for one year with collateral security of Rs. 2 lakh and, (ii) in favour of the M/s. Sri Mahakali Enterprise on 28.07.2004 amounting to Rs. 10 lakh for one year with a collateral security of Rs. 6 lakh. He further submits that before sanctioning such loan, necessary approval was obtained from the circle office. After sanctioning such loan he transferred from the

said Branch on 25.08.2004. The present petitioner retired from his service with satisfactory comment from the bank on 31.12.2008 and after his retirement on 30.07.2010 the instant FIR was lodged.

8. Mr. Mukherjee further submits that no prima facie case was made out against the present petitioner in sanctioning the loan in favour of the two companies. But ultimately the present petitioner was made a scape goat while the accounts become NPA. During the argument the Learned Advocate for the petitioner cited the relevant statement of the available witnesses and the Bank manual of the Canara Bank to show that no illegality has been committed by the present petitioner in sanctioning the above two loans. He submits that the present petitioner is a retired person and has been falsely implicated in this case if the said proceeding is allowed to be continued the present petitioner would be highly prejudiced.

9. Learned Advocate Mr. Mitra on behalf of the CBI submits that the instant case was initiated on the basis of written complaint of Canara Bank dated 30.03.2010. The CBI conducted the investigation on the basis of the said FIR and after investigation and after collecting the oral and documentary evidences CBI submitted charge sheet on the basis of the said charge sheet, charge has been framed by the Learned Special Court against all accused persons including the present petitioner. Mr. Mitra argued that the present petitioner was the then Manager of Canara Bank, Sarat Sarani Branch who allowed opening of current account of M/s. MK Enterprise by an introducer who did not complete one year term for introduce another

farm. He further argued that the evidences shows that the present petitioner in connivance with other accused namely Jawahar Singh defrauded the Bank with a full knowledge that the property (collateral security) was earlier mortgaged with Canara Bank, Howrah Branch. The present petitioner also allowed a borrower Probhunath Singh of M/s. M.K Enterprise to create FDR of Rs. Two Lakh out of the sanction loan amount and keep such mortgage against the loan disburse to M/s. M.K Enterprise and further allowed transfer of loan amount of Rs. 3.7 Lakh they are M/s. M.K. Enterprise to another loan M/s. Mahakali Enterprise to adjust temporary OD.

10. Mr. Mitra further submits the present petitioner did not obtain the audit balance of M/s. Mahakali Enterprise of last 03 years before sanctioning the loan. Mr. Mitra further argued that the statement of witnesses namely Bivaslal Ganguly, Amarnath Mandal, Pinaki mukherjee, Doctor Alok Roy, Doctor Jaydeb Sarkar, Shyamlal Ukil and Jagadish Chandra Mishra proved the guilt of the present petitioner at the material point of time for adopting unfair methods of process of loan of M/s. MK Enterprise. He further argued during the course of investigation it has been revealed that the accused Jawahar Singh as well as the accused Prabhunath Singh defrauded the Canara Bank the huge amount of money in furtherance to the conspiracy with the present petitioner.

11. Mr. Mitra further argued that the High Court has very limited power u/s 482 Cr.P.C. to quash the proceeding against the accused against

whom charge has already been framed. In support of his contention Mr. Mitra cited several decisions there as follows:-

In State of ***Orissa Vs. Debendranath Padhi (2005) SCC 568*** *–*

at the stage of framing of charge, the Trial Court only to consider the material produced by the prosecution. No provision in Cr.P.C. grants to the accused a right to file any material or document at the said stage. The right is granted only at the stage of trial the Hon'ble Apex Court also interpreted that the expression "hearing and submission of the accused" as used in Section 227 means hearing the statements of the accused on the record of the case as filed by the prosecution and documents submitted therewith. It cannot mean an opportunity to file material to be granted to the accused.

2) In State of ***Tamil Nadu Vs. N Suresh Rajan and Ors (20140 11 SCC 709*** *at the time of hearing discharged application of the accused no mini trial is contemplated at the stage of considering discharge application. Court to proceed with an assumption that the materials brought on record by prosecution are true. Only probative value of materials has to be gone into to see if there is a prima facie case for proceeding against the accused. The court is not expected to go deep into the matter and hold that materials would not warrant a conviction. If court, on the basis of materials, thinks that accused prima facie might have committed an offence, it can frame the charge.*

3) In State of ***MP Vs. S.B. Johari and Ors (200) 2 SCC 57 "****at the time of discharge application Court has only to see whether prima facie there was* *sufficient ground for proceeding against the accused. It cannot appreciate the evidence to arrive of a conclusion in the matter.*

4) In State of ***A.P. Vs. Golconda Linga Swamy and Ors.*** *the Hon'ble Apex Court has held inherent jurisdiction of High Court though wide but has to be exercised sparingly, carefully, and with caution and only when such exercise is justified by the test specially laid down in Section 482. The power to be exercised Ex-debito Justitiae to prevent abuse of process of court but should not exercise to stifle legitimate prosecution. The High Court should not assume the role of a Trial Court and embark upon an enquiry as to reliability of evidences and sustainability of accusation on a reasonable appreciation of such evidence.*

12. Mr. Mitra submits that the instant criminal proceeding against the present petitioner cannot be quashed. As there are sufficient materials showing the prima facie involvement of the present petitioner in the alleged offence.

13. Heard the Learned Advocates. Perused the materials also the observation of the Learned Special Court made in the impugned order.

14. It is the admitted fact that the present petitioner is a retired employee of the Bank who retired from the service on 31.12.2008. The present petitioner was the Branch Manager of Canara Bank, Sarat Sarani Branch from 28.07.2001 to 25.08.2004; during his tenure he sanctioned two (2) OCC loan of Rs. 10 lakh each for one year with some collateral security. The performance of sanctioning the loan in favour of the other

accused person is became questionable when the two (2) OCC loan account became NPA. Accordingly Canara Bank lodged FIR; CBI took up the investigation and after investigation to submit charge sheet. The charge sheet alleged the illegalities as follows

a) The present petitioner being a Branch Manager allowed opening current account of M/s. M.K Enterprise by an introducer but did not complete one year frame for introducing another farm.

b) The present petitioner did not obtain balance sheet of M/s. M.K. Enterprise for last years. The present petitioner accepted guaranteed immovable property of Jawahar Singh worth Rs. 30 lakh nothing while that the said property mortgaged at Canara bank, Howrah Branch.

c) The present petitioner was also allowed M/s. M.K. Enterprise to create FDR of Rs. 2 lakh out of the sanction loan and to kep such mortgage against the amount disburse to M/s. MK Enterprise. The present petitioner allowed the proceeding of loan amount of Rs. 3.7 Lakh from M/s. M.K. Enterprise to another loan of M/s. Sri Mahakali Enterprise to just temporary OD.

d) The present petitioner also sanctioned ad-haque limit of Rs. 3.5 Lakh to M/s. MK Enterprise on 18.06.2004 in spite of non-performing good.

15. I have perused the statement of available witnesses and the evidences collected by the CBI including the internal inquiry report relied by the prosecution. Among the statement of the available witnesses, Alok Roy,

Pinaki Mukherjee, Jaydeb Sarkar, Biharilal Ganguly, Amarnath Mandal stated about the illegality and the suppression of facts regarding the business of the other accused person. They stated nothing against the present petitioner the witnesses Shyamlal Ukil as well as Jagadish Chandra Mishra directly alleged against the present petitioner as follows:

On being shown the documents and asked, I am to state that, as per statement of account of M/s Shree Mahakali Enterprise, the account was turned NPA on 07.01.2005, but it was not declared as NPA by the then Manager, and in the document I find no intimation was sent to the Circle Office, Kolkata, reason for which is best known to the said the then Manager, Sri B. Mallick.

16. From their identical statement it reveals that the loan accounts turned NPA on 07.01.2005 but it was not declared as NPA by the then Manager. Surprisingly, the present petitioner was not at the Branch after 25.08.2024 thus the statement of those two witnesses cannot support the prosecution case. The inquiry report disclosed after the OCC limit was sanctioned, Branch Manger cannot prevent to withdraw the amount within the sanction limit within one year. It is admitted that before the completion of one year of the alleged OCC loan accounts, the present petitioner has transferred from the said branch.

17. The Canara Bank Manual specifically on instruction No. 7.1.2 provides for the year 2004, that no audit balance sheet is required for sanctioning credit limit up to Rs. 10 Lakh. The said provision of manual was also mentioned in the internal inquiry report relied by the CBI. It further

appears from the internal inquiry report that after the sanctioning the loan a letter was sent by the present petitioner to the Brnach Manager of Canara bank, Howrah Branch regarding the fact of issuance of the two loans but the no reply was received from the end of the Howrah Branch. The Canara Bank Manuals instruction No. 1.4 provides that if the parties financial position as well as dealing with the branch continues to be satisfactory. Then only loan account can be renewed otherwise not. But in case of both the aforesaid OCC loan accounts not only renewed the OCC but also enhance the limit of Rs. 10 lakhs to 15 lakhs by the Bank Manager who were posted after transfer of petitioner. It appears from the evidence collected by the CBI that both the OCC loan become practically MPA in the year 2005 but the same was not declared as NPA by the then Managers. But it appears to me that surprisingly CBI did not make accused of those managers who posted in the said branch and sanctioned and renewed enhanced the OCC limits.

18. It is true that, in the present case the charge has been framed against the present petitioner by a Special Court. The Special Court has observed the materials on record and came to a finding that there are prima facie materials against the present petitioners. The charge has been framed u/s 120B/420/407 of IPC and Section 13(2) read with Section 13(1)(d) of PC Act.

19. On perusal of the entire materials, I find there no single evidence to justify that the present petitioner was in furtherance to common conspiracy with the other accused persons tried to defraud the Bank. The

conduct of the present petitioner in allowing the OCC limit to the other accused persons appears to me regular according to the internal inquiry report relied by the prosecution. The allowing to withdraw some amount within the OCC Limit when the loan account was not performing well may be a same irregularity but it cannot be said illegality in the eye of law. Moreover, the present petitioner is not liable to renew or enhanced the OCC Limits afterwards. So, it cannot be said that the present petitioner with the knowledge of the performance of the said loan account has allowed the loan account to be continued and enhanced the limits. In the internal inquiry report relied upon by the CBI also disclosed that the OCC loan accounts were sanctioned with necessary approval of the circle office. Thus, I find no justification to hold that the materials suggest any illegality committed by the present petitioner.

20. It is admitted fact that the present petitioner is a retired Bank employee and the instant criminal case contain huge number of oral and documentary evidences and it shall continue at least more than 8 to 10 years for disposal. I find no prima facie materials to substantiate the argument of the Learned Advocate for the CBI that there are prima facie materials against the present petitioner. If the evidences collected by the CBI are taken to be true, then also prima facie case against the petitioner is not made out.

21. Considering the entire aspect I am of a view if the said proceeding is allowed to be continued against the present petitioner, who is a retired

Bank Employee (having no direct nexus or prima facie materials in the instant criminal case), the same would definitely an abuse of process of court.

22. I make it clear that the observation and guideline of Hon'ble Apex Court passed in ***Golconda Linga Swamy (supra)*** has been specifically followed by this court and under the above guideline I am of a view that the attending facts and circumstances of this case warrants the interference of this court under the provisions of Section 482 of the Code of Criminal Procedure.

23. Thus the instant revision appears to be meritorious and hence, it is allowed.

24. The instant criminal proceeding being Special (CBI) Case No. 12 of 2011 pending before the Learned Judge, CBI, Special Court, No. 4, Bichar Bhaban Calcutta arising out RC Case No. 0102010A0010 dated 30.03.2010 against the present petitioner is hereby quashed.

25. CRR is disposed of.

26. Connected applications if pending are also disposed of.

(Subhendu Samanta, J.)