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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.5900/2019**

ARVIND SETHI

..PETITIONER

VS.

UNION OF INDIA

..RESPONDENT

Adv. Prashant Pandey a/w. Adv. Dinesh Jadhvani for the petitioner.

Mr. A. R. Patil, APP for the State.

Ms. Ameeta Kuttikrishnan for the respondent-CBI.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 9, 2024.

ORAL JUDGMENT :

1. Heard learned counsel for the petitioner and learned counsel for the respondent-CBI.

2. The petitioner by this writ petition challenges the order dated 27/9/2019 passed by the Special Court for CBI at Greater Bombay in discharge application Exhibit 193 in CBI Special Case No.4 of 2018.

3. There are in all fourteen accused. The petitioner is the accused no.3 in the charge-sheet. The prosecution case in brief is as follows:-

The CBI, EOW, Mumbai had registered the case bearing No. R.C. 14/E/2017/CBI/EOW/Mumbai dated 31.08.2017 for

the offences punishable under Sections 120-B of Indian Penal Code (for short 'IPC') r/w Sections 420, 468, 468, 411 and 471 of IPC and Sections 13(2), 13(1)(d) of Prevention of Corruption Act against present petitioner and other accused on the basis of written complaint received from D.G. Kallatti, the DGM of Central Bank of India against M/s. Ashok Property Developers and M/s. Aashish Communications System and its Director/Guarantor. It is the case of the prosecution that the accused entered into criminal conspiracy in the year 2011-12, cheated the Central Bank of India, Peddar Road Branch, Mumbai and Mumbai Main Office, Mumbai of its funds to the tune of Rs.17 Crores. By creation of false and fabricated documents, the accused misutilized the credit facility suppressing material information. The accused offered immovable property as collateral security by over valuating it for availing credit facility. The petitioner failed to exercise due diligence and caution while processing and sanctioning the loan which worked to the advantage of the borrowers.

4. The petitioner, at the relevant time, was the Assistant General Manager of the main branch at Mumbai. In the

summary of the charge-sheet and the final report the role of the petitioner is spelt out which is thus:-

(I) That Sh. Arvind Atma Sethi (A-3) was functioning as Head of the Branch, Mumbai Main Office branch of Complainant i.e. Central Bank of India during the relevant period. While he was working as Branch Head, he had fraudulently processed and forwarded the loan application pertaining to M/s Aashish Communication Systems. During this process he intentionally with an intend to help the accused firms, avoid the pre-sanction inspections. Similarly, he did not obtain the credit status report, knowing that the credit worthiness of the accused firms as well as proprietors of the firm. He considered inflated valuation report submitted by Sh. Hitendra Virendra Gangwar (Accused/Suspect) knowing that the value of the collateral property is much lesser than the value arrived by the Sh. Hitendra Virendra Gangwar (Accused/Suspect). The end use of the loan proceeds were also not monitored and allowed non underlined business dealings.

(II) Thus, the Central Bank officer/Public Servant Sh. Arvind Atma Sethi (A-3) had abuse of official position and

entered into a criminal conspiracy with other accused persons Sh. Ashok Kumar Singh (A-1), Sh. Aashish Kumar Singh (Accused/Suspect), Sh. Mehul Pandey (Accused/Suspect), Sh. Janardhan Durgaprasad Pandey (Accused/Suspect) and others committed an offence of cheating to the complainant bank for tune of Rs. 17 Core was serious in nature and due to this Bank has suffered financial loss.

5. In the affidavit-in-reply, the role of the petitioner is spelt out in detail. The same is reproduced thus:-

Role of Accused Mr. Arvind Atma Sethi the then AGM of the Complaint Bank

(i) Applicant/accused Arvind Sethi in M/s Ashish Communications Systems, the main charges were as follows. The proposal for sanction of credit facilities to the tune of Rs. 25.00 Crore was processed by him. He failed to observe the lending norms, before submission of the proposal for sanction, he failed to ensure that due diligence, pre sanction inspection of the business as well as of property offered as security is conducted. The valuation done by the valuer M/s. Rachana Valuers & Surveyors is on the higher side. Mr. Sethi, violated the terms of sanction and

allowed to disburse Term Loan of Rs. 5.00 Crores, without ensuring the contribution of margin by the party, without ascertaining creation of assets by ensuring that post sanction inspection is done. The firms, in whose favor the payment of Term Loan has been released are not in existence and the amount was diverted. No assets created out of Bank's Loan, Mr. Sethi failed to ensure end use of the Bank's Loan and the account turned NPA and the Bank suffer loss to the tune of Rs. 1341.56 Lacs. A copy of the Loan proposal is annexed as Annexure 'I'.

(ii) Applicant/accused Arvind Sethi process the proposal without observing lending norms, he failed to do due diligence, pre sanction inspection of the business as well as the property offered as a collateral security. He did not obtain existing bankers' status/confidential report. External credit rating of the account was not obtained. Stock inspections and visit to the unit were not done. The valuation done by the Valuer M/s Rachana Valuers & Surveyors was on higher side. While disbursing the loan, Shri Arvind Sethi has not taken due care and disbursed term loan of Rs 5.00 crores without ensuring the contribution of

the margin by the party, without ascertaining creation of assets by conducting post sanction inspection. Mr. Sethi did not ensure genuineness of the quotations submitted by the party for release of term loan. Shri Arvind Sethi did not verify the genuineness of the audited balance sheet & Income tax return submitted with the loan application by the party. He did not contact Chartered Accountant M/s Kamal Nayan Singhal & Co who purportedly audited the balance sheet of three financial years to confirm its genuineness. Mr. Sethi did not ensure genuine induction of capital of Rs. 3.75 crores in the business.

(iii) Applicant/accused Arvind Sethi did not ensure compliance of KYC norms and did not carry out due diligence in the account, including enquiry on the borrower and its Proprietor/Guarantor from market reports and sources Credit Status Report/Confidential Report from existing Banks on the borrower Proprietor/Guarantor not ensured Assets and Liabilities statements of Proprietor and Guarantor duly certified by Chartered Accountant are not obtained and their duly certified net worth statements from the CA was not obtained / not cross verified from financial

reports. He did not ensure conducting of pre sanction inspection.

(iv) Applicant/accused Arvind Sethi did not ensure to obtain External Credit rating on the account and the same is not held on record before recommending the proposal. Periodical stock audit /inspection as well as periodical inspection of security in the account was not conducted/ensured. Balance Sheet of the borrower as on 31/03/2013 not obtained. Post sanction inspection not conducted. The valuation of properties mortgaged as collateral security in the account are observed to be on very higher side as compared to the purchase value of the same as per "Agreement of Sale" executed during the period 2007 and 2008, He failed to ensure realistic valuation of the properties and accepted the same without any enquiry.

(v) Entries in the account indicate that internal transfers of funds from one account to another account without bonafide commercial transactions. He thus failed to monitor the affairs in the account and thereby facilitated diversion of funds without ensuring its end use. Compliance of following terms of sanction was not ensured before disbursement.

Failed to obtain details of the amount Rs. 3.75 Crores infused as capital from the relatives not routed through the bank accounts and not verified its genuineness. The term loan was released on 20.12.2012 when COD was 1.9.2012, without obtaining prior permission from competent authority.

(vi) The term loan of Rs. 5.00 Crores was released in one shot on 20.12.2012 to four vendors without obtaining quotations and without ensuring margin money. While releasing the term loan in one shot without compliance of terms of sanction. He failed to take permission from higher authority. While releasing the term loan, party's margin money was not routed through account, even not verified the genuineness of the bill/receipt submitted by the party. The proper quotations/estimate of machinery/equipment purchased out of bank finance was not obtained & verified/ensured end use of funds, thus he facilitated diversion of funds by borrowers. (PW-1, PW-3, PW-19, PW-20, PW-22 and Annexure-A).

(vii) Applicant/accused Arvind Sethi is habitual offender and charge Sheeted by complaint Central Bank of India in the

NPA accounts 1) M/s Purvi Commodities Pvt. Ltd. of CBI EOW Mumbai. 2) Dwarka Group viz M/s. Kavya Traders, M/s. Janhavi Enterprises and M/s. Nandini Milk & Milk Products in RC 04/E/2020 of CBI/EOB/Mumbai. As per the final order in the above NPA accounts complaint Central Bank of India awarded punishment of removal from service. More ever he is FIR named Accused in RC No. 2/E/2017 of CBI EOW Mumbai.

6. Learned counsel for the respondent-CBI relying on the summary of the charge, affidavit-in-reply and other relevant materials on record submitted that there are ample materials on record to proceed against the petitioner. It is submitted that at the stage of discharge this Court cannot conduct a roving enquiry. It is further submitted that the materials on record clearly indicate that the petitioner abused his position and has failed to observe the lending norms before submission of the proposal for sanction. It is submitted that the petitioner has failed to ensure that due diligence, pre-sanction inspection of the business as well as of property offered as security is conducted. It is, therefore, the submission of learned counsel for the CBI that there are,

prima facie, materials on record to frame charge against the petitioner.

7. I have perused the materials on record and also the order passed by the Special Court rejecting the application for discharge. Reading of the accusations against the petitioner indicate that the main role of the petitioner as alleged is that the petitioner has failed to observe the lending norms before submission of the proposal for sanction and also failed to ensure due diligence, pre-sanction inspection of the business as well as of property offered as security.

8. It is the submission of learned counsel for the petitioner that the the loan in favour of 'Aashish Communication' was already sanctioned at Peddar Road Branch, Mumbai, by the officials who were at the relevant time working at the Peddar Road Branch. It is submitted that considering the valuation of the loan which was above five crores, the same was referred to the Head Office. The documents on the basis of which the loan was sanctioned, was scrutinized at Peddar Road Branch. The petitioner was not working at Peddar Road Branch but later on transferred

to the Head Office.

9. As indicated earlier, the allegation mainly is that the petitioner has failed to observe the lending norms, before submission of the proposal for sanction. There is nothing on record to indicate that the petitioner is a beneficiary on account of such a sanction. Though the allegation is that the petitioner has not been diligent while sanctioning the loan but there are no materials to indicate that there has been any collusion on the part of the petitioner with other accused or that he has willfully assisted the creditors in getting advantage of the loan sanctioned. For failure on the part of the petitioner to exercise due diligence, he has already been awarded the punishment of removal from service.

10. As to what are the guiding principles on the application for discharge or framing of charge is well settled by the Supreme Court. At the stage of consideration of an application for discharge, the Court has to proceed with an assumption that the materials brought on record by the prosecution are true and to evaluate the said materials and documents with a view to find out whether the facts

emerging therefrom at their face value disclose the existence of all the ingredients constituting the offence. If any authorities are required on this settled position, a reference may be made to some of them which are:-

- (i) Union of India vs. Prafulla Kumar Samal and another.¹
- (ii) Palwinder Singh vs. Balwinder Singh and others.²
- (iii) Sajjan Kumar vs. Central Bureau of Investigation.³
- (iv) State of Tamil Nadu by inspect of Police Vigilance and Anti-Corruption vs. N. Suresh Rajan and others.⁴

11. In my opinion, the materials on record fall short to frame the charge as *prima facie* the evidence is lacking in the present case qua the petitioner. The evidence on record does not attribute any overt act to the petitioner having participated in the crime, or is in connivance with the co-accused in the alleged transaction. Nothing incriminating was produced by the prosecution against the petitioner in support of their case. It is not the case of the prosecution that the petitioner has benefited from the transaction in any manner or that he is in receipt of the proceeds of crime or

1 (1979) 3 SCC 4

2 (2009) 3 SCC 850

3 (2010) 9 SCC 368

4 (2014) 11 SCC 709.

any part thereof. In these circumstances, the petitioner is required to be discharged from the impugned proceeding. For his failure to follow the procedure, the petitioner has suffered the consequences. In the facts of the present case, failure to follow the procedure while sanctioning the loan cannot by itself be sufficient to charge the petitioner for the alleged offences in the absence of any incriminating materials indicating his active involvement.

12. The writ petition is allowed.

13. The impugned order dated 27/9/2019 passed by the Special Court for CBI at Greater Bombay in discharge application Exhibit 193 in CBI Special Case No.4 of 2018 is quashed and set aside.

14. The petitioner is discharged from the proceeding in CBI Special Case No.4 of 2018 before the Special Court for CBI at Greater Bombay.

15. The writ petition is disposed of accordingly.

(M. S. KARNIK, J.)