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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-2778-2023 (O&M)
Date of Decision : 14.10.2024.

CHANDER PRAKASH GUPTA **-PETITIONER**

V/S

CENTRAL BUREAU OF INVESTIGATION **-RESPONDENT**

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Anoop Verma, Advocate
for the petitioner.

Mr. Gagandeep Singh Wasu, Special Public Prosecutor,
for the respondent-CBI.

<u>KULDEEP TIWARI, J. (ORAL)</u>

1. The instant revision petition, is directed against the order dated 12.10.2023, passed by the court of learned Special Judge, CBI Court, Chandigarh (hereinafter referred to as 'the learned trial court concerned'), vide which the charges have been framed against the present petitioner and other co-accused for the commission of offence punishable under Section 120-B read with Section 420 of the IPC, and also under Section 13 (2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

2. The prime argument which learned counsel for the petitioner advanced in asking for the interference of this Court against the framing

charges vide order (*supra*), is that no offence, whatsoever, is made out against the present petitioner, rather it is a case of a false implication.

3. He further submits that the chargesheet filed by the respondent-CBI against the present petitioner, is only on the basis of the suspicion, he being an Ex-Director of the firm in the name and style of M/s Mam Chand Roller Flour Mills Pvt. Ltd. (hereinafter referred to as 'accused-firm(MCRFMPL)'), without any conclusive evidence.

4. He further submits that the trial court concerned, failed to consider the vital fact that the name of the present petitioner was not figured in FIR/complaint and no role, whatsoever, has been attributed to the present petitioner, rather he has been falsely implicated in the instant case during investigation alleging therein, that the petitioner was the earlier director of the accused-firm(MCRFMPL), and has knowly accepted Rs.35.50 lakhs from the account of the accused-firm(MCRFMPL) to his own account and to the account of his wife and son, out of the total 5.45 crores financial facility availed on 02.11.2013 by the accused-firm(MCRFMPL), through its directors Vinay Sagar and Dalip Kumar from the Indian Overseas Bank (hereinafter referred to as the 'complainant-Bank').

5. While continuing his arguments, he raised yet another issue that the petitioner who was admittedly neither the borrower nor even signatory to any of the documents submitted to the complainant-Bank, while availing the above loan/financial facility. While referring to the agreement to sell dated 01.10.2013 and sale deed dated 24.12.2013, he

submits that prior to taking the loan, the petitioner not only resigned from the accused-firm/MCRFMPL, rather he sold his entire share of the accused-firm(MCRFMPL), and the amount which the present petitioner had received in his account was nothing but a part of sale consideration, and for that he cannot be prosecuted with the aid of Section 120-B IPC.

6. He also draws attention of this Court towards a civil suit filed by the accused-firm(MCRFMPL) through the present petitioner, for permanent injunction restraining the accused borrowers Dalip Kumar and Vinay Sagar (defendents therein), from acting upon, in any manner in respect of the directorship of the accused-firm(MCRFMPL) on the basis of the sale agreement dated 01.10.2013.

7. He, finally, submits that a settlement was arrived at between the parties on dated 29.01.2015 vide Settlement Deed (Annexure P-11), therefore, the petitioner has no role whatsoever, either in taking of loan/financial facility from complainant-Bank or siphoning of the funds of the loan amount from the the account of accused-firm(MCRFMPL).

8. Before envincing upon the submissions, as made by learned counsel for the petitioner, let us have a glimpse over the allegations, as set up by the respondent-CBI in the chargesheet.

9. The loan account in question was declared as fraud as per RBI guidelines, and fraud was reported to CBI, on 31.03.2019. Therefore, instant FIR was registered on a complaint made by the Indian Overseas Bank, against 5 persons/entities namely, M/s Mam Chand Flour Mills Pvt. Ltd, (2) Vinay Sagar, (3) Dalip Kumar (both directors), (4) Adarsh

Kumar Rajwanshi, the then Branch Manger-cum-Assistant General Manger of the complainant-Bank now retired, (5) Deepak Sharma, (the then Assistant Manager of the complainant Bank, and some other unknown persons, with the allegations that the accused persons in collusion with each other cheated the complainant bank and availed various credit facilities, i.e. CC Limit of Rs.3.40 crores and Terms Loan of Rs.2.05 crores, total amount to Rs.5.45 crores. The accused-Vinay Sagar and Dalip Kumar, both directors of the accused-firm conspired with the aforesaid bank officials, i.e. Adarsh K. Rajwanshi and Deepak Sharma, and got sanctioned various credit facilities fradulently. There was diversion of funds in this account and most of the frequent payments were transferred from the Cash Credit Account to account of various firms belonging to co-accused-Phool Kumar Jha, directly or indirectly.

10. During the investigation, it revealed that the agreement to sell dated 01.10.2013, was executed on a stamp paper which was actually purchased on 24.10.2013.

11. It further surfaced during investigation that on dated 25.10.2013, a Current Account bearing No.028402000012957, was opened in the name of accused-firm(MCRFMPL) showing co-accused, Vinay Sagar and Dalip Kumar, as new directors and authorised signatories of the said current account. Till then, accused-Vinay Sagar and Dalip Kumar, were not the directors, rather they became directors only on 28.10.2013.

12. On the basis of the some inflated previous balance sheets, the

loan and the Cash Credit Limit was extended to the accused-firm(MCRFMPL). The detail facts are mentioned in the chargesheet (Annexure P-14).

13. During investigation, it further surfaced that the entire Cash Credit Limit was diverted to other accounts, and did not use for the purpose, as mentioned in the sanction note, and the directors by doing the above act, cheated the bank. The documents pertaining to these transactions were not collected from the directors, Vinay Sagar and Dalip Kumar, by the bank officials (who are now co-accused), and post sanction inspection of the firm was not conducted. By this act and omission the co-accused Adarsh K. Rajwanshi, abused his official position as a public servant, and facilitated the borrower firm and its directors to avail the credit facilities of the complainant-Bank, and subsequently, after availing such loan/credit facilities on the inflated balance sheets, the loan proceeds were mainly diverted in different accounts of various firms/companies/ individuals, having no genuine business with the accused-firm(MCRFMPL).

14. A perusal of the chargesheet, further reflects that the present petitioners, Yashpal Gupta and Vijay Kumar Gupta, knowingly continued to operated the account of the accused-firm(MCRFMPL), even after their resignation from the directorship of the said firm. The relevant extract from the chargesheet reflecting the role of the present petitioner, and other co-accused, reads as under:-

> "16(54). Investigation further established that Sh. Chander Prakash Gupta, Sh. Yashpal Gupta and Sh. Vijay Kumar Gupta

> knowingly continued to operate the accounts of company even after resignation from the directorship of the company on 28.10.2013. Further, Sh. Chander Prakash Gupta knowingly accepted the payments of Rs. 35.50 lakh from the Cash Credit limit enjoyed by the new directors of the company as already mentioned in detail in para 16(38) of charge sheet. However, this amount was received by Sh. Chander Prakash Gupta without any genuine business for which the CC limit was sanctioned to the borrowers. Also, Sh. Yashpal Gupta filed VAT returns of the company for the year 2014 after resignation from the directorship of the company on 28.10.2013. It is further established that Sh. Chander Prakash Gupta, Sh. Yashpal Gupta and Sh. Vijay Kumar Gupta remained attached with the affairs of the company even after the resignation from the directorship of the company on 28.10.2013 and they are conspirators with other accused to perpetrate this fraud.
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> 16(55). Investigation has thus established that M/s Mam Chand Roller Flour Mills Private Limited (A-1), its Directors Vinay Sagar (A-2), Dalip Kumar (A-3), Adarsh K.Rajwanshi, the then AGM (Retired) (A-4), Sh. Phool Kumar Jha (A-5), Smt. Neetu Jha (A-6), and three previous Directors of the company, Sh. Chander Prakash Gupta (A-7), Sh. Vijay Kumar Gupta (A-8) and Sh. Yashpal Gupta (A-9) entered into a criminal conspiracy for cheating Indian Overseas Bank, Main Branch, Chandigarh, by availing the credit facility fraudulently and diverting the funds of credit facilities. Adarsh Kumar Rajwanshi (A-5), the then Branch Head/AGM, IOB, Main Branch, Chandigarh, facilitated the same abusing his official position and thereby committed the offence of criminal misconduct."

15. On the other hand, learned counsel for the respondent-CBI opposed the instant petition by submitting that there are sufficient allegations and evidence with the prosecution which reflects the involvement of the present petitioner in the instant crime.

16. He futher submits that the learned trial court concerned, cannot appreciate the defence of the accused at the time of framing of charges, and all the issues, which are raised by learned counsel for the petitioner are purely disputed questions of facts.

17. This Court has considered the rival submissions, as made by learned counsel for the parties concerned, and has perused the entire record of the case.

18. The prime argument of learned counsel for the petitioner to the extent that the petitioner was not signatory to any loan documents, however, that would not absolve him from the allegations as surfaced during investigation. Further, this issue is purely a disputed questions of facts which cannot be examined by the learned trial court concerned at the time of faming of charge. The learned trial court concerned was required to consider the *prima facie* case against the accused. In the instant case there are specific allegations surfaced during investigation that the loan amount was, subsequently, siphoned off in the account of the present petitioner. Apart from that, there are other incriminating evidence which are already discussed above.

19. The veracity and authensity of the allegations against the present petitioner, would not be required to be examined at the stage of the framing of charge. It is trite law that at the time of framing of charge, the learned trial court concerned, is not required to delve into the merits of the case or to decide the guilty or innocence of the accused. The learned trial court concerned, ought to have concerned, whether, there is enough evidence to justify framing of charges and proceeding with the trial.

20. The impugned order reflects that the learned trial court concerned, has exercised its powers within the legal framework, and there is no illegality or perversity in framing of charges against the present petitioner, therefore, interference by this Court is not required. No other point has been raised by learned counsel for the petitioner, which requires

consideration by this Court. Consequently, the instant petition is, hereby, **dismissed**.

21. However, liberty is reserved to the petitioner to raise all such pleas, as raised through the instant petition, before the learned trial court concerned, at an apt stage of the trial.

22. The observation made hereinabove, by this Court, have been made only to evaluate the legality of the impugned order, and it does not have any bearing upon the trial.

23. All pending application(s), if any, also stand **disposed** of accordingly.

(KULDEEP TIWARI)
JUDGE

October 14, 2024
dharamvir

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No