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

\+ **CRL.M.C. 9075/2024**

STATE OF NCT OF DELHI .....Petitioner

Through: Mr. Satinder Singh Bawa, APP for the State.
Insp. Sandeep Maan, PS EOW.

versus

SATYENDR NATH SINGH .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **21.11.2024**

CRL.M.A. 34798/2024 (*exemption*)

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

CRL.M.C. 9075/2024

3. The present petition is filed challenging the order dated 16.03.2024 (hereafter '**impugned order**'), passed by the learned Additional Sessions Judge ('**ASJ**'), Patiala House Court, New Delhi District, New Delhi, in Criminal Revision No. 367/2022 arising out of FIR No. 380/2005, registered at Police Station Connaught Place.

4. The learned ASJ, by the impugned order, allowed the revision petition filed by the respondent and set aside the order on charge dated 19.04.2022.

5. By the order dated 19.04.2022, the learned Trial Court had found that *prima facie* case was made out against the respondent and other accused persons, except accused Sudha Shukla, for

offences under Sections 406/419/420/467/471/120B of the Indian Penal Code, 1860 ('**IPC**').

6. The brief facts of the case are as follows:

6.1. On 07.07.2005, FIR No. 380/2005 was registered at Police Station Connaught Place on the compliant received from the Chief Manager, State Bank of Mysore alleging that M/s Radha Swami Trading House, a proprietorship concern of accused Kiran, had availed credit facilities to the tune of ₹40 lakhs. It is alleged that accused Surinder (since deceased), who was the husband of accused Kiran, and one BS Mathur had stood as guarantors to the said facility. These facilities were also secured by mortgage of a property owned by BS Mathur. The loan account exceeded the credit limit. Subsequently, due to non-payment of loan, the bank sought to enforce the charge against the said property, however, it was found that BS Mathur never stood as a guarantor.

6.2. During investigation, it was found that the PAN card of BS Mathur submitted to the bank was bogus and Mr. K Bhattacharya (Bank Manager) had not taken due care to verify the same, due to which, he was arrayed as an accused. The lawyer appointed for giving legal opinion in relation to the concerned property was also charge sheeted.

6.3. During investigation, it was also found that 4 invoices were raised by Global Impex Inc. for an amount of ₹39.26 lakhs for supplying papers to M/s. Saran Sandesh and the said payment had been made by accused persons–Kiran and Surinder. Subsequently, supplementary chargesheet was filed against the respondent for offences under Sections 406/420/120B of the IPC alleging that he gave his EXIM license to accused Surinder which was used for purported import of paper. It was alleged that the accused Kiran and Surinder had raised a Letter of Credit, through M/s Radha Swami Trading House, for importing paper from Canada on behalf of M/s Saran Sandesh and the respondent is a proprietor of the said concern. It is alleged that the letter of credit was used by the accused persons to cheat the bank and the respondent benefited from the same. It is alleged that the respondent had conspired to commit the offence with the accused persons and he had also not accounted for the foreign exchange outgo from the import in his balance sheet.

6.4. By order dated 19.04.2022, the learned Trial Court discharged the accused lawyer and found that a *prima facie* case was made out against all the other accused persons, including the respondent. The relevant portion of the said order is reproduced hereunder:

> *"6…Further qua accused S. N. Singh as well it is on record that he was holding import license on the strength of which letter of credit was submitted by accused Kiran Kapoor and Surinder Kapoor.* ***Report regarding usage of import license is on record which mentions that holder of import license has to incorporate foreign exchange out go in his balance-sheet and thus, contention that license holder was unaware of his license used by co-accused is not correct and appears to have connived with alleged or some material gain.*** *Further report of assisting Director General of foreign trade mention that there is no provision of hand over import-export license to another importer as per foreign trade policy and procedures.* ***Thus, this material reflects that S. N. Singh was in know of things and therefore, a prima facie case is also reflected against him as co-conspirator****."*
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> (emphasis supplied)

6.5. The learned ASJ, by the impugned order, allowed the revision petition filed by the respondent against order dated 19.04.2022 and discharged the respondent of the offences under Sections 406/419/420/467/471/120B of the IPC by holding that the prosecution had failed to establish a *prima facie* case that the respondent had hatched a criminal conspiracy with accused Kiran and accused Surinder.

7. The learned Additional Public Prosecutor (‘**APP**’) for the State submits that the learned ASJ erroneously delved into the evidence so as to draw a conclusion as to the *mens rea* of the respondent. He submits that conspiracy is to be established through circumstantial evidence, as direct evidence is usually not available in such cases, and the same could have only be done during trial.

8. He submits that the learned ASJ has failed to consider that the misuse of the respondent’s EXIM license by the co-accused was central to the fraudulent scheme.

9. He submits that the respondent was actively involved in the fraudulent misuse of his EXIM license and the illegal import of paper under the guise of legitimate transactions. He submits that the respondent, as the license holder, was complicit in the scheme and he had failed to account for the foreign exchange in his balance sheet, further evidencing his involvement.

10. He submits that the payments to Global Implex Inc., USA was made using the funds misappropriated by the accused persons and the respondent was a direct beneficiary. He submits that the report dated 16.07.2009 by CFE Mr. RK Bharani indicates that the EXIM License, intended strictly for newspaper print, was improperly utilized for these transactions.

11. He submits that while the respondent denied receiving any transaction of papers, however, the letter of credit raised by M/s Radha Swami Trading House was contrary to the same.

12. He submits that the learned ASJ did not consider the report from the office of the Director General of Foreign Trade, which explicitly states that there is no provision in the Foreign Trade

Policy and Procedures that allows for the handing over of an EXIM License to another importer.

13. I have heard the counsel and perused the record.

14. Since the State has assailed the impugned order whereby the learned ASJ has discharged the respondent for the offences under Sections 406/419/420/467/471/120B of the IPC, it will be apposite to succinctly discuss the law with respect to framing of charge and discharge under Sections 227 and 228 of the Code of Criminal Procedure, 1973 (‘**CrPC**’) respectively. The statutory provisions are set out below:

> *“**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.*
> ***228. Framing of Charge***
> *(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—*
> *(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;*
> *(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.*
> *(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”*

15. It is trite law that the trial court, at the stage of framing of charges, is not required to conduct a mini trial and has to merely weigh the material on record to ascertain whether the ingredients

constituting the alleged offence are *prima facie* made out against the accused persons. The Hon'ble Apex Court, in the case of ***Sajjan Kumar v. CBI* : (2010) 9 SCC 368**, has culled out the following principles in regards to the scope of Sections 227 and 228 of the CrPC:

> *"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:*
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> *(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.*
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> *(ii)* ***Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.***
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> *(iii)* ***The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.***
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> *(iv)* ***If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.***
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> *(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.*
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> *(vi)* ***At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution***

> ***states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.***
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> *(vii)* ***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.***"
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> (emphasis supplied)

16. The Court at the stage of framing of charge is to evaluate the material only for the purpose of finding out if the facts constitute the alleged offence, given the ingredients of the offence give rise to grave suspicion. Though, for the purpose of conviction, the same must be proved beyond reasonable doubt.

17. It is the case of the prosecution that the respondent had conspired with the accused persons and he is a beneficiary of the offence. It is alleged that the accused persons had paid the payments to Global Impex Inc., USA for supplying papers to M/s. Saran Sandesh, which is a proprietorship concern of the respondent, using the funds misappropriated by them and the respondent was a direct beneficiary. It is further alleged that M/s Radha Swami Trading House had raised a Letter of Credit for importing paper on behalf of M/s. Saran Sandesh and the respondent had given his EXIM license to accused Surinder for the same. It is alleged that the respondent had not accounted for the foreign exchange outgo in his balance sheet.

18. The learned ASJ, by the impugned order, partly set aside the order on charge dated 19.04.2022 and discharged the respondent. It was observed that the supplementary chargesheet against the respondent had been filed almost seven years after filing of the chargesheet. It was further noted that the role of the respondent was based on conjectures and there was no material on record to show that the respondent had actively connived to

commit the offence and was a part of the alleged conspiracy. The relevant portion of the impugned order is reproduced hereunder:

> *"12.... **Even if the allegations are accepted as gospel truth, the same does not in absence of any material link connect the revisionist to the alleged crime to an extent that he actively connived with other accused so as to cheat and defraud the bank.** Except from the fact that he gave his Import License to accused number 1 & 2, no other role has been attributed to the revisionist.*
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> *14. It is true that criminal conspiracy is hatched in secrecy and direct evidence of the same is seldom available but equally true is the fact that **there must be some material which can form a causal link between the accused and the alleged crimes so as to form a chain clearly demonstrating the role of the accused in the conspiracy to commit that crime.** The same may be through circumstantial evidence but it is well settled that in the absence of the above, the role of a person in a criminal conspiracy cannot be attributed merely on the basis of conjecture and surmises.*
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> *15. In this case also it is observed that the role of the revisionist is attributed on the basis of conjectures and surmises and vague inferences which are not supported by material on record. **No material has come on record which can prove that the revisionist was in active touch with the accused persons at the time of hatching of the alleged criminal conspiracy. More over, the complainant also has not attributed any role to the revisionist in obtaining the loan, or that he approached the bank alongwith accused number 1 & 2 or in any way assisted them in obtaining the said loan.** In addition, it is clearly mentioned in supplementary charge-sheet itself that accused no. 2 **Surender Kapoor (since deceased) had been interrogated by the previous IO who reiterated that Sh. S. N. Singh had given his license to him to import news print papers but he could not supply the said newspaper and Sh. S. N. Singh has nothing to do with the crime** committed by Sh. Surender Kapoor (accused number 2) and his family members. Therefore, it is observed that no material has come on record which can link the revisionist to accused no. 1 & 2 so as to suggest that he actively connived with criminal intention with the said accused so as to be a part of criminal conspiracy in commission of the said offences. **In other words, mens-rea which is an essential ingredient in all criminal offences cannot be prima facie found as per the material on record**."*
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> (emphasis supplied)

19. It is argued on behalf of the State that the learned ASJ exceeded its ambit by delving into whether the respondent had the requisite *mens rea* to conspire with the accused persons to commit the offence. It is also argued that conspiracy can only be proved through circumstantial evidence during trial and the respondent was central to the fraudulent scheme.

20. It is relevant to note that no explanation has been provided by the prosecution, even at this stage, as to why the supplementary chargesheet was filed against the respondent after more than seven years of filing of the chargesheet.

21. As noted above, at the stage of framing of charges, the Court has to restrict itself to sifting the material on record to ascertain whether *prima facie* ingredients of the alleged offence are made out. In such circumstances, where the entire case against the respondent is tethered on the allegation of his connivance in the conspiracy, the learned ASJ did not err in stressing on the ingredients that constitute criminal conspiracy as elaborated by the Hon'ble Apex Court in ***CBI, Hyderabad v. K. Narayana Rao* : Criminal Appeal No. 1460 of 2012**. The Court is not precluded from assessing the material on record to discern whether a *prima facie* case is made out against the accused.

22. It was the case of the respondent before the learned ASJ that although he had given his license to the accused persons for carrying out the import, however, he had received no delivery of any consignment. It is contested that even though the prosecution was unable to trace any delivery, however, the respondent could not have been unaware of the use of his license.

23. As rightly noted by the learned ASJ, even if the case of the prosecution is taken at the highest, there is absence of any material to connect the respondent to the alleged crime and show

his involvement in cheating the bank and misappropriating the loaned amount. No role has been attributed to the respondent in obtaining the loan. Moreover, apart from a bald allegation that the respondent must have known about the conspiracy to cheat the bank and he benefitted from the same, there is nothing that shows that the respondent was in active touch with the accused persons to that he had any knowledge of the conspiracy to fraudulently obtain the loan and misappropriate the amount.

24. The learned ASJ also rightly took into account that even as per the supplementary chargesheet, the co-accused Surinder had categorically stated during interrogation that the respondent had nothing to do with the alleged crime.

25. While the use of the respondent's EXIM license may cast a doubt that the respondent was complicit in the scheme of cheating the bank, however, as noted by the ***Sajjan Kumar v. CBI*** (*supra*), if two views are possible and one of them gives rise to only suspicion instead of grave suspicion, the Judge is empowered to discharge the accused.

26. In such circumstances, in the opinion of this Court, the learned ASJ has rightly applied its judicial mind and considered the totality of the facts before discharging the respondent of the offences under Sections 406/ 419/ 420/ 467/ 471/ 120B of the IPC in light of the absence of grave suspicion against him.

27. In view of the aforesaid discussion, this Court finds no reason to interfere with the impugned order.

28. The present petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

NOVEMBER 21, 2024