IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 128 of 2004

Parimal Roy

-Versus-

The State of West Bengal

For the Appellant : **Ms. Monami Mukherjee,**
Ld. Amicus Curiae

For the State : **Mr. Bidyut Kumar Ray, Sr. Adv.**

Hearing concluded on : **19.05.2025**

Judgment On : **17.06.2025**

Prasenjit Biswas, J:-

1. The instant appeal is preferred by the appellant challenging the impugned judgement and order of conviction dated 27.11.2003 passed by the learned Judge, 4th Special Court, Calcutta in connection with Special Case No. 2 of 1988.

2. By passing the impugned judgment this appellant is found guilty for commission of offence punishable under Section 120B/420/465/471 of the Indian Penal Code along with fine and sentenced him to suffer imprisonment accordingly.

3. Being aggrieved and dissatisfied with the said impugned judgement and order of conviction passed by the Trial Court the present appeal is filed at the behest of the appellant –convict.

4. In short campus story of the prosecution is delineated hereunder:-

> "Shri K.C. Balasubrananium, the Branch Manager of Central Bank of India, New Market Branch, Calcutta had entered into a criminal conspiracy with Parimal Roy (the present appellant) of village Udayarampur, P.O. Bishnupur, District- 24 Parganas (South) and out of the said conspiracy the Branch Manager of the Bank had sanctioned cash credit limit of Rs. 2,75,000/- and term loan of Rs. 1,00,000/- in favour of the firm of Parimal Roy under the name and style as M/s. Packing India, 35, C.R. Avenue, Calcutta- 700 006 alleged to be a fictitious one. The amount of the above two loans were released in favour of the accused Parimal Roy in an irregular manner without adhering the rules of the bank and allowed the accused Parimal Roy to withdraw the said amount to the tune of Rs. 3,75,000/-."

5. Shri D.N. Biswas, Inspector of Police, C.B.I. lodged the FIR *suo moto* and the case was registered being Crime No. 68 of 1986 dated 23.09.1986 for the offence under Section 120B/420 of the Indian Penal Code and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947.

6. Thus, the criminal law was set in motion. The CBI Inspector took up the case for investigation and in course of investigation he examined witnesses, arrested the accused persons and seized some other documents under the seizure list and thereafter, he has been transferred from Calcutta to Delhi then one Pradip Christopher, Inspector CBI/S.P.E./A.C.B./Calcutta took up the investigation and after conclusion of investigation submitted charge-sheet against this appellant along with other accused persons under Section 120B/420/467/468/471 of the Indian Penal Code and Section 5(2) read with Section (1)(d) of the Prevention of Corruption Act, 1947.

7. Charge was framed against this appellant and other two accused persons under Section 120B/420 read with Section 34/465/471 of the Indian Penal Code and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947.

8. In this case, prosecution has examined 21 witnesses in order to bring home the charge levelled against the accused persons.

9. Ms. Monami Mukherjee, learned *Amicus Curiae* said that the prosecution has hopelessly failed to prove the case against this appellant beyond all reasonable shadow of doubt. The learned Advocate further contended that the entire investigation was done in a perfunctory manner and virtually there is no evidence at all from any of PWs to the effect that this appellant acted dishonestly in furtherance of the conspiracy to cheat the bank by any illegal act. The Bank Manager, K.C. Balasubrananium (one of the accused persons) after duly following banking procedure and rules granted loans in favour of the M/s. Packing India. It is further said by the learned Advocate that PW2 being the Deputy Chief Officer of Central Bank of India, New Market Branch never stated that there was any irregularities in the opening of the account in the name of M/s. Packing India. It is said by the learned Advocate that the prosecution has failed to produce any cogent evidence by which it can be said that the appellant has committed the offence for which he was found guilty.

10. Ms. Mukherjee further assailed that the learned Trial Court failed to assess the evidences brought in the record properly with due weightage on the fact that the loan to the appellant was sanctioned in compliance with the guidelines provided by the bank for sanctioning of loan to a borrower and the bank sanctioned loan to the accused appellant within the permissible discretionary powers of the Branch Manager of the bank. It is further contended by the learned Advocate that the prosecution withheld the material witnesses like Shri V.P. Krishnan, the then Regional Manager of the Bank, Mr. Swaraj Dastidar who introduced the account opening of M/s. Packing India, Mr. Sunil Kumar Mukherjee and Shri K.C. Chakraborty who verified the signature of the appellant and many others who could have thrown sufficient light to bring out truth and thereby there is a serious infirmity in the prosecution case. It is further said by the learned Advocate that none of the prosecution witnesses have ever supported the prosecution story to the effect that the appellant has acted dishonestly and fraudulently while opening the loan account and withdrawing the amount from the account. As per submission of the learned Advocate the findings of the learned Trial Court are based upon conjecture and surmises and not warranted by the materials on record and as such, on the basis of the evidences on record the prosecution has not been able to prove the guilt of the appellant to the hilt and/or beyond all reasonable doubt. So, it is submitted by the learned Advocate that the impugned judgement and order may be set aside outright.

11. Per contra, Bidyut Kumar Ray, learned Advocate appearing on behalf of the State said that there is no infirmity and irregularity in the impugned judgment and order of conviction passed by the learned Trial Court. The attention of this Court is drawn by the learned Advocate to the findings of the learned Trial Court. It is said by the learned Advocate that all the witnesses have stated in one voice that the documents produced by this appellant and the other accused were false and the accused no. 1 has acted illegally and on relying upon all these forged and fictitious papers and documents sanctioned loan in favour of M/s. Packing India, proprietor of which is the accused no.2, Parimal Roy. It is said by the learned Advocate that after getting proper sanction order the accused no. 1 was prosecuted. The attention of this Court is drawn by the learned Advocate to the relevant portions of the page nos. 80, 100, 101 and 103 of the paper book. The attention of this Court is also drawn to the relevant portions of the deposition of PW1, PW2 and PW11. It is said by the learned Advocate for the State as there is no irregularity in the impugned judgment and order of conviction, then there is nothing to interfere with it and the impugned judgment and order of conviction passed by the learned Trial

Court may be affirmed and the appeal filed by the appellant may be dismissed.

12. I have considered the rival submissions advanced by both the parties. I have also consulted the entire materials gathered in the record.

13. PW1, Lokesh Narayan Chattopadhyay, the Deputy Chief Officer, Central Bank of India, South Calcutta in his evidence has stated that the procedure for obtaining term loan by the intending borrower. It is said by this witness that at first the application duly filled in and signed by the borrower should be submitted at the branch and after receiving the said application the processing starts. A credit status report is thereafter obtained and pre-inspection of the unit or the establishment is to be done and all the information mentioned in the application is to be verified. The financial status of the intending borrower is also to be verified and thereafter, quotations for purchase of the machinery for which the term loan has been applied for is called from the borrower. It is further said by this PW2 that thereafter the feasibility of the project is to be considered and if necessary the branch may seek technical assistance from the regional office and after being satisfied about all these the loan is sanctioned directly adhering to the terms and conditions. The party will be required to sign on the sanctioned order as a token of acceptance of the terms and thereafter the bank will pay the price of the machinery and margin money to be debited of the loan account and the amount will be paid to the supplier directly. Thereafter, an inspection will be made for installation of machineries and insurance coverage will also be taken covering several of risk of accidents etc.

14. In cross-examination, this witness stated that in respect of A/C No. 11704 of New Market Branch, Central Bank of India standing in the name of M/s. Packing India, they found some anomalies and pointed out the anomalies by writing a letter to the Branch Manager but this witness had no document to show or he could not produce any document that such a letter was written by him addressing to the Branch Manager. In cross-examination, this witness further said that he informed to his superior officer, the Regional Manager about the anomalies by sending him a note but this witness could not say whether his note has been produced in Court or not. At the time of giving deposition this witness said that according to category of the branch, the Branch Manager had got their discretionary powers to sanction the proposal of advances at their end and the bank issues the circulars intimating the discretionary power of the respective Branch Manager according to categories. It is categorically said by this witness that when the branch is headed by Class-III Officer, two Class-II officers designated as Assistant Branch Manager and there will be no post of accountant in that case. This PW1 further said that according to the circulars the discretionary power of the Branch Manager, Large Scale Branch as under-

<u>Small Scale Industries</u>.

Total under Group I, - Rs. 5,00,000/-

Total under Group II - Rs. 1,00,000/-

Total under Group III - Rs. 1,00,000/-

Aggregate commitments - Rs. 5,00,000/-

This witness stated that the entire procedure is to be complied with before getting loan from the concerned branch of the Bank. The borrower in this case is S.S.I. Unit. This witness said that Exhibit 2 is the sanction proposal of party M/s. Packing India of New Market Branch.

15. PW2, Amit Kumar Ghosh, Deputy Chief Officer, Central Bank of India, New Market Branch, in his evidence has stated that the financial reports are in favour of M/s. Packing India and Shri Uthan Pada Mondal. It is said by this witness that before sanctioning of loan some formalities are to be performed and first of all the amount asked for must be within the financial limit of the Branch Manager and secondly a proposal is called for and after examination of the proposal if it is found acceptable then the loan may be sanctioned. It is said by this witness that according to the normal practice the financial reports in cases of loan are prepared by the chief cashier. In this case, loan amount to the tune of Rs. 3,75,000/- was sanctioned by the Branch Manager of the bank (the another accused) which well within the financial limit of the Branch Manager. In course of deposition this PW2 proved the specimen signatures cards of M/s. Packing India and said that the signatures were verified by two officers of the bank namely, Shri Sunil Kumar Mukherjee and K.C. Chakraborty. This PW2 further said that a Xerox copy of the S.S.I. certificate was submitted before the bank and the original was retained at the unit and he identified the Trade Licence of M/s Packing India of 35, C.R. Avenue and the number of the Trade Licence is 10150 dated 12.06.1988. It is said by the witness that although the date was written as 1988 but it should be 1985. This witness (PW2) in his evidence stated the name of the guarantor is Uthan Pada Mondal. This witness also proved the letter of guarantee of Uthan Pada Mondal. It is said by this witness that the guarantor letter and other connected papers are accepted and verified by the Branch Manager.

16. This PW2 in his evidence further stated that the Sanction Register bears the signature of the accused K.C. Balasubrananium as well as the accountant Mr. S.C. Brahma and it was prepared in duplicate. It is said by this witness that the original copy was sent to the Regional Office and the duplicate was kept in the Bank. This witness identified the statement of account of Cash Credit of M/s. Packing India and signature of the accountant Mr. S.K. Saha.

17. This PW2 identified a letter (marked Exhibit 18) written by this appellant addressing to the Manager of the Central Bank of India. It is said by this witness that the portion in red ink on the letter (Exhibit 18) is an instruction written by another accused K.C. Balasubrananium, the then Bank Manager and it bears his signature which is marked as exhibit 18/1. It is said by this witness that the proforma invoice was attached with the letter and it bears the signature of Parimal Roy which is marked as exhibit 18/2 in the case. In course of deposition it is said by this witness that in the cash credit account and excess sanctioned over the limit to the party has been allowed but this witness did not mention the excess amount or details of anomaly. In cross-examination, this PW2 stated that the loan sanctioning power of the Branch Manager depends upon the scale of the Branch Manager and the activity of the parties and the year 1985, the loan sanctioning limit of the Branch Manager of New Market Branch was Rs. 5,00,000/- and as a Deputy Chief Officer of the bank, this witness had no authority to interfere with the function of the Branch Manager. So, as per submission of PW2 the loan sanctioning limit of that branch at the relevant point of time was Rs. 5,00,000/- and the two loans which were issued in favour of the appellant to the extent of Rs. 3,75,000/- was well within the limit of the Branch Manager of the Bank. This PW2 in his evidence has stated that at the relevant time the New Market Branch was the Chief Officer Category Branch and M/s. Packing India, the borrower in question was a S.S.I. a unit and according to the circular a Branch Manager under the Chief Officer Category Branch enjoyed the discretionary power in sanctioning loan to the limit of Rs. 5,00,000/-. It is said by this witness that until or unless the bank executes the necessary documents the loan is not sanctioned and for enjoyment of the advance on hypothecation basis, the borrower has to execute the demand promissory notes also in addition to other documents. It is said by this witness that without proper identification nobody is allowed to open an account in the bank. After scrutinizing the evidence of PW2 who was the Deputy Chief Officer of the Central Bank of India it appears that all procedures has been complied before sanctioning loan amount to this appellant.

18. PW11, Virendra Digambar Kulkarni, the General Manager, Personnel Department, Central Bank of India at Bombay has stated in his evidence that he signed on the sanction order to prosecute the accused K.C. Balasubrananium. Virtually, this witness stated nothing in his examination-in-chief against this appellant save and except proving the sanction order. In cross-examination, this witness stated that he did not recollect the nature of irregularities which he found against the other accused K.C. Balasubrananium and he failed to throw any light regarding involvement of this appellant in this case.

19. PW18, Dhirendra Nath Biswas, complainant/I.O. of this case stated in cross-examination that he started the investigation on 23.09.1986 and before registration of the case he did not make any enquiry as to the source information and in reply to the question put to him that whether before investigation he made any enquiry about the genuiness of complaint and or information and in reply to that he answered in negative which is contrary to the contentions of the written complaint. In the written complaint this witness stated that he received reliable information regarding the alleged offence committed by this appellant and the other accused persons.

20. PW19, Hiranmoy Nath, General Manager, District Industries Centre, South 24 Parganas who in his cross-examination stated that their office issued the certificate after verification of documents filed by this appellant. The appellant provided all the relevant necessary documents to register M/s. Packing India as S.S.I. Unit. In cross examination this PW18 has stated that his office issued the certificate after verification of documents by this appellant.

21. PW21, Pradip Christopher, Inspector of Police, A.C.B., C.B.I. who is the second I.O. of the case and submitted charge-sheet in cross-examination failed to say whether he examined any witness or seized any documents in connection with the case.

22. PW12, Uthan Pada Mondal and PW13 Luci Homes were tendered by the prosecution for cross examination.

23. PW14 Ranjit Kumar Roy in his evidence stated that C.B.I. Officer obtained his specimen signatures in a blank white sheet.

24. PW15 Kalyan Kumar Mukherjee stated nothing involving this appellant with the case.

25. PW17 Kanai Lal Parui, clerk in the Pailan Branch of United Bank of India failed to state anything in connection with this case.

26. Other witnesses cited by the prosecution did not state anything material regarding involvement of this appellant with the alleged offence. I have already stated hereinabove that PW1 stated that the entire procedure by which a Bank Manager can disburse the loan to the intending borrower after following the rules and regulations of the bank. As per statement of PW2, the Deputy Chief Officer of the Central Bank of India, New Market Branch that this appellant submitted standard application duly filled in and signed by him annexing with all the relevant documents and after being satisfied the loan was sanctioned by the then Branch Manager (other accused person) and the loan amount which was sanctioned in favour of M/s. Packing India is well within the financial limit of the Branch Manager. It appears that under the normal banking rules and procedure the loan proposal of the appellant was sanctioned. PW2 specifically stated that the signatures in the specimen signatures cards of M/s. Packing India were verified by the two officers of the bank namely, Shri S.K. Mukherjee, Mr. K.C. Chakraborty, but the prosecution withheld those witnesses and no explanation was given for not citing them as witnesses in the case. So, it would appear from the testimonies of the aforementioned witnesses that everything was done following the due procedure and after being satisfied the loan was disbursed by the bank in favour of M/s. Packing India, proprietor of which is this appellant.

27. So, the prosecution has hopelessly failed to prove that the appellant has ever acted dishonestly and fraudulently to cheat the bank. The number of material witnesses who could have unfolded the truth were not produced and examined by the prosecution and no explanation is given for not citing them as witnesses to the prosecution. None of the prosecution witnesses have ever supported the prosecution story to the effect that this appellant had acted dishonestly and fraudulently while opening the loan account and withdrawing the amount from the account.

28. So, the entire findings of the impugned judgment and order of conviction by the learned Trial Court are solely based on conjectures and surmises and not warranted by the materials on record and the prosecution has failed to prove without reasonable shadow of doubt regarding involvement of this appellant with the alleged offence.

29. In view of the above facts and circumstances and discussion made above. I am opinion that the impugned judgment and order of conviction passed by the learned Trial Court dated 27.11.2003 in connection with Special Case No. 2 of 1988 is liable to be set aside.

30. Accordingly, the instant appeal being CRA 128 of 2004 is hereby **allowed**.

31. The impugned judgment and order passed by the learned Judge 4th Special Court, Calcutta dated 27.11.2002 in connection with Special Case No. 2 of 1988 is hereby set aside.

32. This appellant is on bail. He is discharged from bail bonds and be set at liberty if not wanted in connection with any other case.

33. Let a copy of this order along with T.C.R. be sent down to the Trial Court immediately.

34. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)