IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.12.2024

Pronounced on : 06.01.2025

CORAM : JUSTICE N.SESHASAYEE

Crl.R.C.Nos.1968, 1969, 1970, 1971, 1972, 1973, 1974, 1977, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1988 & 1989 of 2023
and
CMP.Nos.18357, 18358, 18359, 18360, 18362, 18363, 18364, 18365, 18366, 18367, 18368, 18369, 18370, 18371, 18382, 18383, 18385, 18388, 18396, 18398, 18399, 18400, 18401, 18402, 18403, 18404, 18405, 18406, 18407, 18408, 18409, 18410, 18414, 18416, 18418 and 18419 of 2023

1.Lia Gagrat ... Petitioner in Crl.RC.Nos,1968, 1969, 1970, 1971, 1972, 1973, 1974, 1977, 1979 of 2023

2. Farah Bakshay ... Petitioner in Crl.RC.Nos.1980, 1981,1983, 1982 1984, 1985, 1986, 1988, 1989 of 2023

Vs

State Represented by
The Inspector of Police
Central Bureau of Investigation
Bangalore. .... Respondent / Complainant

Petitioner Name	***Crl.R.C. Nos.***	***Common Prayer***
Lia Gagrat	1968, 1969, 1970, 1971, 1972, 1973, 1974, 1977, 1979 of 2023	Criminal Revisions filed under Section 397 r/w. 401 Cr.P.C., to set aside the order made in Crl.MP.Nos. 2175, 2169, 2183, 2181, 2167, 2171, 2177, 2179 & 2173 of 2019 dated 26.05.2023 respectively by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai-8, and discharge the petitioner from the case in C.C.Nos. 8409 of 2018, 8030 of 2018, 4239 of 2019, 4238 of 2019 , 7756 of 2018, 8031 of 2018, 279 of 2019, 4237 of 2019 and 8408 of 2018.
Farah Bakshay	1980, 1981 1982, 1983, 1984, 1985, 1986, 1988, 1989 of 2023	Criminal Revisions filed under Section 397 r/w. 401 Cr.P.C., to set aside the order made in Crl.MP.Nos. 2174, 2166, 2176, 2168, 2170, 2178, 2172, 2182 & 2180 of 2019 dated 26.05.2023 respectively by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai-8, and discharge the petitioner from the case in C.C.Nos.8409 of 2018, 7756 of 2018, 8030 of 2018, 279 of 2019, 8031 of 2018, 4237 of 2019, 8408 of 2018, 4239 of 2019 and 4238 of 2019.

For Petitioners : Mr. N.L.Rajah, Senior Advocate
Assisted by Ms.Jayanthi Shah

For Respondent : Mr.Srinivasan
Senior Counsel &
Special Public Prosecutor for CBI

COMMON ORDER

A broad opening statement may be made. The petitioners herein are sisters, and are daughters of a certain Farouk Irani. He was the Managing Director of M/s.First Leasing Company of India Ltd., (FLCIL), and he along with few others, while in the management of the affairs of the company, are alleged to have manipulated the accounts of the company and diverted the public deposits made by the general public for their personal benefit of the company. In all nine cases were registered. After investigation into the allegations the CBI had filed its final reports implicating the petitioners of committing offences under Sec.120-B r/w 201, 409, 420, 468 471, and 477A IPC.

1.2 The petitioners individually have taken out separate petitions before the trial court in each of the nine cases under Sec.239 Cr.P.C, for discharging them. They came to be dismissed by separate Orders in all the nine cases, dated 26.05.2023. Challenging these Orders, the petitioners have preferred these revisions.

FACTS

2. The facts are as below:

a) M/s.First Leasing Company of India Limited (FLCIL), the Accused No.1 in all the nine cases was engaged in the business of lease finance; Hire purchase; General purpose loan to corporates; and re-financing of hire purchase loan on old assets. The Company is now under liquidation.

b) Broadly the business of FLCIL was leasing and hire-purchase of capital assets. It enables its customers who enter into Hire Purchase Agreements with it to pay the cost of the fixed assets on instalment basis, and FLCIL would transfer ownership of the said asset to the lessee thereof on payment of the last instalment. M/s.FLCIL, for its business purposes, approached the banks for finance against the value of stock and the lease rentals receivable by it from those whom it had financed under Leasing and Hire Purchase agreements.

c) On account of the huge exposure of the credit limits and consideration of various factors, including the norms of the various banks in the consortium, a Steering Committee consisting of few banks, who have substantial exposure in the consortium, was put in place.

d) The Company being a Non-Banking Financial Company (NBFC) was subjected to inspection by the RBI. And, between 02.04.2008 and 04.07.2013, FLCIL was stated to be performing creditably.

e) Inspections were carried out by the Consortium bankers periodically. i.e. quarterly on a rotation basis. Since FLCIL is a non-banking financial institution, it is subjected to the scrutiny of the RBI.

f) Be that as it may, on 13.09.2013, RBI directed that the business activities of the company be frozen until further orders. In essence, it directed FLCIL not to alienate or encumber its property and assets without prior written permission of RBI; not to declare or distribute any dividend; transact any business; or incur any further liabilities.

g) Consequent to the RBI's press release, a consortium meeting was called on. Mr.Farouk Irani, MD (A-2) informed that the assets creation was not in line with the liabilities taken by the Company; not enough income generation to meet the repayment of dues, and that the loans obtained by FLCIL from the banks were used to service the interest payable on earlier loans, income tax and sales tax and salary to staff etc. In short bad time struck the company very badly.

h) Thereafter, the RBI had appointed M/s. N.C.Rajagopal & Co., Chartered Accountants, Chennai to carry out a special audit. This was followed by a forensic audit at the instance of the Consortium of banks. The forensic Auditor submitted a preliminary report on 15.02.2014 and a final report on 28.05.2014. The quintessence of the report is that FLCIL had been showing inflated income and assets in the financial statements by creating unsubstantiated entries in the books of accounts since 1998, and that most of the loans advanced by it were fictious and the borrowers did not have any income but had only passed book entries showing fictitious income through which process non- existing assets were created.

i) The findings which later formed the basis for the accusation was that FLCIL, its directors and others had cheated the bank by submitting documents derived by fraudulent means and manipulating them for availing credit limits from the Bank, that on 28.12.2013, the loans which FLCIL had availed from the banks had become NPA, and the banks suffered a total loss of about Rs.1,000 crores.

j) Promptly nine banks preferred separate complaints with the CBI, and that had led to the registration of 9 cases. The FIR in each of the cases arrays several individuals and companies as accused persons. Farouk

Irani, the Managing Director of FLCIL, his wife along with their two daughters, the petitioners herein, were also arrayed as accused persons.

3. To complete the narration, it may be stated that, treating the above batch of nine cases as predicate offences, Enforcement directorate has registered its own cases under the provisions of Prevention of Money Laundering Act. In these cases the petitioners are not arrayed as accused persons.

4. The CBI has since completed its investigation and laid its final reports in each of the 9 cases before the Additional Chief Metropolitan Court, Chennai, suggesting the commission of offences u/s 120B r/w. 201, 409, 420, 468, 471, 477A of IPC. And, the petitioners herein were also implicated in each of the final-reports. The details of the reports along with details of case, ranking of the accused, discharge petition and corresponding Revision petitions are as follows:

Accused (1)	***Rank of the accused*** (2)	***Discharge Petition No.*** (3)	***C.C.No. / Bank Name*** (4)	***Amount defrauded as per charge sheet (Rs. in crores)*** (5)	***Criminal Revision Petition No.*** (6)
Lia Gagrat	23	2167 / 2019	7756 / 2018 (IDBI Bank Ltd.)	273.99	1972 of(2023
	26	2169 / 2019	8030 / 2018 (State Bank of India)	248.46	1969 of 2023
	26	2171 / 2019	8031 / 2018 (Bank of Maharastra)	35.36	1973 of 2023
	25	2173 / 2019	8408 / 2018 (Canara Bank)	44.80	1979 of 2023
	25	2175 / 2019	8409 / 2018 (UCO Bank)	142.94	1968 of 2023
	25	2177 / 2019	279 / 2019 (Vijaya Bank)	24.80	1974 of 2023
	24	2179 / 2019	4237 / 2019 (State Bank of Mysore – Now SBI)	77.74	1977 of 2023
	24	2181 / 2019	4238 / 2019 (Syndicate Bank)	102.00	1971 of 2023
	24	2183 / 2019	4239 / 2019 (State Bank of Travancore)	112.00	1970 of 2023

Name of the accused	***Rank of the accused***	***Discharge Petition No.***	***C.C.No. / Bank Name***	***Amount defrauded as per charge sheet (Rs. in crores)***	***Criminal Revision Petition No.***
Farah Bakshay	22	2166 / 2019	7756 / 2018 (IDBI Bank Ltd.)	273.99	1981 of 2023
	25	2168 / 2019	8030 / 2018 (State Bank of India)	248.46	1983 of 2023
	25	2170 / 2019	8031 / 2018 (Bank of Maharastra)	35.36	1984 of 2023
	24	2172 / 2019	8408 / 2018 (Canara Bank)	44.80	1986 of 2023
	24	2174 / 2019	8409 / 2018 (UCO Bank)	142.94	1980 of 2023
	24	2176 / 2019	279 / 2019 (Vijaya Bank)	24.80	1982 of 2023
	23	2178 / 2019	4237 / 2019 (State Bank of Mysore – Now SBI)	77.74	1985 of 2023
	23	2180 / 2019	4238 / 2019 (Syndicate Bank)	102.00	1989 of 2023
	23	2182 / 2019	4239 / 2019 (State Bank of Travancore)	112.00	1988 of 2023

5.1 In the present batch of 9 + 9 cases, the prosecution has made identical allegations against the revision-petitioners - a literal cut-copy-paste of one set of accusation replicating into additional 8. The specific allegation in the final report (running to several pages) attributable to the petitioners is now reproduced. Since they are identical in all the nine cases, reference is made to paragraphs 50 to 53 of charge sheet in C.C.No.8030/2018 to which are related Crl.R.C.No.1969 of 2023 and Crl.R.C.No.1983 of 2023. It is as below:

> *"50. That the employees working for M/s. FLCIL (A-3), who were pawns in the hands of Shri Farouk Irani (A-2), were made Directors of these Satellite Companies and were rotated on time to time from one Satellite Company to another. The employment of most of the workers of M/s.FLCIL was shown in one of these satellite companies. That Shri Farouk Irani (A-2) himself signed appointment letters in respect of many such employees giving them appointments in satellite companies. That all the affairs of these satellite companies were managed from the office of M/s.FLCIL office and the company seals for all these satellite companies were held securely in M/s. FLCIL Office. Over the years, by the end of FY 2003-04, these Satellite Companies acquired almost 26% shares of M/s.FLCIL (A-3) and for the purchase of the shares M/s.FLCIL gave unsecured loans to these Satellite Companies, obviously out of the loan funds availed from the Banks, thus amounting to cheating and diversion of Bank Loan funds. That by circumventing RBI Guidelines regarding accounting & provisioning of NPA Accounts and to project rosy picture of its financial health, M/s.FLCIL (A-3) transferred Receivables aggregating to Rs.50-60 crores (approx.,) during 1998-99 to*

their Satellite Companies and thus avoided showing loss in the annual returns of the company. That by effecting such manipulation and falsification in the books of accounts of M/s.FLCIL (A-3), the accused persons fraudulently showed (false) rosy picture of the company to various Banks, Investors, RBI, SEBI and other agencies. Moreover, for purchase of these NPAs of M/s.FLCIL (A-3), money was provided to Satellite Companies by M/s.FLCIL (A-3) only and again out of loan funds availed from various Banks including State Bank o India, thus amounting to cheating and diversion of Bank Loan Funds. The register maintained by M/s.FLCIL (A-3) U/s.370 & 372 of Companies Act 1956 for showing the loans granted to the companies under the same management, the details of the abovesaid loans granted by M/s.FLCIL (A-3) to the Satellite Companies viz., Name of the Satellite Company, Date & Amount of Loan etc., are recorded along and this register is signed by Shri A.C.Muthiah (A-1) and Shri Farouk Irani (A-2) which establishes that both of them were party to this conspiracy hatched for cheating the banks by floating Satellite Companies effecting manipulation of books of accounts of M/s.FLCIL (A-3) using these Satellite Companies.

51. That the aforesaid Satellite' Companies were also used for the personal monetary | benefit of. Shri Farouk Irani (A-2) and his wife Smt. Sherna Irani (A-24). The said Satellite Companies were used for purchase: of high-end (used) cars in the name of Shri Farouk Irani (A-2) for office use, for hiring-of Shri Farouk

Irani's Mumbai property by M/s. FLCIL (A-3), for receipt of security deposit and rent from the tenant i.e. M/s FLCIL (A-3) and for providing loans to Shri Farouk Irani (A-2) at concessional rate of 3% with repayment period of 15 years etc. That during early 2007, the property bearing Door No.16 (Old Door 50), Moore. Street, George Town, Chennai-1, owned. by Smt. Sherna Irani? (A-24) was first shown to be sold to M/s. Congruent Real Estates Pvt. Ltd, (one of the satellite companies 'of M/s.FLCIL) for Rs.1 Crore. For making this payment of Rs.1 Crore to Smt. Sherna Irani (A-24) the required funds were provided to M/s.Congruent Real Estates Pvt. Ltd. by M/s. FLCIL (A-3) through another Satellite Company namely M/s. Thirimoorthy Financial Services Pvt. Ltd. Moreover, the loss stated to be on account of this transaction was finally written off as loss in the books of M/s. FLCIL (A-3) after 5 years of this transaction. That the fund trail carried out in the accounts of the Satellite Companies held with 5 different banks namely Vijaya Bank, State Bank of India, Axis Bank, Catholic Syrian Bank and Karur Vysya Bank; shows huge amount of fund transfers between M/s. FLCIL? and the Satellite Companies and also within the satellite companies which establishes that the accused Directors of M/s FLCIL(A-3) with criminal intention to cheat the bank, used the Loan funds availed from the Banks for the above manipulative purposes which amounted to diversion of loan funds.

*52. That **Farouk Irani (A-2)**, the then Managing Director,* *M/s.FLCIL (A-5), his wife* ***Smt.Sherna Irani (A-24)*** *and daughters* ***Smt.Farah Bakshey (A-25)*** *and* ***Smt.Lia Gagrat (A-26)*** *made investments in M/s.FLCIL (A-3) through an internal account termed as "****FACTORS****" maintained in the books of M/s.FLCIL (A-3) wherein transactions in the nature of Bills Re-discounting (bogus), Investment Certificate and Current Account transactions were made and they earned wrongful gains by way of undue higher return/interest on the funds invested by them. The said investments were for short durations and they were continuously being renewed on maturity by passing book entries in the books of M/s.FLCIL without any corresponding transaction (deposit/withdrawal) in respective Bank Accounts of M/s.FLCIL. That on the bogus Bill rediscounting transactions an upfront interest rate ranging from 12.50% p.a. to 15.00% p.a. was being charged by* ***Shri.Farouk Irani (A-2)*** *and* ***Smt.Sherna Irani (A-24)*** *on quarterly basis whereas the public depositors were paid an interest rate of maximum 10% during the relevant period. That it is clearly established that the Bill Re-discounting shown against various firms including M/s.Hatsun Agro Products Ltd are artificial and bogus.*

53. That during the years 2010-2013, ***Shri Farouk Irani (A-2)****,* ***Smt.Sherna Irani (A-24), Smt.Farah Bakshey (A-25)*** *and* ***Smt.Lia Gagrat (A-26)****, withdrew all their investments made in M/s.FLCIL (A-3) through FACTOR Account along with wrongful interest earned thereon and placed the same in* *various fixed deposits held in their names at different banks. The major amount of sum was deposited in the Fixed Deposits opened in the names of* ***Smt.Farah Bakshey (A-25)*** *and* ***Smt.Lia Gagrat (A-26)****. Subsequently, after closing various fixed deposits more than Rs.20 crores each was transferred to the Bank Accounts of* ***Smt.Farah Bakshey (A-25)*** *and* ***Smt.Lia Gagrat (A-26)*** *maintained with Bank of Baroda, Worli Branch, Mumbai and Dena Bank of Worli Branch, Mumbai respectively. Meanwhile, Smt.Farah Bakshey (A-25) and Smt. Lia Gagrat (A-26), in criminal conspiracy with* ***Shri Farouk Irani (A-2), Smt.Sherna Irani (A-24)*** *and others, opened a trust namely "****IRANI FAMILY MAINTENANCE TRUST****" for the benefit of Shri.Farouk M.Irani (A-2) and Smt.Sherna Irani (A-24) by executing a Trust Deed on 23.03.2014 at Mumbai and got it registered with the Department of Inspector General of Registration, at BBE3 Joint Sub Registrar Mumbai, City3, Mumbai. Subsequently, a current account in the name of IRANI FAMILY MAINTENANCE TRUST was opened by* ***Smt.Farah Bakshey (A-25)*** *and* ***Smt.Lia Gagrat (A-26)*** *at Lakshmi Vilas Bank, Andheri East Branch, Mumbai. Thereafter, a sum of Rs.20 crores each from the bank accounts of* ***Smt.Farah Bakshey (A-25)*** *and* ***Smt.Lia Gagrat (A-26)*** *maintained with Bank of Baroda, Worli Branch, Mumbai and Dena Bank of Worli Branch, Mumbai respectively, was transferred to the Account No.0176360000000330 of Lakshmi Vilas Bank, Andheri East Branch, Mumbai and from the said amount and other diversions fixed deposits were opened in the* *name of* ***IRANI FAMILY MAINTENANCE TRUST.*** *Thus it is established that Smt.Farah Bakshay (A-25) D/o.Shri Fraouk M.Irani (A-2) and Smt.Lia Gagrat (A-26) D/o.Shri Farouk M Irani (A-2) conspired with Shri Farouk M Irani and others and opened a trust namely 'IRANI FAMILY MAINTENANCE TRUST' for the benefit of Shri Farouk M Irani (A-2) and Smt.Sherna Irani (A-24) and diverted huge amount from the Accounts of M/s.FLCIL as unlawful benefits on FACTOR Account to their own accounts and finally divered the huge sum (more than Rs.40 crores) by opening various Fixed Deposits in the name of "IRANI FAMILY MAINTENANCE TRUST".*

5.2 The Prosecution case can be easily explained through a flow chart which the Enforcement Directorate has prepared (whose correctness the CBI does not question) and is as below:

Credited to A/c No. 0429301000024122, Smt. Sherna Irani & Shri. Farouk Irani — **Rs. 18,57,68,492.6/-** — Savings Account in Lakshmi Vilas Bank, Mount Road Branch Chennai

↓

(Credited to A/c No. 0429301000024122, Smt. Sherna Irani & Shri. Farouk Irani) — **Rs. 18,50,00,000/-** — (Savings Account in Lakshmi Vilas Bank, Mount Road Branch Chennai)

↓

(Credited to A/c No. 04220100013051, Mrs. Lia Gagrat) — **Rs. 18,49,50,000/-** — (Savings Account in Bank of Baroda, Worli Branch, Mumbai)

↓

(Credited to A/c No. 009510025447, Mrs. Lia Gagrat Dena Bank, Worli Branch, Mumbai) — **Rs. 18,49,50,000/-**

\+

Rs.1,83,50,437/- credited to A/c. 009510025447 of Mrs. Lia Gagrat From A/c. 429301000024122, Farouk Irani & Sherna Irani, Lakshmi Vilas Bank, Mount Road Branch)

↓

(Credited to A/c No. 176360000000330, M/s. Irani Family – Maintenance Trust) — **Rs. 20,00,00,000/-** — (Current Account in Lakshmi Vilas Bank, Andheri Branch, Mumbai)

↓

(19 Fixed Deposits for Rs. 1 Crore each Created in the name of M/s. Irani Family - Maintenance Trust — **Rs. 19,00,00,000/-** — (In Lakshmi Vilas Bank, Mount Road Branch, Chennai)

12. Flow Chart – 2: Money Trail showing Diversion of Funds from Account of FLCIL to the Personal Accounts of Managing Director, Shri Farouk Irani& his family members held Karur Vysya Bank, Chennai

Debited from A/c No. 603851004377
A/c Name: First Leasing Company of India
ICICI Bank, Mount Road Branch, Chennai

↙ ↘

N. ANANTHIE
Deputy Director
Directorate of Enforcement
Govt. of India
Shastri Bhawan
Chennai-600 006.

Total amount to the tune of Rs.19,26,00,000 Credited into A/c 1219155000105201, of Smt Sherna Irani & Shri Farouk Irani

On 02.12.2013, **16FDs** held in Karur-Vysya Bank, Whites Road, Chennai were either pre-closed or redeemed &**Rs. 20,28,96,779/-** Credited into A/c1219155000105201, Smt. Sherna Irani & Shri Farouk Irani

(Credited to A/c No. 1219155000105201, Smt. ShernaIrani& Shri. Farouk Irani)

Rs. 20,28,96,779/-

(Savings Account in KarurVysya Bank, Mount Road Branch Chennai)

(Credited to A/c No. 04220100013049, Mrs. Farah Bakshay)

Rs. 20,28,96,779/-

(Savings Account in Bank of Baroda, Worli Branch, Mumbai)

Rs. 10,00,00,000/-

FD for Rs. 10 Crores
A/c. 04220300024812
Dated 02.12.2013
Mrs. Farah Bakshay

Rs. 10,00,00,000/-

FD for Rs. 10 Crores
A/c. 04220300024821
Dated 02.12.2013
Mrs. Farah Bakshay

Rs. 18,90,000/-

FD for Rs 18.90 lakh

FD for Rs. 10 Crores
A/c. 04220300024812 preclosed
Dated 02.04.2016

Rs. 9,95,28,139/-

Credited to Mrs. Farah Bakshay
A/c No. 04220100013049
Bank of Baroda, Worli Branch

FD for Rs. 10 Crores
A/c. 04220300024821preclosed
Dated 02.04.2016

Rs. 9,95,24,409/-

Credited to Mrs. Farah Bakshay
A/c No. 04220100013049
Bank of Baroda, Worli Branch

(Credited to A/c No. 176360000000330, M/s. Irani Family – Maintenance Trust)

Rs. 20,00,00,000/-

(Current Account in Lakshmi Vilas Bank, Andheri Branch, Mumbai)

एन. आनंदी / N. ANANTHIE
उप. निदेशक / Deputy Director
प्रवर्तन निदेशालय
Directorate of Enforcement
भारत सरकार / Govt. of India
शास्त्री भवन / Shastri Bhawan
चेन्नई-600 006 / Chennai-600 006.

Rs. 20,00,00,000/-
(10 FDs for Rs. 1 Crore each,
2 FDs for Rs. 5 Crore each,
Created in Lakshmi Vilas Bank
Andheri Branch, Mumbai)

5.3 To substantiate its accusation, the prosecution relies on The Special Audit Report, Forensic Audit Report, and statements of five witnesses namely: (i) Victor Zacharias Victor, the former Assistant Vice President of FLCIL, (ii) V. Lakshmanan, the former Manager of FLCIL, (iii) Madanlal, the then Manager of Dena Bank, (iv) Chandran, Branch Manager of M/s Lakshmi Vilas Bank Ltd., and (v) Kamatham Thiripalaiah, the then Senior Manager of Bank of Baroda.

6.1 As stated in paragraph 1.2 above, the petitioners have preferred separate petitions before the trial court for discharging them. Broadly their contentions are that the complainant banks' accusation is pivoted on the way FLCIL had operated, and how it inflated its assets, borrowed loans from these banks, and how it diverted the loan amounts so borrowed etc through manipulations of books of accounts, these are all internal to the functioning of FLCIL and might have happened at the management level, and that the petitioners are not part of the corporate structure of FLCIL and that they never had any occasion to be part of the management of the company for them to even to gain an opportunity to sit and conspire with those in the management of the affairs of the company, and except being the daughters of the Managing Director of FLCIL, there is nothing to incriminate or implicate the petitioners in the cases.

7. This plea however, was not accepted by the trial court, as it found that the issues raised by the petitioners are fundamentally triable. Hence its Order is now under challenge in this batch of revisions.

Arguments:

8.1 Arguing for the revision-petitioners, Mr. N.L Rajah, Senior Advocate, made the following submissions:

a) If the accusation of the prosecution is dissected, it only discloses that

- The petitioners made investments in FLCIL through an internal account termed as 'FACTORS' maintained in the books of First Leasing Company of India Limited and derived unlawful monetary gains in the form of dividends on false profits of FLCIL.
- The petitioners, in furtherance of criminal conspiracy, withdrew their investments made in FLCIL through 'FACTORS" account along with wrongful interest earned.

b) Higher rate of interest was given for the deposits they had made, that they had opened accounts into which their parents had transferred their funds, which were later converted into fixed deposits, that the fixed deposits were subsequently closed and the amounts in these accounts later were transferred to a Family Maintenance Trust in which only the parents of the petitioners were the beneficiaries. What is required to be noted are:

- The alleged payment of higher rate of interest to the deposits of the petitioners, even it is presumed to be true, is the decision of the management of FLCIL and the petitioners can never be responsible for it. At the relevant time petitioners were in their mid-20s, unmarried, and dependent on their parents. The money invested belonged to parents, the interest given was by FLCIL, and in none of them the petitioners had a role. Indeed, it is not even the prosecution's case that the petitioners had any specific role in it.
- The fact that the petitioners were given higher rate of interest for the deposits made in their names, does not constitute an offence, and at any rate, the petitioners are not responsible for it.
- Turning to opening of accounts by the petitioners is concerned, it is not a crime to open bank accounts. That the parents had transferred funds into the accounts of the petitioners so opened also is not a crime. It might be that such amounts transferred to the newly opened accounts of the petitioners by their parents constitute

proceeds of crime, assuming it is, but such proceeds of crime are generated by those in the management of the FLCIL in which the petitioners have no role. Indeed, the nine cases registered by the CBI at the instance of nine banks pertain to what had happened inside FLCIL and not how after making wrongful gains those who might be responsible for it have diverted such proceeds of crime.

- Assuming that the amounts transferred to the savings bank account in two banks opened by the petitioners from their parents' accounts constitute proceeds of crime, then petitioners as daughters of the Managing Director of FLCIL had little to suspect it. Here the prosecution has not produced any material how and with whom the petitioners have conspired with which led to the bank suffering wrongful loss.

c) Neither the Special Audit Report (constituted by the RBI), nor the Forensic Audit Report (constituted by the consortium of banks) have either named the petitioners or attributed any specific overt acts to implicate the petitioners in these cases, nor has the prosecution explained how despite these audit reports not making any reference to the petitioners except as depositors along with few hundred depositors are responsible for bank suffering wrongful loss.

d) The petitioners never had any connection whatsoever with the management of FLCIL in any capacity, and it is not even the case of the prosecution. The petitioners were never involved, either in the management or in the decision-making process of First Leasing Company of India Limited at any point of time. Even according to the CBI, accounts were fudged and camouflaged by the persons belonging to the accounts department of the FLCIL and the petitioners did not have control over them. They had neither represented FLCIL, nor had signed in any documents on its behalf.

e) The case of the Prosecution is that only Mr. Farouk Irani MD (A-2) along with Mr. Dilli Raja (A-8) along with A9 had conspired together from the beginning by manipulating the records and further it was also alleged by the Prosecution in its final report that no other officials had any control and powers over financial transactions of the Company except Mr.Farouk Irani (A-2) himself. The Prosecution ought not to have come to conclusion that the Petitioner was a party to the alleged offences committed by the management of the Company.

f) Most importantly the principal lender to the Company ICICI bank, had withdrawn all the proceedings against the company and hence, the very filing of this case is vexatious.

g) It is submitted that nowhere in the charge sheet it is mentioned that any complaints were received from general public regarding the alleged charging of differential interest rates or any violation of any law or contract.

The allegations made in the final reports, therefore, are sweeping without touching on the specific overt-acts. Nor has the investigation agency made available any material that may suggest a triable case against the petitioners. Merely because the petitioners are the daughters of Farouk Irani they cannot be made accused for all the alleged offences which their father might have committed since it was he who was the Managing Director of FLCIL along with other company officials. The Prosecution has erroneously come to the conclusion that the petitioners were involved in the alleged conspiracy of defrauding the banks merely on the ground that they are the daughters of the Managing Director of the Company and received profits on the investments made in the Company without any evidence or document on record. A perusal of the statement of the witnesses recorded under Section 161 CrPC further reveals that there is no link between the petitioners and other accused except for the fact that they are the daughters of the then Managing Director of First Leasing Company of India Limited. None of the witnesses spoke about any positive act or omission on the part of the petitioners in the entire transaction.

8.2 So far as the offence under Sec.201 IPC is concerned, for constituting an offence, (a) the accused must have known or has reason to believe that an offence had been committed; (b) that the accused has caused disappearance of evidence thereof. So far as the present case is concerned, all the accounts which are alleged to have been fudged are available, and there is no case for the prosecution that the petitioners had caused to disappear any of the evidentiary-documents. And so far as the alleged routing of the funds of petitioners' parents through their accounts goes, even if it is presumed to be the proceeds of crime, yet they have not disappeared, but are well locked in the banking system, and indeed the Enforcement Directorate has even attached them. Therefore no prima facie case is made out even with regard to offence under Sec.201 IPC.

9. In essence, the prosecution has not been able to produce any evidence to make out a prima facie case that the petitioners had or could have conspired with A1 and other officials of FLCIL to commit any offence under Sec.120B r/w 201,

409, 420, 468 471 and Sec.477 A IPC. Reliance was placed on the ratio in ***Narendra Pratap Narain Singh Vs State of U.P.*** [(1991) 2 SCC 623]; ***Mariam Fasihuddin and another Vs State by Adugodi Police Station and another*** [2024 SCC OnLine SC 58]; ***Deepak Gaba and others Vs State of Uttar Pradesh and another*** [(2023) 3 SCC 423]; ***Central Bureau of Investigation, Hyderabad Vs K.Narayana Rao*** [(2012) 9 SCC 512]; ***P.K.Narayanan Vs State of Kerala*** [(1995) 1 SCC 142]; ***Pushpendra Kumar Sinha Vs State of Jharkhand*** [2022 SCC OnLine SC 1069]; ***Sanjay Kumar Rai Vs State of Uttar Pradesh & another*** [2021 SCC OnLine SC 367]; ***Gajanan Property Dealer and Construction Pvt. Ltd., and others Vs State of Orissa and another*** [2018 SCC OnLine Ori 387]; ***Muthammal & others Vs S.Thangam*** [Order of Madurai Bench of Madras High Court dated 05.10.2018 in Crl.OP(MD) No.6123 of 2016] and ***Capt.V.N.Katiere and others Vs The Registrar of Companies*** [Order of Principal Bench of Madras High Court dated 21.12.2020 in Crl.R.C.Nos.1002 to 1004 of 2013].

10.1 Per Contra, the learned Prosecutor explained the materials which according to him *prima facie* indicate the involvement of the petitioners in the crime with reference to (a) two separate flow charts for each of the petitioners (the consolidated one is provided by the Enforcement Directorate. See; Paragraph 5.2 above) (b) the first two paragraphs of the final report extracted in paragraph 5.1 above; and (c) statements of (i) Victor Zacharias Victor, the former Assistant Vice President of FLCIL, (ii) V. Lakshmanan, the former Manager of FLCIL, (iii) Madanlal, the then Manager of Dena Bank, (iv) Chandran, Branch Manager of M/s Lakshmi Vilas Bank Ltd., and (v) Kamatham Thiripalaiah, the then Senior Manager of Bank of Baroda. Since they have been already extracted, this Court refrains from re-stating it.

10.2 Placing reliance on the ratio in ***Amit Kapoor Vs Ramesh Chander and another*** [(2012) 9 SCC 460], the learned Prosecutor submitted that Court may not go into a meticulous analysis of the materials made available by the investigating agency in its final report, and must only ascertain if the materials so made available make out a case for framing charges.

Discussion & Decision

11.1 The accusation against the petitioners herein can be segregated into two parts:

a) The crime of conspiracy and falsification of accounts of FLCIL showing a higher asset value and borrowing of funds from the complainant banks and defrauding it of the sums (which are indicated in each of the cases in column 5 in the table in paragraph 4 above) owing to which the banks have suffered wrongful loss whereas the accused persons who had conspired to falsify the accounts etc. inflicting the said loss on the banks have made wrongful gains. The modus operandi adopted was in bogus re-discounting of bills, investment certificates and manipulation of current account, and they relate to a class of accounts which FLCIL had maintained and known as Factors Accounts. Going by the prosecution case, the banks have lost their money essentially here.

b) There is a second part to the final report. It relates to the flow of money alleged to have been defrauded by fudging the accounts of FLCIL by Farouk Irani to the accounts of the petitioners, then converted them into fixed deposits which eventually had gone to form the corpus of a Family Trust, which is intended to benefit only Farouk Irani and his wife, the parents of the petitioners. This part of the final report as explained by the prosecutor , if closely scanned for its criminality, reveals that it relates to the money trail of the proceeds of the predicate offence which the CBI has investigated and laid its final reports. As outlined in paragraph 3 above, the Enforcement Directorate are behind the money-trail of the proceeds of the crime constituting the predicate offences, and opened its own investigation under the PMLA. It has also promptly attached all the accounts of petitioners and their parents, including the account of the Family Trust.

11.2. While the petitioners have been arrayed as accused persons in all the nine cases constituting the predicate offence, they are not accused in the cases registered by the Enforcement Directorate.

12. Now inasmuch as the petitioners have been arraigned as accused persons only in the nine cases involving the predicate offences in which final reports too have been filed, this court is only required to evaluate the materials gathered and made available by the CBI to ascertain if they *prima facie* disclose petitioners' involvement in the commission of the crime alleged against them.

13. Prosecution in effect relies on four paragraphs of the final reports, which are

extracted in paragraph 5.1 above. As already stated these paragraphs get repeated in all the cases, except that they carry different paragraph numbers. If these paragraphs are closely read it could be seen that the first two paragraphs did not make any reference to the petitioners but only their father Farouk Irani (A2 in all the nine cases). If the last two paragraphs of the final report are read they do refer to the petitioners by name and also make certain allegations. To back it up, the prosecution relies on the statements of (i) Victor Zacharias Victor, the former Assistant Vice President of FLCIL, (ii) V. Lakshmanan, the former Manager of FLCIL, (iii) Madanlal, the then Manager of Dena Bank, (iv) Chandran, Branch Manager of M/s Lakshmi Vilas Bank Ltd., and (v) Kamatham Thiripalaiah, the then Senior Manager of Bank of Baroda.

14. The suggested charges against the petitioners by the prosecution involves their involvement in offences under Sec.120B r/w Sec.201 (causing disappearance of evidence), Sec.409 IPC (criminal breach of trust by public servant/banker), 420 (cheating), 468, 471, 477A of IPC (relating to forging of documents) and Sec.477A (falsification of accounts). Can the petitioners be alleged to have committed any of these offences? It may be considered in some detail:

a) The petitioners cannot be charged of committing an offence under Sec.409 IPC, for they are neither public servants, nor they are bankers.

b) They cannot be charged with offence under Sec.420 IPC because there is no case for the prosecution that they had, dishonestly and fraudulently induced or deceived any person or entity to deliver any property, or altered or destroyed the whole or any part of any valuable security, or anything which is signed or sealed, and is capable of being converted into a valuable security. And, the prosecution does not have a case here against the petitioners that they had engaged in anything that may constitute an offence under Sec.420 IPC.

c) Then comes Secs.468, 471 and 477A IPC. They relate to forging of documents and falsification of accounts of FLCIL. Even here, there is no accusation that the petitioners are involved in any of these classes of crimes. After all it is no case of the prosecution that the petitioners were part of the management of FLCIL and that they had a role in taking any decision for the company, or they had access to the books of accounts etc, of the company.

d) What remains is Sec.201 IPC, but it essentially relates to causing the disappearance of evidence. What is that evidence which these petitioners have caused to disappear? The prosecution's narrative against the petitioners does not specify the documents which they had caused to disappear nor it mentions the role that they had played.

e) This leaves only the applicability of Sec.120B IPC, and how far the materials which the prosecution has made available in its final report makes out a prima facie case for framing charges. For constituting an offence under Sec.120B, there should be a meeting or convergence of minds of at least one accused person against whom materials have been gathered by the CBI for commission of any of the offences under Sec.201, 409, 420, 468, 471 and 477A and the petitioners. After all when the prosecution has not been able to provide materials which could prima facie indicate the involvement of the petitioners directly in any of these offences, then unless the prosecution is able to establish through its final report that the petitioners have conspired with those who according to it have committed the said offences under Sec.201, 409, 420, 468, 471 and 477A IPC, it cannot be said that charges could be framed against the petitioners and force them to undergo the agony of a trial.

15.1 The learned Prosecutor made a pointed statement in his customary vehemence as to how each of the petitioners had opened two bank accounts with Rs.1,000/- in two different banks, and how to each of these newly opened savings accounts, money from the accounts of their father and mother were respectively transferred, and how the money that came into the newly opened bank accounts of the petitioners were finally consolidated and converted into fixed deposits, and how after few years they were closed and the amounts in those accounts were credited back to their respective savings accounts of the petitioners, and how the money was then transferred to the account of the Family Trust which was formed for the benefits of the parents of the petitioners. Let its truth be presumed. Indeed, in all probability, the petitioners might not be even able to deny the money trail through their account irrespective of whether the source of the money is legal or illegal, since these facts are essentially based on documentary evidence.

15.2 Let these allegations of the prosecutor be analysed:

a) Both the petitioners opened two fresh bank accounts within a short period of time in two different banks with Rs.1,000/-. But the respondents should know that it is not illegal to open bank accounts.

b) Money has been transferred from the account of the petitioners' parents to their newly opened accounts. This may be a fact, but how they could have conspired with those in actual management of the company to fudge the accounts of the FLCIL when they were no more than investors/depositors of FLCIL at one point of time along with around 1000 investors whose money which FLCIL had maintained as Factors Account? There is neither any accusation nor are there materials to indicate that the petitioners herein, had access to the account books of the company or had the opportunity to fudge them to enable the managers of the company to inflate the value of the assets and to borrow from the complainant-banks on such inflated value and to defraud these banks. Indeed, it is not even the prosecution's case that these petitioners were actively involved in fudging the accounts of the FLCIL.

c) The next aspect highlighted by the prosecution was that the money so collected in the accounts of the petitioners were converted into fixed deposits and then it ultimately found its way to the account of the Family Trust created for the maintenance of the parents of the petitioners, of which the petitioners themselves are the trustees. If this is analysed, formation of Trust by itself is not a criminal act, or to become the trustees of the Trust is not an action involving any shades of criminality.

15.3 The discussion above shows that the individual limb of prosecution's accusation does not constitute any offence in itself nor can it be a part of any of the constituent offence in the batch of predicate cases.

16. There is one accusation by the prosecution that certain sums of money have directly come from the FACTORS account of FLCIL to the individual account of the petitioners. What the prosecution has not appreciated is that the petitioners themselves were depositors in the FACTORS account and that all the depositors have been paid and account have been closed even by 2013, and this fact gets reflected in the report of Special Audit by RBI.

17. Therefore, the petitioners have two sources of money into their accounts; one from their own deposits which has been repaid to them; and the second is the money from their parents. So far as money from parents is concerned, as already stated, unless the prosecution comes out with some material that the money transferred by the parents of the petitioners form part of the wrongful loss occasioned to the complainant banks, and that the petitioners have also actually participated in generating wrongful gains for the parents, it cannot be said that

the petitioners are involved in committing the offences involved in the predicate cases.

18. Turning to the statements of Victor Zacharias Victor, the then Assistant Vice President of FLCIL and Lakshmanan, the then Manager of FLCIL they merely say how certain investment certificates were issued in the name of the petitioners without any back-up investments, and how the general ledger of the FACTORS account have been fudged. But these allegations are internal to FLCIL and even Victor Zacharias Victor only accuses Farouk Irani and not his daughters, the petitioners herein. So far as the statements of other three witnesses Madanlal, Chandran, and Kamatham Thiripalaiah are concerned, they are merely the bank officials of three banks in which the petitioners have opened new accounts, and they merely speak to when the accounts were opened, how the monies got transferred from the accounts of the parents to the accounts opened in the respective banks by the petitioners, and how the money which reached those accounts of the petitioners were later converted into fixed deposits. In effect they speak about the trail of money from the parents of the petitioners that go through their hands. When the issue is whether the petitioners had participated in the commission of core offences leading to wrongful loss to the complainant banks,

the facts that these bank officials speak to in their statements do not connect the petitioners to the core offences. Set in the context, invoking Sec.120B IPC vis-a-vis the petitioners, except it finding a kind of tag-line in the final report, there is not a shred of material to come to a prima facie conclusion that the petitioners herein might have conspired to cause wrongful loss to the complainant-banks.

19. Turning to the authorities, in ***Amit Kumar Case*** [(2012) 9 SCC 460], the Hon'ble Supreme Court has held:

> *"**17.** Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for **presuming that the accused has committed an offence**, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such*

> *jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.*
>
> ***19.*** *At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage.*

Proceeding further, the Supreme Court has gone on to rely on its earlier authority in ***State of Bihar Vs Ramesh Singh*** [(1977) 4 SCC 39], wherein the Hon'ble Supreme Court has illustrated how the Court may approach the issue on framing charges. It reads :

> "*We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his*

acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."

20. If this Court now reads the materials made available by the prosecution as against the accusation it makes, the pan of innocence of the petitioners weighs so much that it leaves the pan of evidentiary materials irrelevant. It is so because while the case is all about causing wrongful loss to the complainant banks, the respondent has spent more time explaining how the money has traveled through the accounts of the petitioners. The objective of the prosecution should have been to gather such materials as would be capable of connecting the accused persons to any of the aspects of the crime which according to the prosecution had led the banks to suffer wrongful loss.

21. To conclude, it is now writing on the wall for the respondent. These petitions are allowed and the petitioners are discharged from the accusation levelled against them. Consequently, connected miscellaneous petitions are closed.

06.01.2025

Index : Yes / No
Neutral Citation : Yes / No
Speaking order / Non-speaking order

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To:

1.The Inspector of Police
Central Bureau of Investigation
Bangalore.

2.The Public Prosecutor
High Court, Madras.

N.SESHASAYEE.J.,

ds

Pre-delivery order in

Crl.R.C.Nos.1968, 1969, 1970, 1971, 1972, 1973, 1974, 1977, 1979,1980, 1981, 1982, 1983, 1984, 1985, 1986, 1988 & 1989 of 2023

06.01.2025