2025:PHHC:005309

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

114+115 (4 cases)

1. **CRR-2523-2024 (O&M)**
Date of decision: 10.01.2025

Kamlesh Wadhawan .....Petitioner

Versus

Central Bureau of Investigation .....Respondent

2. **CRR-2536-2024 (O&M)**
Date of decision: 10.01.2025

Devinder Kumar Gupta .....Petitioner

Versus

Central Bureau of Investigation .....Respondent

3. **CRR-2557-2024 (O&M)**
Date of decision: 10.01.2025

Om Parkash Kathpal .....Petitioner

Versus

Central Bureau of Investigation .....Respondent

4. **CRR-2567-2024 (O&M)**
Date of decision: 10.01.2025

Anil Kumar Khosla .....Petitioner

Versus

Central Bureau of Investigation .....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. B.B. Bagga, Advocate for the petitioners.

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MANJARI NEHRU KAUL, J.

1. This order shall dispose of abovementioned four Revision Petitions as they all arise out the same case and similar questions of

facts and law are involved in them.

1A. The petitioners are seeking quashing of order dated 06.12.2023 vide which applications for their discharge were dismissed by learned Special Judge, CBI Court, Chandigarh, as well as charge sheet dated 29.01.2024 in case FIR No.RCBD1-2017-E0002 dated 07.04.2017 registered at Police Station CBI, New Delhi, whereby charges under Sections 420, 467, 468, 471, 120-B of the IPC and Sections 13(2) read with Section 13(1)D of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'PC Act') have been framed against them.

Submissions on behalf of petitioner Kamlesh Wadhawan

2. Learned counsel for the petitioner contends that learned Special Court failed to consider the relevant facts and the legal principles while passing the impugned order. Specifically, the learned Special Court while passing the impugned order erroneously relied on the principle that at the stage of framing charges, the probative value of the material on record cannot be examined. However, it has been argued that in the present case, there was no necessity to assess the probative value, as the facts on record overwhelmingly point to the innocence of the petitioner. It has been further submitted that the petitioner was posted as Manager in Foreign Exchange Section in Large Corporate Branch of Punjab National Bank (PNB), Sector 17, Chandigarh from 05.07.2011 to 10.08.2013. The allegations in the case pertain to the loan account of an exporter M/s Kudos Chemie Ltd. (hereinafter referred to as 'accused company'). This account was

sanctioned and monitored at the head office of PNB and had been operational in the branch since the year 1994, long before the tenure of the petitioner. It has still further been argued that the FIR in question annexed as Annexure P-1, reveals that the petitioner has not been named therein as an accused. In fact, the petitioner was implicated as an accused, two years after her superannuation and nearly ten years after her transfer from the concerned branch. Furthermore, during her tenure, the bank conducted thorough investigations, including a review by the Vigilance Department and Forensic Audits. At no point were any malpractices or malfeasance attributed to the petitioner regarding this account. It has been further argued that the following facts further underscore the absence of any culpability of the petitioner:-

(i) No charge sheet was issued against the petitioner during her service;

(ii) No disciplinary proceedings were initiated concerned the account of accused company;

(iii) The petitioner was transferred from the branch on 10.08.2013, and the borrowers' account remained a standard assert unless 31.03.2015.

2A. In addition, It has been further urged that the account of the borrower underwent multiple layers of scrutiny, including concurrent audits at the branch level, inspections and audits conducted by independent agencies, which revealed no culpable conduct or malafides attributable to the petitioner. Furthermore and pertinently, following her retirement, no adverse observations or allegations of misconduct were made against the petitioner by the bank.

2B. Learned counsel for the petitioner has, therefore, challenged the charges which have been framed against her on the ground that the Court failed to recognize that the documents on record, which when read objectively, point towards the innocence of the petitioner. Therefore, the petitioner's prayer for discharge should have been fairly considered by the learned Special Court. Moreover, the claim of the prosecution that the petitioner extended unauthorized accommodation to the borrower is in fact refuted by documentary evidence, including purchase orders dated 15.11.2012 and 21.12.2012 issued by the Concentrate Manufacturing Company of Ireland; post-facto approval of the credit facilities by the head office, which held the sanctioning powers. Hence, the allegations levelled that fictitious and fake shopping bills were utilized to justify the credit facilities of the borrower is also untenable, the institutionally available tools and the bank's own guidelines governed the actions of the petitioner, which were consistent with her official duties.

Submissions on behalf of petitioner Devinder Kumar Gupta

3. It has been contended by the learned counsel that the petitioner was serving as Senior Relationship Manager at Large Corporate Branch of Punjab National Bank (PNB), Sector 17, Chandigarh, from 10.06.2013 to 20.06.2015. The account of the accused company had been in operation since 1994 and fell within the sanctioning powers of the head office of the bank, and not the petitioner. Like co-accused Om Parkash Kathpal, FIR which was filed

in 2017 did not name the petitioner as an accused. It was two and a half years after the petitioner superannuated and seven years after his transfer from the branch, the petitioner was made an accused in the present case. Furthermore, it has been asserted that the professional conduct of the petitioner was subject to rigorous scrutiny during his tenure which included investigations by the Vigilance Department of the bank, Forensic Audits and independent audits conducted by Ernst & Young. Furthermore, no evidence of malafides, misconduct or culpable behaviour was ever attributed to the petitioner during any of these audits. Still further, the account of the accused company remained classified as a standard asset in the records of the bank until 31.03.2016, nearly a year after the transfer of the petitioner from the bank on 20.06.2015. Moreover, the account of the borrower was under continuous scrutiny including concurrent audits at the branch level and periodic inspections by the internal teams of the bank. None of these processes flagged any irregularities attributable to the petitioner.

3A. The petitioner retired from the bank with an unblemished record, and no disciplinary action was initiated against him during or after his tenure.

3B. While pointing out to the flaws in the case of the prosecution, learned counsel submitted that as per allegations levelled, the petitioner extended unauthorized accommodation to the borrower, however, the same was baseless and stood contradicted by purchase orders dated 15.11.2012 and 21.12.2012 from the Concentrate Manufacturing Company of Ireland, which substantiate the legitimacy of the transactions; the post facto approval of the credit facilities by the head office of the bank was the competent sanctioning authority. Furthermore, as per allegations, fake and fictitious shipping bills were used to justify credit facilities extended to the borrower. However, it has been argued that the petitioner was not directly responsible for verifying or approving such documents; the banks institutional safeguards and guidelines governed the role of the petitioner, and no deviation from these norms was attributed to him. Learned counsel still further asserted that the learned Special Judge as well as the prosecution failed to differentiate the limited operational role of the petitioner at the branch from the broader decision-making authority of the head office of the bank. Therefore, the impugned charges were framed in disregard of the settled legal principles by the learned Special Court, who acted mechanically, without applying judicial mind to the documentary evidence which clearly establishes the innocence of the petitioner.

Submissions on behalf of petitioner Om Parkash Kathpal

4. Learned counsel for the petitioner has argued that framing of charges is based on the principle that at this stage, the probative value of evidence cannot be assessed. However, in the instant case, the facts and documents on record clearly show that acts attributed to the petitioner could not be said to be illegal, and no prima facie case is made out against him. It has been further argued that the petitioner was serving as Chief Manager/Senior Relationship Manager at Large Corporate Branch of Punjab National Bank (PNB), Sector 17,

Chandigarh from 13.02.2010 to 25.06.2013. The controversy pertains to the loan account of accused company, an exporter. The account of the accused company had been existence at the Sector 17 Branch since 1994 and was under the sanctioning powers of the head office of the bank, not the petitioner. It has been further contended that the FIR, initiated at the instance of the bank, did not even nominate the petitioner as an accused. The petitioner was only implicated five years after his superannuation and ten years after his transfer from the branch concerned. During the entire tenure of the petitioner, no evidence of any misconduct against him had surfaced. The bank had conducted extensive investigations, including reviews by the Vigilance Department and Forensic Audits and since at no stage was any malafide or culpable conduct attributed to the petitioner, no disciplinary proceedings were ever initiated against him. The petitioner was transferred from the branch on 25.06.2013. The account of the borrower remained classified as a standard asset in the books of the bank until 31.03.2016. The account was subject to concurrent audits at the level of the branch and additional inspections including audits by independent agencies were also conducted. Despite these thorough monitoring exercises, no wrongdoing by the petitioner ever came to the fore. Even when the petitioner retired from the services of the bank, no allegations of misconduct were raised against him either during his tenure or after his superannuation.

4A. Learned counsel has prayed that the impugned order deserves to be set aside as the learned Special Judge failed to consider material documents on record, which, if read objectively, would point to the innocence of the petitioner. It has been also asserted that the allegations against the petitioner that he had extended unauthorized accommodations to the borrower is not even supported by any evidence much less cogent. Furthermore, a conjoint reading of the purchase orders dated 15.11.2012 and 21.12.2012 from the Concentrate Manufacturing Company of Ireland, along with the post facto approval of credit facilities by the head office of the bank, disproves these allegations. Learned counsel has still further argued that the petitioner was not the sanctioning authority as the account of the borrower was under the purview of the head office. Furthermore, the allegations that fictitious shipping bills were considered to justify credit facilities, fall flat in the face since the petitioner was required to operate within the institutional tools and instructions; there was clear cut absence of evidence linking the petitioner to any misuse or irregularities in handling these documents. Learned counsel still further has submitted that the Special Court ignored the limited role played by the petitioner at the branch and also failed to appreciate that the actions of the petitioner were consistent with his official duties and the established norms of the bank.

Submissions on behalf of petitioner Anil Kumar Khosla

5. Learned counsel for the petitioner submits that the learned Special Court failed to consider crucial facts and legal principles. The order of framing charges was passed without due application of judicial mind to the material on record and is based on the principle that the

probative value of the evidence cannot be assessed at the stage of framing charges. However, it has been argued by the learned counsel that in the present case, there was no necessity to evaluate the probative value as the facts and documents on record clearly prove the innocence of the petitioner.

5A. It has been contended by the learned counsel that the petitioner was a Deputy General Manager at Large Corporate Branch of Punjab National Bank (PNB), Sector 17, Chandigarh from 01.10.2012 to 04.04.2015. The allegations pertained to the loan account of accused company, an exporter. This account was under the sanctioning authority of the head office of the bank and had been in operation at the bank since 1994, long before the tenure of the petitioner. While drawing the attention of this Court to the FIR in question, filed at the instance of the bank, it has been submitted that the petitioner has not been named as an accused therein. The petitioner was nominated as an accused only three years after his superannuation and seven years after his transfer from the branch in question.

5B. During the petitioner's tenure, the bank conducted thorough investigations, including assessments by the Vigilance Department and Forensic Audits. No malafides or irregularities were attributed to the petitioner regarding the account of accused company. It has been argued that although the petitioner was charge sheeted for certain procedural deviations, no findings of misconduct or malfeasance were made against him. Furthermore, the petitioner was transferred from the branch on 04.04.2015. The account of the borrower remained classified as a standard assert in the books of the bank until 31.03.2016. The account underwent concurrent audits at the branch level as well as multiple independent audits, including one conducted by Ernst & Young (D29). These audits revealed no culpable conduct or malafides attributable to the petitioner. When the petitioner retired from the service of the bank, no adverse observations were made against him either during or after his tenure.

5C. Counsel has, therefore, challenged the framing of charges against the petitioner on the following grounds:-

(i) The Special Judge overlooked the material documents on record that, when read objectively, point towards the innocence of the petitioner. Further, the prosecution claims that the petitioner extended unauthorized accommodations to the borrower. This allegation is contradicted by the documentary evidence, including purchase orders dated 15.11.2012 and 21.12.2012 issued by the Concentrate Manufacturing Company of Ireland, which substantiate the credit facilities extended. Further, post fact approval of the credit facilities granted by the head office of the bank which held the ultimate sanctioning powers further creates a dent in the allegations levelled against the petitioner. It has further been argued that the allegations levelled that fictitious and fake shipping bills were used to justify the credit facilities of the borrower is baseless. The actions of the petitioner were governed by institutional tools and the establish guidelines of the bank, which he followed in the discharge of his duties.

5D. It has been further argued that the learned Special Judge failed to assess the limited role played by the petitioner at the branch and the institutional framework within which he operated. This oversight has resulted in prejudice against the petitioner. It has been lastly asserted that the impugned charges were framed without adherence to the legal mandate that Courts must not act as a mere 'Post Office' in matters of framing charges.

<u>Findings of the Court</u>

6. I have heard learned counsel for the petitioners and perused the relevant material on record.

7. As per the allegations levelled and on a perusal of material collected during investigation which is part of the challan, the petitioners, all officials of PNB acted in collusion with the Directors of the accused company to perpetrate a series of fraudulent activities, causing a wrongful loss of Rs.1301.67 crores to the bank. Their respective roles and the modus operandi allegedly adopted in furtherance of the criminal conspiracy is detailed as follows:-

<u>Petitioner Kamlesh Wadhawan</u>

7A. On May 7, 2013, petitioner Kamlesh Wadhawan in conspiracy with co-accused Arun Kumar, Gurinder Singh and Directors of the accused company prepared a note (based on account details of 06.05.2013) recommending the disbursement of a packing credit advance of Rs.5.25 crores. Despite acknowledging irregularities in the account, such as Rs.48 crores in due date defaults, packing credit advance worth multiple crores was approved and disbursed to the accused company, resulting in violation of established banking norms and huge losses to the bank. Furthermore, the petitioner allegedly knowingly recommended and allowed disbursements of Packing Credit (PC) advances despite fully exhausted funds based (FB) working capital limits and failed to ensure that these funds were used for export-related purposes. Further, the petitioner allegedly along with co-accused Arun Kumar, Gurinder Singh and Om Parkash Kathpal, prepared another note dated 30.05.2013 (based on account details of 29.05.2013) recommending further PC disbursements despite the irregular position of the account.

Devinder Kumar Gupta

7B. Allegedly, petitioner Devinder Kumar Gupta, in collusion with co-accused bank officials, recommended the disbursement of PC advances without ensuring their proper utilization and despite the full exhaustion of the FB credit limits.

7B(i). One such instance took place as documented in the branch approval note dated 22.06.2013, which included the account status of the accused company, as of 21.06.2013. The note indicated that the FB account of the accused company stood at Rs.465.15 crores, exceeding the sanctioned limit of Rs.360 crores. Despite the FB limit being fully exhausted, and disbursement of PC advances being impermissible under these circumstances, the petitioner, in connivance with the co-accused, recommended the disbursement of the PC advance when the note was presented by the Manager, co-accused Kamlesh Wadhawan.

7B(ii). Subsequently, Rs.2.57 crores of the PC advance were transferred into the accounts of the accused company. These funds were then misutilized to rectify irregularities in the accounts of the accused company instead of being utilized for the intended purpose of the advance, thereby resulting in the misappropriation of funds.

Om Parkash Kathpal

7C. Allegedly, petitioner Om Parkash Kathpal colluded with accused Arun Kumar and others to prepare and approve proposals for PC disbursements, ad hoc limits, and foreign bill discounts without verifying the claims of the accused company of non-receipt of payment due to detention of their shipments or ensuring compliance with banking guidelines. The petitioner deliberately facilitated the disbursal of multiple PC advances and ad hoc limits, such as the 20 crores limit sanctioned in December, 2012, knowing that the account was irregular and that the funds would be misused to regularize overdue accounts rather than for export purposes.

Anil Kumar Khosla

7D. Allegedly, as the branch head, petitioner Anil Kumar Khosla approved multiple PC disbursements and ad hoc limits, including Rs.20 crores of Adhoc Foreign Outward Usance Bill Purchase (FOUBP) in December, 2012, Rs.8 crores in February, 2013 and PC advance of Rs.5.25 crores on 07.05.2013. He further failed to obtain supporting documents for accused company's claims regarding shipment detentions or delayed payments. Further, despite explicit terms requiring him to monitor the accounts and ensure funds were used for working capital purposes, petitioner failed to oversee the utilization of proceeds. Instead, funds were misappropriated to regularize overdue account, contrary to bank guidelines.

8. The allegations and evidence presented in the present case concerning the petitioners, who are accused bank officials, as well as the co-accused Directors of the accused company, the investigation conducted into the matter has revealed the following key prima facie findings:-

(a) **Dishonest Disbursal of PC Advances**: PC advances (for example D-525, D-526, D-527 through D-537, D-548) were dishonestly recommended and disbursed by the accused bank officials, including the petitioners, despite the full exhaustion of FB limits and account irregularities.

The funds were not utilized for export related purposes, as mandated but were instead diverted to regularize overdue accounts.

(b) **Submissions of False and Inflated Debtor Statements by accused company's Directors**: The co-accused Directors of the accused company including accused Gurmeet Singh Sodhi, deliberately submitted fabricated debtor statements inconsistent with their ledger, thereby inducing the bank to extend a higher drawing power (DP).

(c) **Recommendation of Ad Hoc Limits in Violation of Guidelines**: Ad Hoc limits of Rs.20 crores and Rs.8 crores were recommended and approved despite : (i) accounts being irregular; (ii) outstanding overdue ad hoc facilities; (iii) pending renewals of regular limits; (iv) absence of supporting documents for claims made by the accused company.

(d) **Non-Monitoring of Funds**: Proceeds from discounted foreign bills were misappropriated to liquidate PC advances rather than being utilized for working capital or fresh export business, as required under banking norms.

(e) **Fraudulent Submissions of Export Bills**: Forged export documents were submitted by the Directors of the accused company to the bank for discounting. The accused bank officials, including the petitioners, knowingly approved these fraudulent transactions.

9. From the material on record, it is evident that the accused bank officials abused their official positions to recommend, approve, and facilitate fraudulent PC advances, Ad Hoc limits, and bill discounts. Their failure to monitor the utilization of funds enabled the accused company to divert the sanctioned amounts for unauthorized purposes. This conduct violated established banking policies, circulars, and guidelines, causing a wrongful loss of Rs.1301.67 crores to Punjab National Bank.

10. Further, the prima facie evidence indicates a conspiracy between the accused bank officials and the directors of the accused company. The actions of the petitioners demonstrate gross negligence, willful misconduct, and a blatant disregard for their fiduciary duties, thereby facilitating the fraud.

11. The principles governing the framing of charges in a criminal trial are well settled and codified under Sections 227 and 228 of the Cr.P.C./250 and 251 of the BNSS. The framing of charges is a preliminary yet significant stage in a criminal trial, intended to ascertain whether there exists a prima facie case against the accused.

12. The law with respect to framing charges have been repeatedly emphasized by Hon'ble the Supreme Court through its various pronouncements including ***Sajjan Kumar Vs. Central Bureau of Investigation : (2010) 11 SCR 669***.

13. Hon'ble the Apex Court has repeatedly underscored that (i) at the stage of framing charges, the Court is not required to conduct a meticulous analysis of evidence or assess its probative value. The inquiry is limited to determining whether the material presented by the prosecution raise a strong suspicion that the accused may have committed the alleged offence; (ii) a prima facie presumption of guilt, based on the evidence presented, is sufficient to proceed with framing charges. This presumption, however, is distinct from proof beyond a reasonable doubt, which is required for conviction at the conclusion of the trial; (iii) a Court is not tasked with determining whether the evidence is sufficient for conviction but only whether it warrants a trial. Even if the material presented by the prosecution appears insufficient to conclusively prove guilt, it is adequate to frame charges if it gives rise to a strong suspicion regarding the involvement of the accused in the offence; (iv) quashing of charges is an exception rather than the norm. unless it is patently clear that the allegations in the FIR and the material collected do not make out any offence, the Court should not interfere at this stage.

14. In the present case, the allegations and the material on record, including the FIR and the challan, prima facie disclose that the petitioners actively facilitated and participated in the fraudulent

activities of co-accused i.e. directors of the accused company.

15. The Court, at this stage, is not required to undertake a detailed evaluation of the evidence. The prima facie findings are sufficient to prove that the ingredients of the offence alleged against the petitioners are made out. Any further inquiry into the probative value of evidence will be conducted during the trial.

16. In the light of the foregoing, this Court finds no merit in these petitions. Accordingly, all the revision petitions are hereby dismissed.

17. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

18. Since all the revision petitions are dismissed on merits, there is no need to pass separate order on the applications for condonation of delay, which stand disposed of accordingly.

10.01.2025 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No