Reserved

Court No. - 11

Case :- CRIMINAL REVISION No. - 1432 of 2019

Revisionist :- Om Prakash Kapoor @ O.P. Kapoor
Opposite Party :- State Thru. Cbi, Bs&Fc, New Delhi
Counsel for Revisionist :- Shreesh Chandra
Counsel for Opposite Party :- A.S.G.

Hon'ble Rajeev Singh,J.

Heard learned counsel for the revisionist and the learned A.G.A.

This revision has been filed for quashing of the order dated 05.08.2019 passed by the Special Judge, Anti Corruption, C.B.I. (Central), Lucknow in Criminal Case No. 1051 of 2018 (State through C.B.I. Vs. Vikram Kothari & Ors.), by which the discharge application of the revisionist was rejected. A further prayer has been made for setting aside the charges framed against the revisionist.

Factual matrix of the case is that an F.I.R. No. RCBD1/2018/E/0001 of 2018 was registered by C.B.I. (B.S. & F.C.), New Delhi, on the complaint made by Shri Brijesh Kumar Singh, Deputy General Manager/Regional Manager, Bank of Baroda, Kanpur, under Section 120B read with Sections 420, 467, 468, 471 I.P.C. and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988, with the allegation that M/s. Rotomac Global Pvt. Ltd. (hereinafter referred to as the 'Company') and its Directors cheated the Bank for a sum of Rs.456.63 crores and also other banks, total amounting to Rs.2919.39 crores and did not repay the loan amount. After investigation, charge sheet dated 19.05.2018 was filed against the Company and its Directors, including the revisionist. It is alleged in the charge sheet that the revisionist, during his posting as Senior Manager, IBB, Bank of Baroda, Kanpur, he entered into criminal conspiracy with the Directors of the Company and approved disbursement of 6 instances of Packing Credits (PC), out of which, 3 PCs were without obtaining credit report and 3 other PCs were approved in spite of poor credit reports. Aggrieved, the revisionist moved an application for discharge under Section 239 Cr.P.C. before the Special Judge, Anti Corruption, C.B.I. (Central), Lucknow, which was rejected by the impugned order dated 05.08.2019 and consequently, charge have been framed against the revisionist under Section 120B read with Sections 420, 467, 468, 471 I.P.C. and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988.

Hence, this revision.

Learned counsel for the revisionist has submitted that the court below has wrongly and illegally rejected the discharge application in arbitrary manner. There was no allegation against the revisionist in the F.I.R. and during the investigation conducted by the C.B.I., merely alleging negligence in discharging the duty, the charge sheet has been filed by stating that the complicity of the revisionist was found in cheating of Rs.456.63 crores, by committing fraud with the association of the Directors of the Company. It has further been submitted by learned counsel for the revisionist that though it is also alleged by the C.B.I. in the charge sheet that the total amount of all Banks involved is about Rs.2919.39 crores, but there is no evidence against the revisionist in relation to the alleged offences. Further allegation alleged against the revisionist is to facilitate the Company by allowing disbursement of 15.90 crores against the request letter of the Company dated 3rd February, 2012, which was made for Rs.10.90 crores. Submission of the learned counsel for the revisionist is that the aforesaid PCs were disbursed in one lot of Rs.15.90 crores, within the permissible balance, which was within the available sanction limit. Moreover, this amount has also been liquidated by the Company much before the registration of the F.I.R. He has also submitted that only general allegations have been levelled by the Investigating Officer against the revisionist, without any credible evidence. Learned counsel for the revisionist has submitted that court below wrongly and illegally rejected his discharge application collectively along with the other accused persons vide impugned order dated 5th August, 2019.

In rebuttal to the allegations made in the charge sheet to the effect that the revisionist had sanctioned PC limit without asking credit report from the concerned officials and also permitted opening of Letter of Credits (Lcs) of value of more than USD 3 million, learned counsel for the revisionist has submitted that it is admitted case of the CBI that all the LCs were authorised by the then Branch Head.

Placing reliance on the decisions of the Hon'ble Apex Court in the case of **C. Chenga Reddy & Ors. Vs. State of A.P., 196 SCC (Cri) 1205** (para 23) and **C.K. Jaffer Sharief Vs. State (Through CBI), (2013) 1 SCC 205** (paras 14 to 17), learned counsel for the revisionist has submitted that though the accused might be acted in violation of the international rules, but no dishonest intention is found during the course of investigation, therefore, the court below has committed error in rejecting his application for discharge.

Learned A.S.G., Shri S.B. Pandey assisted by Shri Kazim Ibrahim, on the

other hand, has submitted that it is undisputed that the revisionist was working as a responsible Bank Officer and he granted PC limit to the Company for giving the undue benefits to them ,without applying the mandatory provisions and getting the approval from his seniors as well as A.G.M. As a result, the revisionist with the association of the Directors of the Company committed fraud with the Bank in cheating of more than Rs.456.63 crores of Bank Of Baroda, in total Rs.2919.30 crores (including other Banks). He has further submitted that after investigation, charge sheet was filed and at the time of framing of charges, the court is not required to enter into another meticulous evidence and other materials placed before it. He has also submitted that due to the act of the accused persons, including the revisionist, huge amount of the Bank has been cheated and the court below had rightly rejected the application of the revisionist and he may raise his submissions at the appropriate stage.

I have considered the arguments advanced by the learned counsel for the parties and gone through the record.

It is undisputed fact that the total amount of Rs.2919.39 crores of different Banks have been cheated and on a complaint, a detailed investigation was conducted by the Investigating Officer and the charge sheet was submitted under Sections 420, 467, 468, 471 read with Section 120B I.P.C. and Section 13(2) read with Section 13(1)(d) of the P.C. Act, on which, the court below had taken cognizance and issued process. Thereafter, the discharge application moved by the revisionist was also rejected on 5th August, 2019 and the charge was framed on 28th August, 2019. The present revision has been filed on 24th October, 2019.

The case laws cited by learned counsel for the revisionist, in support of his submission, are not applicable in the present case, as after a detailed investigation, charge sheet was filed with the allegation that the huge amount of Bank has been cheated by the Directors of the Company with the association of the revisionist and other co-accused persons and a total amount of Rs.2919.39 crores is involved in the matter, which is a public money.

The Supreme Court in the case of State of **Tamil Nadu by Inspector of Police Vigilance and Anti-corruption Vs. N. Suresh Rajan and others, (2014) 11 SCC 709** has held that at the stage of discharge, the court is required only to go into the probative value of the material and, it is not expected to go into deep the matter to hold that the material should not warrant conviction. What is required at the stage of discharge is that if, the court finds that, prima facie, the

offence has been committed, it can frame charge.

Paragraphs 29, 32.4, 33 and 34 of the aforesaid judgement are extracted herein below :-

> "29. We have bestowed our consideration to the rival submissions and the submissions made by Mr Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.
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> 32.4. While passing the impugned orders [N. Suresh Rajan v. Inspector of Police, Criminal Revision Case (MD) No. 528 of 2009, order dated 10-12-2010 (Mad)] , [State v. K. Ponmudi, (2007) 1 MLJ (Cri) 100] , the court has not sifted the materials for the purpose of finding out whether or not there is sufficient ground for proceeding against the accused but whether that would warrant a conviction. We are of the opinion that this was not the stage where the court should have appraised the evidence and discharged the accused as if it was passing an order of acquittal. Further, defect in investigation itself cannot be a ground for discharge. In our opinion, the order impugned [N. Suresh Rajan v. Inspector of Police, Criminal Revision Case (MD) No. 528 of 2009, order dated 10-12-2010 (Mad)] suffers from grave error and calls for rectification.
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> 33. Any observation made by us in this judgment is for the purpose of disposal of these appeals and shall have no bearing on the trial. The surviving respondents are directed to appear before the respective courts on 3-2-2014. The Court shall proceed with the trial from the stage of charge in accordance with law and make endeavour to dispose of the same expeditiously.
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> 34. In the result, we allow these appeals and set aside the order of discharge with the aforesaid observations."

In the case of **Amit Kapoor Vs. Ramesh Chander and another, (2012) 9 SCC 460**, the Supreme Court has held that at the time of considering the application for discharge, the Court is required to consider the "record of the case" and the documents submitted therewith. 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. The Court is not concerned with the proof, but only with strong suspicion that the accused has committed the offence. Paragraphs 17 and 19 of the aforesaid judgement are extracted herein under :-

> "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.
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> 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. We may refer to the well-settled law laid down by this Court in **State of Bihar v. Ramesh Singh [(1977) 4 SCC 39 : 1977 SCC (Cri) 533] : (SCC pp. 41-42, para 4)**
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> > "4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If "the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing', as enjoined by Section 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-- ... (b) is exclusively triable by the court, he shall frame in writing a charge against the accused', as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial

> the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. 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."

The Supreme Court in the case of State by the **Inspector of Police, Chennai Vs. S. Selvi and another, (2018) 13 SCC 455** has summarised the principle while considering the application for discharge of an accused. Paragraphs 6, 7 and 8, which are relevant, are extracted herein below :-

> "6. It is well settled by this Court in a catena of judgments including Union of India v. Prafulla Kumar Samal [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 : 1979 SCC (Cri) 609] , Dilawar Balu Kurane v. State of Maharashtra [Dilawar Balu Kurane v. State of

Maharashtra, (2002) 2 SCC 135 : 2002 SCC (Cri) 310] , Sajjan Kumar v. CBI [Sajjan Kumar v. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , State v. A. Arun Kumar [State v. A. Arun Kumar, (2015) 2 SCC 417 : (2015) 2 SCC (Cri) 96 : (2015) 1 SCC (L&S) 505] , Sonu Gupta v. Deepak Gupta [Sonu Gupta v. Deepak Gupta, (2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265] , State of Orissa v. Debendra Nath Padhi [State of Orissa v. Debendra Nath Padhi, (2003) 2 SCC 711 : 2003 SCC (Cri) 688] , Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya [Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76 : 1991 SCC (Cri) 47] and Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja [Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038] that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused. The Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the statements and the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the materials as if he was conducting a trial.

7. In Sajjan Kumar v. CBI [Sajjan Kumar v. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , this Court on consideration of the various decisions about the scope of Sections 227 and 228 of the Code, laid down the following principles: (SCC pp. 376-77, para 21)

> "(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.
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> (ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.
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> (iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.
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> (iv) If on the basis of the material on record, the court could form an opinion that the accused might have

committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

8. This Court in State v. A. Arun Kumar [State v. A. Arun Kumar, (2015) 2 SCC 417 : (2015) 2 SCC (Cri) 96 : (2015) 1 SCC (L&S) 505] , Sonu Gupta v. Deepak Gupta [Sonu Gupta v. Deepak Gupta, (2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265] , State of Orissa v. Debendra Nath Padhi [State of Orissa v. Debendra Nath Padhi, (2003) 2 SCC 711 : 2003 SCC (Cri) 688] and State of T.N. v. N. Suresh Rajan [State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721] has reiterated almost the aforementioned principles. However, in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , relied upon by the counsel for Respondent 1 is not applicable to the facts of the case inasmuch as the said matter arose out of the judgment of the High Court quashing the entire criminal proceedings inclusive of the registration of first information report. The said matter was not concerned with the discharge of the accused."

In the case of **Asim Sharif Vs. National Investigation Agency, (2019) 7 SCC 149**, the Supreme Court has again reiterated the principle that while considering the application for discharge, the court has power to sift and weigh the evidence only for limited purpose to find out whether or not prima facie case exists against the accused. If the material placed before this Court raises strong suspicion against the accused, the Court is wholly justified in framing of the charge. After taking note of the judgement in the case of Sajjan Kumar (supra), in paragraph 18 of the aforesaid judgement, the Supreme Court has held as under :-

"18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases

> (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the court is not supposed to hold a mini trial by marshalling the evidence on record."

In the recent judgement, the Supreme Court in the case of **Tarun Jit Tejpal Vs. State of Goa and other: 2019 SCC OnLine SC 1053** after taking note of the judgements in the cases of Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 (Para 10), State of Bihar v. Ramesh Singh, (1977) 4 SCC 39 (Para 4), Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715, Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460, Ajay Singh v. State of Chhattisgarh, (2017) 3 SCC 330, Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76, State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709 (Para 29 to 31.3), State v. S. Selvi, (2018) 13 SCC 455, Mauvin Godinho v. State of Goa, (2018) 3 SCC 358., in paragraph 32 of the judgement held as under :-

> "32. Applying the law laid down by this Court in the aforesaid decisions and considering the scope of enquiry at the stage of framing of the charge under Section 227/228 if the CrPC, we are of the opinion that the submissions made by the learned Counsel appearing on behalf of the appellant on merits, at this stage, are not required to be considered. Whatever submissions are made by the learned Counsel appearing on behalf of the appellant are on merits are required to be dealt with and considered at an appropriate stage during the course of the trial. Some of the submissions may be considered to be the defence of the accused. Some of the submissions made by the learned Counsel appearing on behalf of the appellant on the conduct of the victim/prosecutrix are required to be dealt with and considered at an appropriate stage during the trial. The same are not required to be considered at this stage of framing of the charge. On considering the material on record, we are of the opinion that there is more than a prima facie case against the accused for which he is required to be tried. There is sufficient ample material against the accused and therefore the learned Trial Court has rightly framed the charge against the accused and the same is rightly confirmed by the High Court. No interference of this Court is called for.

> "Tarun Tej Pal Vs. Goa, 2019 SCC Online 1053 after taking note of the judgement in the case of Union of India Vs. Praful .. in paragraph 20 of the judgement held as 32 it has been held as under :-

Thus, the law is very well settled that while considering the application for discharge or at the time of framing of charge, the Court is only required to weigh the material and evidence on record to find out whether, prima facie, case is made

out against the accused, which raises strong suspicion against him to have committed the offence and, if it is found that the ingredients of the commission of the offence are available on the basis of record, the Court will proceed to frame the charge. At this stage, the Court is not required to weigh the evidence in detail to find out whether evidence would be sufficient to record conviction or not. The Court is only required to evaluate the material and evidence to find out prima facie case.

Considering the facts of the present case and on the anvil of law as has emerged, it cannot be said that there is not enough material for a prima facie case which raises strong suspicion against the revisionist to have committed the offences under Sections 420, 467, 468, 471 I.P.C. and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 and, therefore, the present revision is hereby dismissed.

However, the trial court is directed to proceed and conclude the trial expeditiously.

December 7th, 2019
VKS