

**CBI Vs. Rajesh Kumar Singh & Ors.
RC No. 17(E)/2013/CBI/EOU-IV/EO-II/ND
CC No. 230/2019**

28.02.2020

ORDER ON CHARGE

1. Vide this order, I shall dispose off the arguments on the point of charge(s).

2. Brief facts are :

The present case was registered by CBI, EOU-IV/EO-II, New Delhi against Dr. Rajesh Kumar Singh, B-187, Mount Kailash, East of Kailash, New Delhi, guarantor Dr. Rifat ali D/o. Shri Ali Mhd. Bhatt, B-124, Mount Kailash, East of Kailash, New Delhi and other unknown persons under Section 120-B r/w 403, 406, 420 IPC and substantive offences thereof on the complaint of Shri Deepak Kumar Kakkar, AGM, Punjab National Bank, Circle Office (North), New Delhi wherein it was alleged as under :

a) That M/s. Sapphire International Traders through its proprietor Dr. Rajesh Kumar Singh and guarantor namely Dr. Rifat Ali obtained credit facilities to the extent of Rs. 3.5 crores on 28.09.2011 which was secured by way of equitable mortgage of property at AG-35, 1st Floor, Shalimar Bagh, Delhi by Dr. Rifat Ali. However, this property was already mortgaged with Bank of India, Shahid Bhagat Singh Marg, New Delhi in the loan account of M/s. Saraswati

Hospitals (I) Pvt. Ltd.

b) One of the conditions for sanction of loan was that sale proceeds would be routed through the account regularly, which was not done.

The investigations revealed that a current account no. 1603002100034743 in the name of M/s. Sapphire International Traders was opened with PNB, Laxmi Nagar. The date on the account opening form is 10.09.2011 whereas as per the statement of the account it was opened on 07.09.2011 with the cash deposit of Rs. 5,000/-. Thereafter, an undated loan application was moved by Dr. Rajesh Kumar Singh, proprietor of M/s. Sapphire International Traders for extending credit facilities to the tune of Rs. 3.5 crores. For this property of 1st floor AG-35, Shalimar Bagh in the name of Dr. Rifat Ali was proposed to be kept at collateral security whereas it was revealed that the sale deed dated 23.09.2011 with regard to the said property was forged.

The investigations also revealed that earlier Rajesh Kumar Singh and his wife Smt. Gunjan Singh had obtained loan from Bank of India, Shaheed Bhagat Singh Marg Branch, New Delhi in the name of Saraswati Hospitals Indian Pvt. Ltd. by mortgaging whole property at AG-35, Shalimar Bagh, New Delhi, which was owned by Smt. Gunjan Singh during the year 2008. Later, the said loan turned into NPA. The said loan was obtained on furnishing of forged documents i.e.

forged PAN Cards, ITR returns etc.

Regarding the loan of public servant Rita Verma, she was working as Sr. Manager, PNB, Laxmi Nagar Branch. She dishonestly and fraudulently processed the said application / proposal and recommended for sanction of CC limit of 3.5 crores despite so many anomalies in the said application. The investigations also revealed that the loan application form at the address of registered office, but no detail of the godown was mentioned. The concerned firm also furnished a rent agreement dated 02.12.2011 with regard to the premises at Faridbad, the same was forged and no verification was done by the concerned public servant.

The investigations further revealed that another rent agreement dated 03.04.2012 was furnished by the above firm in respect of rented property at Lajpat Nagar, which was a godown, however the said godown never saw a business activity. Despite this no inspection was done by the public servant.

The investigations further revealed that the party in the loan form submitted that it had started commercial operation in 2009 and having made Govt. supplies with turnover of Rs. 4624.36 lacs as on 31.03.2011 with anticipated turnover of Rs. 5500 lacs. However, no details of any bank account of the firm is mentioned anywhere.

The investigations further revealed that Smt. Rita Verma did not access MPBF as per bank

guidelines mentioned in SME division circular No. 23/2010 dated 20.11.2010. Requirement of credit should have been arrived on the basis of Credit Monitoring Arrangement (CMA) data which has not been done as per the Board Note.

The investigations further revealed that Smt. Rita Verma in the Board Note concealed the facts that M/s. Max Enterprises was a group concern of M/s. Sapphire International Traders and they also had submitted a loan application form with a common guarantor and common addresses during the same period. Collateral security of another floor of the same building was offered in the loan of M/s. Max Enterprises. Since, Dr. Rifat Ali was guarantor in both the proposals and was one of the Directors of M/s. Sanador International Hospitality Pvt. Ltd., the details of the said company was also supposed to have been analyzed. Both the loan application forms (of M/s. Max Enterprises and M/s. Sapphire International Traders) are filled in the same handwriting which itself confirms that both the firms were being actually controlled by the same persons. It has been revealed that loan application of both M/s. Sapphire International Traders and M/s. Max Enterprises were filled by Shri Neeraj Garg who was an employee and close associate of Dr. Rajesh Kumar Singh visited the bank to provide the documents and used to make transactions in both the loan accounts after sanction.

The investigations further revealed that Smt. Rita Verma obtained the confidential report in respect of M/s. Sapphire International Traders, which mentions that the market reports were obtained from Dr. Rifat Ali and Shri Neeraj Kumar Garg. Dr. Rifat Ali was guarantor of this loan account whereas Shri Neeraj Garg was employee of Dr. Rajesh Singh, the borrower and he was visiting branch as such. Thus, the market report was not obtained from two independent persons. Verification regarding the address of the firm A-120, First Floor, Gali No. 4, Jagat Puri, Delhi-92 where the firm was licensed to stock the medicines was also not conducted.

The investigation further revealed that the loan amount was disbursed without obtaining comprehensive insurance for the stocks. Insurance was obtained on 07.10.2011 whereas the whole limit had been disbursed within two days of sanction i.e. on 28.09.2011 and 29.09.2011. The entire loan amount was immediately transferred to 9 different bank accounts. Out of these 9 bank accounts, 8 bank accounts are operated or controlled by Dr. Rajesh Singh and his associates. The account in respect of KABS Pharma was an independent account and the firm was genuinely working the Pharma field.

Regarding the role of accused Neeraj Garg, he filed an application for anticipatory bail dated 03.03.2015 before the Ld. ASJ Court at Saket stating that he was working as accountant

in Indian Hospital, AG-35, Shalimar Bagh, New Delhi. Being accountant he was well aware of the fact that the whole property at AG-35, Shalimar Bagh, new Delhi was already mortgaged with bank of India. He opened the account in the name of M/s. Sarawati Enterprises as proprietor to facilitate the fraudulent siphoning of the loan funds. Account opening forms of almost all the aforesaid bank accounts including the loan form s of M/s. Sapphire International and M/s. Max Enterprises are filled in his handwriting which have been found to be existing on papers only without any actual business. This shows that he was actively involved in the subject fraud.

The investigation further revealed that accused Neeraj Garg was working as accountant of Dr. Rajesh Kumar Singh. He used to visit the PNB, Laxmi Nagar Branch and did work / prepared documents relating to M/s. Sapphire International. It was in knowledge of Neeraj Garg that the loan in the name of M/s. Sapphire International was taken on the basis of false information and fabricated documents.

3. Ld. Counsel for the (A-3) Smt. Rita Verma has orally argued and has also filed written submissions that the said public servant i.e. A-3 has nothing to do with the alleged offence(s) and that she had performed and discharged of her official duties as Sr. Manager, PNB, Laxmi Nagar with sincerity and had dealt with the processing of the application of M/s. Sapphire International Traders, as per Banking Rules and Procedure. There is nothing on the record

to suggest the involvement of A-3 except her official forwarding and recommending notes based on the reports of different authorities nor there has been any incident of alleged acceptance of any illegal gratification by the said A-3 for obtaining any pecuniary advantage nor any recovery has been made at the instance of the above accused. The said accused had not been named in the FIR nor any recovery had been made from accused no. 3 nor there is any circumstantial evidence to show that she had any dishonest intention.

It is further stated that there was no criminal intent or any evidence pointing to the conspiracy between her and the other accused persons and there is no strong suspicion to frame charge(s) against her. In support of his contentions, he has relied upon the judgment ***P. Vijayan Vs. State of Kerala, AIR 2010, SC 663.***

Regarding the accused A-4 Neeraj Kumar Garg, it has been argued on behalf of the Ld. Counsel that the said accused has been wrongly implicated as well, there is no evidence to establish conspiracy between him and the other accused persons, as he was merely working as accountant and no criminality can be attributed to him. Therefore, he submits that there is no material on record to frame charge(s) against him.

4. On the other hand, Ld. PP for CBI has strongly refuted the above arguments and has argued that there are number of lapses on part of the public servant A-3 for extending the credit facilities to the tune of 3.5 crores without due diligence. The collateral security which was offered with regard to the first floor AG-35, Shalimar Bagh was a forged document and investigations revealed that the accused Rajesh Kumar Singh and his wife had obtained loan from Bank of India, Shaheed Bhagat

Singh Marg branch in the name of Saraswati Hospitals Pvt. Ltd. by mortgaging whole of the property, whereas a forged sale deed with respect to the same property was also furnished in the present case. The public servant i.e. A-3 had fraudulently processed and recommended sanction of CC limit of Rs. 3.5 crores despite, there being so much apparent anomalies in the loan application, for instance in the loan application form, the address of registered office was mentioned, but no detail of the godown was mentioned. The rent agreement dated 02.12.2011 in respect of premises at Faridabad was forged and another rent agreement dated 03.04.2012 with regard to the godown was not properly verified, as no regular activities were being done in the said godown with respect to the loan in question and no verification was done of these documents by the public servant.

The investigation also revealed that the loaner had submitted that it had started commercial operations in 2009 and made government supplies to the tune of Rs. 4624.36 lakhs as on 31.03.2011 with anticipated turn over of Rs. 5500 lakhs, however, no detail of bank account was mentioned anywhere. Further, she concealed in the bank note that M/s. Max Enterprises was a group concern of M/s. Sapphire International Trader with common guarantors and common addresses and common property was being offered as collateral and it was also revealed that the loan application(s) of both the above firms were filled by Neeraj Garg, who was an employee and close associate of Dr. Rajesh Kumar Singh, who visited the bank to provide the documents used to make transaction in both the loan accounts after sanction.

He has also argued that for the loan in question, Rajesh Kumar Singh submitted fake documents i.e. voter I card, PAN card and ITRs as well as audit reports and the drug licence in favour of loaner was issued on 26.08.2011, whereas the firm was

claiming to have been doing the business since 2009, which was not possible without obtaining drug licence and despite all these lapses, A-3 dishonestly and fraudulently processed the loan application proposal and recommended the cash credit limit of 3.5 crores.

It has been further argued that in the bail application filed by accused Neeraj Garg, he had admitted that he was working as accountant in Indian Hospitals in AG-35, Shalimar Bagh and therefore, he was well aware of the fact that whole of the property at AG-35 Shalimar Bagh was already mortgaged with Bank of India and he had opened the account in the name of Saraswati Enterprises as proprietor to facilitate fraudulent siphoning of loan amounts and all the account opening forms including that of Sapphire International and Max Enterprises had been filled in his handwriting only.

It has also been argued that Neeraj Garg was working as accountant and used to visit PNB, Laxmi Nagar Branch and used to prepare the documents pertaining to the present loan and was instrumental in obtaining loan on the basis of forged documents. He has also argued that his handwriting also matched on the various documents in question with that of admitted handwriting as per the CFSL report. Therefore, he has submitted that there is strong suspicion that both the accused persons are involved in the conspiracy to defraud the bank and both are liable to be charged.

5. I have gone through the rival contentions.

6. It is settled law that at the stage of framing of charge, it is not expected that the prosecution evidence should be meticulously evaluated. The court has to frame a charge, if there is

a strong suspicion that the accused is involved in the commission of offence for which he has been charge sheeted.

It has been held in judgments ***Dilawar Balu Kurane Vs. State of Maharashtra, (2002) 2 SCC 135*** and ***Union of India Vs. Prafulla Kumar Samal, (1979) 3 SCC 4*** that the Judge while considering the question of framing the charges under section 227 of the Code 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 materials placed before the court disclose grave suspicion against the accused which has been properly explained the court will be fully justified in framing a charge and proceeding with the trial. By and large, however, 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 right to discharge the accused.

7. Further, the Hon'ble Supreme Court in ***Sajjan Kumar Vs. Central Bureau of Investigation 2010 (9) SCC 368*** held as under :

“On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge;

(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.

(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.

(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.

(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 Section 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. The law is also well settled to the effect that if at the time of framing of charge, two views are possible, the view in favour of accused shall be taken into consideration. The law is also well settled to the effect that at the time of framing of charge, the court has to shift the weight for a limited purpose and not to evaluate the entire evidence meticulously which the prosecution may lead after framing of charge nor the court has to hold a mini trial within the trial.

9. With regard to the role of the public servant A-3, number of anomalies have been pointed out by the Ld. PP for CBI, as stated above in his arguments and despite so much infirmities in the application and other documents submitted on behalf of loaner, the said public servant did not get done the proper verification and *prima facie* fraudulently processed the loan application and recommended the sanction of cash credit limit of 3.5 crores by ignoring that forged sale deed had been submitted and forged PAN card and ITRs and voters I card as well as forged rent agreement had been submitted regarding which no verification was got done nor this fact was verified, whether any government supply was ever made having huge turnover of 4624.36 lakhs and without having any bank account and without verifying that the firm was not having drug licence without which the said business could not have been done.

The sanction u/s. 19 of PC Act, 1988 has already been given by the concerned sanctioning authority vide sanction dated 27.08.2015. I have gone through the same. From the perusal of the same, it appears that the sanctioning authority has gone

through the entire material placed before it and had *prima facie* given sanction after due application of mind.

The contention to the contrary can only be seen after conclusion of trial and after the examination of the sanctioning authority and other relevant witnesses in this regard.

10. Regarding the role of accused Neeraj Garg, for instance his signature(s) on the application form Q-13 (D-14) and Q14, Q15, Q17 on the same document and those on cheque for the loaner M/s. Sapphire International Traders in the CC Account no. 1603008700000636 at Q116 and another cheque of same loaner at Q121 and Q125, Q136, Q141, Q145, Q151, Q161, Q165, as per the CFSL report dated 10.11.2017 have been opined to be that of the accused Neeraj Garg.

Further, with regard to the signatures on the account opening form of M/s. Navlakha Enterprises opened in the name of proprietor S. N. Singh, the admitted signatures of the present accused matched with the disputed signatures at point Q538 to Q544 to have been opined to be that of the accused vide CFSL report 10.11.2017. In the said account, an amount of Rs. 24,13,278/- were transferred from the loan account in question of M/s. Sapphire International Traders as per the document D-276, which is a statement of account of M/s. Navlakha Enterprises.

As per document D-352 which is the anticipatory bail application filed by the accused before the court of Ld. ASJ, Saket Court in RC No. E0016 to E0019 of 2013 and RC 220 of 2014 E0001 of 2014, in the said anticipatory bail application, he had admitted that he was working for Dr. Rajesh and in para 3 of the said application, it has been mentioned as under :

3. It is respectfully submitted that the petitioner is an accountant by profession and was

appointed by the company named Indian hospital run by Dr. Rajesh Kumar Singh on 10th July 2008. the same is a proprietorship firm situated at AG-35 Shalimar Bagh, New Delhi. A copy of petitioner's appointment letter is attached herewith a annexure-P1.

It was also stated in the said application that Dr. Rajesh Kumar regularly used to hand over cash to him for deposit in various accounts of the companies run by him. Along with the bail application, he had also filed appointment letter of M/s. Indian Hospital AG-35, Shalimar Bagh, Delhi dated 14.07.2008 and whereas the present loan was applied in the year 2011, therefore, *prima facie* it was not possible that he was not aware about the mortgaging about the property AG-35 Shalimar Bagh with bank of India by his employer Rajesh Kumar Singh prior to taking of the present loan.

11. With regard to evidence of conspiracy being admissible against all the accused persons, Section 10 of the Evidence Act, is relevant, same is reproduced as under :

Section 10. Things said or done by conspirator in reference to common design.- Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

In view of the said provision of the Evidence Act, if *prima facie* evidence of existence of conspiracy is given and accepted, the evidence of acts and statements made by any of the conspirators in furtherance of the common object is admissible against all (**AIR 2005 SC 716**).

Further, Section 10 incorporates the principle of agency as otherwise, in the case of conspiracy there would be no evidence against the co-conspirators for the individual act done by the conspirators in furtherance of their common object. It has been held in **Badri Rai Vs. State of Bihar AIR 1958 SC 953** that **“Section 10 has been deliberately enacted in order to make acts and statements of a co-conspirator admissible against the whole body of conspirators, because of the nature of crime.”**

Since, there is more than reasonable grounds in view of above discussion to infer the existence of conspiracy between all the accused persons, therefore, anything said, done or written by any of them in reference to the common intention during the subsistence of the conspiracy would be a relevant fact against each of accused persons by the principle of agency incorporated u/S. 10 of the Evidence Act.

12. In view of the above discussion, there is strong suspicion that the accused persons (A-3) Rita Verma (public servant) and (A-4) Neeraj Kumar Garg along with (A-1) Rajesh Kumar Singh and (A-2) Dr. (Ms) Rifat Ali @ Riya (**since both PO**) entered into conspiracy to fraudulently and dishonestly obtained cash credit limit of Rs. 3.5 crores on the loan application of M/s. Sapphire International Traders from PNB, Laxmi Nagar Branch, thereby dishonestly cause a wrongful loss to the above bank by using

forged documents for the purpose of cheating, and some of the forgery pertained to the documents, which were valuable securities and such documents were used as genuine despite knowing the same to be forged documents for the purpose of cheating the above bank.

13. Consequently, from the above said facts and circumstances, *prima facie* the accused persons i.e. A-3 Rita Verma and A-4 Neeraj Kumar Garg are liable to be charged u/S. 120-B r/w 420/467/468/471 IPC r/w 13(2) r/w 13(1)(d) of the PC Act, 1988.

Further the accused Rita Verma will also be liable to be charged substantively u/S. 13(2) r/w 13(1)(d) of the PC Act, 1988.

Further, the accused Neeraj Kumar Garg will also be liable to be charged substantively u/S. 420/467/468/471 IPC.

Let formal charge(s) be framed, against the accused persons, as discussed above.

14. **Nothing observed herein above shall have any bearing on the merits of the case during trial.**

Announced in the open Court on this 28th day of Feb. 2020. **Sanjeev Aggarwal**
Special Judge-CBI (PC Act)-02
Rouse Avenue Court/New Delhi
28.02.2020