In the Hon'ble Court of Special Judge Anti Corruption (West), Lucknow.

1. Prem Shankar Upadhayaya s/o Shri Kailash Upadhayaya, R/o 2/687, Sec. H Jankipuram District, Lucknow.

2. Rekha Upadhayaya wife of Prem Shankar Upadhayaya R/o 2/687, Sec. H Jankipuram P.S. Jankipuram District, Lucknow.

In the matter of:

CBI Versus Pankaj Saxena & Others

Case No. RC0062015A0018/2012
U/s 120B r/w 201,409, 420, 467,
468, 471, 477A of IPC

Dated : 04.11.2015 **Order**

1. This discharge application has been filed by applicants/accused Shri Prem Shankar Upadhayaya and Rekha Upadhayaya in case RC NO. 0062012A008/2012 120B r/w 201,409, 420, 467, 468, 471,477A of IPC and section 13 (1) & (2) of prevention of corruption Act 1988.

2. It is stated in the discharge application that "That as per the prosecution version the applicants are involved in a fabrication of cheques, file Insurance Corporation and siphoning of money That the applicants are law abiding citizen and has not committed any crime as alleged in the FIR and charge sheet. That the applicants were running a small general merchant store in Jankipuram Lucknow. The applicants neither a Government Employee in Central or State Government. That the investigation agency has arrested the applicants U/s 120 B r/w 201, 409, 420, 467, 468, 471 and 477 of India Penal Code and section 13 (1) & (2) of Prevention of Corruption Act, on 21.08.2014. It is pertinent to point out here that the applicants have not committed any crime which

falls under the ambit the said sections. That the investigation agency has filed a charge sheet against the applicants U/s 120 B r/w 201,409, 420, 467, 468, 471 and 477 of India Penal Code. That from the perusal of the charge sheet it reveals that in the column of the occupation the CBI has very specifically mentioned “Private Person". That the section 409 relates with a public servant who has dominion over the property, as a Rule the duties of such person are of a highly confidential corrector involving great power and control over property interested to them, therefore section 409 does not attract. That the section 420 deals with delivery of destruction of any property or alteration of destruction of valuable security, for offence the section it must be proved that the complainant parted with his property acting on a representation which was false to the knowledge of accused. It is pertinent to point out here that the applicants have not done any misrepresentation neither they have cause destruction of any valuable property, therefore the section 420 does not attract. That the section 467, 468 and 471 relates with forgery of documents or forged any electronic record which purpose to be a valuable security and whoever fraudulent and dishonest use of documents as genuine. It is pertinent to point out here that the applicants have to done any forgery with any documents or forged any electronic record neither they have used any forged documents. This section punished forgery committed for the purpose of cheating example falsification of accounts book of deception, making of cheques and procuring the signature of the officer to sign under the pretence that the money was needed for officials purpose has been held to be an offence under the section. It is pertinent to point out here that the applicants are private person and therefore the section does not attract. That the section 477A relates with the clerk, officer or servant or employed or acting in the capacity of the clerk, he must willfully with intent to employer; it is pertinent to point out here that the applicants are private person and therefore the section does not attract. That section 120 B relates to the criminal conspiracy, it is pertinent to point out here that the applicants have not done any criminal conspiracy against anyone. That section 201 relates with knowledge of a crime committed. It is pertinent to point out here that the applicants were not aware that Pankaj Saxena is doing any forgery and fabrication in his own department neither the applicants were aware regarding the misappropriation of government funds whatever amount Pankaj Saxena has given that has been returned back to him with interest as the applicants were under impression that he has arranged for a loan from LIC, for the purpose of loan Pankaj Saxena has taken all credentials of the applicants as well as the signatures on the blank paper and stamp papers. Therefore the section 201 also not attracts. That it is also pertinent to point out here that in the entire investigation done by the Central Bureau of Investigation (hereinafter referred as CBI) no where they have mentioned the involvement of the applicants in a fabrication of any sought of documents or the fabrication of the cheques. That it is relevant to mention here that Pankaj Saxena has contacted the applicants and said that he is working in LIC and LIC use to provide a loan/ financial assistance and he can arrange the loan and the same will be the short terms loan and the same has to be returned as early as possible. That the applicants or not much educated and was unable to understand that Pankaj Saxena is trying to trap the applicants and unknowingly the applicants were ready to take the assistance but the applicants have asked that why he is helping us then he shown his interest in the commission and asked 20% of the loan amount. It is also pertinent out here that in lieu of the said financial assistance Pankaj Saxena has taken all credentials i.e. ID and address proof of the applicants and taken signatures on blank paper and stamp papers. Pankaj Saxena has told to open a account and the applicants were not aware about the procedure of opening accounts therefore Pankaj Saxena took them to Rajdhani Sahkari and got the account open and Pankaj Saxena has introduced the applicants in the bank he has also put his signature on the accounts opening form as an introducer. That thereafter Pankaj Saxena used to give several cheques in the name of applicants inspite of the fact that the applicants have refused the cheque because they have to return the money also then the Pankaj Saxena has requested that he also gets the commission as he cannot meet the expenses and the salary is not enough. The applicants have taken cheques but without any delay they have returned the money to Pankaj Saxena like a cautious borrower. That the applicants were not aware that they are a party to any crime. That the main ingredient of committing crime i.e. mensrea is absent. The whole investigation reveals that the Pankaj Saxena is a culprit who has deliberately involved the innocent people to fulfill his own personal needs and has also not left his wife and brothers who all are the party to the crime. That the investigation done by the CBI, nowhere reveals the role of applicants in manufacturing any documents or cheques neither the investigating agency has found any incriminating articles from the possession of the applicants. It is pertinent to point out here that no Prima Facie case is made against the applicants". It is mainly stated in the discharge application that the section imposed in the chargesheet as 120 B r/w 201,409, 420, 467, 468, 471, 477A of IPC are not attracted in the matter in the view of the aforesaid circumstance therefore, the applicants are liable to be discharge. The Learned Counsel for the accused stated and pressed the contents of discharge application in his argument.

3. The CBI filed its reply and stated there in that "the cited case was registered in cbi,acb luck now on 13-08-12 u/s120-b r/w 409 ,

467,468,471of IPC and section13(2) r/w section 13 (1) (d) of PC Act 1988 in the complaint lodge by the shri D S Dharmshatu,chief managerLIC trans gomti branch lucknow,related with fraud aggregating Rs5,99,68,338(Five crore ninety nine lacs,sixty eight thousand threehundered thirty eight) at trans gomti branch by manipulation of books, issuance of cheques favouring unauthorized private persons and encashment of cheques by opening accounts in different banks. It is further stated that ‘it is alleged in the FIR that during may 2006 to September 2010,payment of Rs5,99,68,338(Five crore ninety nine lacs,sixty eight thousand threehundered thirty eight) was made by issuance of 212 cheques from policy holder payment account i.e.a/c no 4(05301020001884) with axis bank,in the name of 17 ineligiable/fake persons who were not entitled to receive any amount from LIC. these cheques were en-cashed through the accounts opened at different bank at lucknow. It is further stated that the investigation has revealed that the principal accused Pankaj Saxena, between the period 27.2.2006 to 9.8.2010,prepared 248 false/fake cheques amounting to Rs. 6,37,66,660/- in the name of Neetu Saxena, Vimlesh/Bimlesh Saxena, Manish Saxena, Sangeeta Saxena, Prem Shankar Upadhyay, Rekha Upadhyay, Samir Joshi, Anju Joshi, Krishna Kant Agnihori, Asha Agnihotri, Sachin Mehrotra, Vinita Mehrotra, Sashi Mehrotra, Jitendra Kumar and Raj Kishor Singh. All non-existing policy holder,which were en-eashed through the accounts opened at different banks at Lucknow. It is further stated that main accused of case Pankaj Saxena,in criminal consipiracy with the accused persons prem shanker upadhyay and his wife Rekha updhyay in course of preparation of fraudulent cheques,commited offence punishable u/s 120-b r/w 201, 409 , 420, 467, 468, 471 and 477 which caused wrongful gain amounting toRs 1,38,34,157 to Prem Shanker Upadhyay and wrongful gain of Rs1,09,82931 to Rekha upadhyay. Hence both the accused persons may be prosecuted with Sections 120B r/w 201, 409 , 420, 467,468, 471 and 477. It is further stated that accused person are resident of the locality where pankaj Saxena resides. They were very much aware about the profession and economical condition of Pankaj Saxena. The plea that accuse persons had taken loan from Pankaj Saxena can not be admissible on the ground whether they filled any loan application form or ever visited any LIC office or any property was mortagaged in lieu of loan or why loan amount had been deposited in various accounts maintained in different banks. It is further stated that The investigation has further revealed that Rekha Upadhayaya is wife of Prem Shankar Upadhayaya. She along with his husband Prem Shankar Upadhayaya conspired with Shri Pankaj Saxena for preparation of fake LIC cheque in their name, encashment of the same and thereafter to distribute the money. In furtherance of criminal conspiracy during 2007-2010, Pankaj Saxena in criminal conspiracy with Prem Shankar Upadhayaya and Rekha Upadhayaya prepared 51 forged LIC cheques amounting to Rs. **1,38,34,157** in the name of Prem Shankar Upadhayaya and 43 forged LIC cheques amounting to Rs. **1,09,82,931** in the name of Rekha Upadhayaya, handed over those to Prem Shankar Upadhayaya and his wife Rekha Upadhayaya. Who deposited and encashed the same at Rajdhani Nagar Sahkari Bank JankiPur Branch, Indusland Bank Aminabad Branch, HDFC Bank, Jankipuram Branch, ICICI Bank, Indira Nagar Branch and Union Bank of India, Jankipuram Branch, Lucknow. It is further stated that with the help of fraudulent money received through cheques of LIC, Prem Shankar Upadhyay registered two firms namely Maa Vaishno Agencies and Jai Maa Vaishno Agencies in Department of Commercial Tax and started whole sale business of Crax, Namkins, General Merchant goods etx. Most of the money was used in payments to defferent firms i.e. M/s Grace Marketing, Utasave Traders, Gupta Traders, Malhotra Marketing Pvt. Ltd. etc. except,they used the fraudulent money in purchase of vehicles and repayment of housing loan for house no. 2/685 Sec. H, Jankipuram Lucknow. It is further stated that Prem Shankar Upadhyay and Rekha Upadhyay had obtained pecuniary advantage by obtaining fraudulent cheques of LIC. The prayer has been made for the rejection of the discharge application. The Learned Public Prosecutors for CBI made similer submisions, in regard to fact and law, as said and mentioned in reply.

4. I have heard the Learned Counsel for accused and Learned Public Prosecutors for CBI and perused the record alongwith the chargesheet.

5. After hearing the arguments of both the parties, and perusing the material available on record, I am of the view that sufficient material is available on record for framing the charges against the applicant accused namely Prem Shankar Upadhayaya and Rekha Upadhayaya u/s 120 B r/w 201, 409, 420, 467, 468, 471, 477A of IPC. Hence, the discharge application presented by the accused persons Prem Shankar Upadhayaya and Rekha Upadhayaya is liable to be rejected. Hence, the discharge application presented by the accuse person Prem Shankar Upadhayaya and Rekha Upadhayaya is hereby rejected.

Dated: 04.11.2015

(Sanjeev Shukla)
Special Judge CBI,
Anti Corruption (West)/Addl.Session Judge
Lucknow.