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HARDEO SINGH
v.
STATE OF BIHAR AND ANR.

MAY 11, 2000

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[G.B. PATTANAİK AND UMESH C. BANERJEE, JJ.]

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Indian Penal Code—Sections 120B, 409, 420, 468, 471, 477A—Prevention of Corruption Act—Ss.5(1)(a), 5(1)(c), 4(1)(d)—Charge sheet as against Appellant for conspiracy—For obtaining loans from main accused, a bank employee—Beyond financial limits—Main accused alleged to be in the habit of receiving illegal gratification from a specified person—Application for discharge by Appellant dismissed by Special Court—upheld by High Court—Whether Appellant is liable to be discharged—Held, No—Some connecting link or connecting factor would be good enough for framing of a charge—It cannot be equated to establishing the charge of conspiracy.

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The Appellant alongwith others was charged under Sections 120B, 409, 420, 468, 471, 477A of IPC read with Sections 5(1)(a), 5(1)(c) and 5(1)(d) of the Prevention of Corruption Act. The charge sheet mentioned that one 'R' who was an employee of a Bank in connivance with some named accused in the FIR had cheated the Bank of serval lakhs of rupees, misusing his official position. After investigation it was found that the said 'R' had granted overdraft facility to the Appellant transgressing his financial competence, on different dates. Though the FIR did not mention the Appellant as an accused, his name had been shown as a person receiving loan on breach of financial obligation.

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Special Judge took cognizance of the case and summons was issued to the Appellant. The Appellant after obtaining bail, applied for discharge and to drop proceedings against him. Special Court dismissed the application and held that there were sufficient materials existing for a *prima facie* case against the accused person for framing of charges.

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Petition under Section 482 Cr.P.C. filed by the Appellant before the High Court was dismissed.

In appeal to his Court the Appellant contended that a specific person has been named in the matter of formation of habit so far as illegal gratification

is concerned and since the Appellant's name does not find any place, question of continuation of proceedings as against the Appellant does not arise, and that the charge sheet has not mentioned the fact of repayment of the said loan by the Appellant within 46 days, being the shortest possible time which has to be viewed seriously. A

The Respondent contended that there is a charge under Section 120B and as such, question of setting the Appellant free at this stage does not arise, that the offence under Section 120B, is an independent offence and while it is true that the gist of the offence, is the agreement between two or more offenders but particular facts of the conspiracy need not even be shown in the charge, that some general evidence pertaining to the conspiracy would be sufficient to form part of the charge of conspiracy in the chargesheet, and that since conspiracy is generally a matter of influence and since Appellant did take advantage of the overdraft facility knowing fully well that the same is beyond the financial limits of the Branch Manager, the natural inference may be drawn that the same must have been done upon some other consideration and it is the assessment of the same which should prompt the court to thwart such an attempt. B C D

Dismissing the Appeal, the Court

HELD: 1. The allegation pertains to the factum of the habit of Branch manager, of receiving illegal gratification from a person however by itself may or may not be sufficient to bring home the charge of conspiracy but that by itself would not authorise the court to call it a day in regard to the charge of conspiracy on the wake of the factual matrix of the situation at this stage of proceedings. Criminal prosecution does not necessarily mean harassment and in the event the prosecution of this nature is allowed to be continued, it would not be in our view a travesty of justice or any undue prejudice or even otherwise prejudicial since ultimately in the event the charge is not proved, he would be acquitted. The Counter Affidavit filed by the Respondents herein does disclose the materials for scrutiny against the Appellant; as such the Court cannot assist the Appellant. [229-E-F] E F

2. As a matter of fact some connecting link or connecting factor somewhere be good enough for framing of charge since framing of charge and to establish the charge of conspiracy can not possibly be placed at par. To establish the charge of conspiracy, there is required cogent evidence of meeting of two minds in the matter of commission of an offence-in the absence of which the charge cannot be sustained. This is however not so, in the matter G H

A of framing of charge since the incidence of the offence shall have to be investigated. [229-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 477 of 2000.

B From the Judgment and Order dated 30.7.99 of the Patan High Court in Crl.M. No. 4292 of 1993.

Altaf Ahmed, Additional Solicitor General, P.S. Mishra, S.B. Upadhayay, Sanjay K. Shandilya, Rajeev Sharma, P. Parmeshwaran, Kumar Rajesh Singh and B.B. Singh for the appearing parties.

C The Judgment of the Court was delivered by

BANERJEE, J. Leave granted.

D This Appeal directed against the judgment and order of the Patna High Court pertains to refusal to exercise jurisdiction under Section 482 Cr.P.C. in the matter of discharge of the complaint against the petitioner under Section 120B, 409, 420, 468, 471, 477A IPC read with diverse provisions of Prevention of Corruption Act in RC No.35/85 before the Special Judge, Patna. On the factual score it appears that the First Information Report was lodged against

E one S.K. Roy, Branch Manager, Birpur Branch of Central Bank of India alleging *inter alia* that in connivance with some other named accused he has cheated the Bank to the tune of Rs. 7,47,000 by misusing his official position, and thus, wrongful loss to the bank to the above extent and wrongful gain to himself and others having entered into a criminal conspiracy with Ved Prakash Agrawal, Satya Narain Agrawal and M/s Arun Khadya Tel Udyog. During the

F course of investigation by Central Bureau of Investigation (CBI), the present Appellant's name surfaced from the record that the latter having an Account in the Bank made an application on 8th February, 1985 for sanction of loan of Rs. 14 lakhs for urgent payment of labourers in contract work. It has also come to light that the Branch Manager S.K. Roy has given sanction and

G allowed a total amount of overdraft facility to the extent of Rs. 21,50,000 on different dates to the Appellant. It is this grant of overdraft facility which have been very strongly criticised by Mr. Altaf Ahmed, the learned Additional Solicitor General Mr. Ahmed contended that the Branch Manager of the Bank has had no power to the grant of overdraft facility beyond a sum Rs. 10,000 and this accommodation to the appellant herein is, obviously, for reasons not

H far to seek.

The contextual facts depict that inspector of Police, SPE, CBI, Patna Shri Jyoti Kumar lodged an FIR being RC No. 35/85 Patna wherein it has been alleged as below: A

“An information has been received through a reliable source that Shri S.K. Roy, while functioning as Branch Manager, Birpur Branch of Central Bank of India during the period 1983 to 1985 entered into a criminal conspiracy with S/Shri Ved Prakash Agrawal, Satya Narain Agrawal, M/s Arun Khadya Tel Udyog and others and cheated the Central Bank of India to the tune of Rs. 7,47,000 by misusing his official position and thus caused wrongful loss to the Bank to the extent of Rs. 7,47,000 with corresponding wrongful gain to himself and others. B C

2. It is alleged that Shri Ved Prakash Agrawal applied for loan and filled up only the amount of finance required by him leaving all the other particulars including the nature of business blank in the loan application form. Shri S.K. Roy, Branch Manager sanctioned Rs. 10,000 cash credit open limit on *ad hoc* basis pending regular proposal and sanction Shri S.K. Roy also fraudulently and dishonestly allowed the party to draw to the extent of Rs. 2,57,655.55 without knowing the nature of business and without obtaining the financial statement, financial report, inspection report and stock statement. D E

3. It is alleged that there was no shop/establishment in the name of Shri Ved Prakash Agrawal.

4. It is alleged that Shri Ved Prakash Agrawal (A-3) was fraudulently and dishonestly allowed by Shri S.K. Roy (A-1) to withdraw to the extent of Rs. 89,464.10 without any loan application, proposal, sanction, financial statement report, stock statement and inspection report. It is also alleged that this also is a fake and fictitious financing since there is no establishment/shop in the name of Shri Satya Narain Agrawal. F

5. Further it is alleged that M/s. Arun Khadya Tel Udyog (A-7) was allowed by A-1 Shri S.K. Roy to draw to the extend of Rs. 4,94,620.50 without regular proposal, sanction, financial statement, financial report and inspection report. All the documents are blank, undated and unstamped. G

6. It is also alleged that Shri S.K. Roy (A-1) made fictitious finance as term loans even to the citizens of Nepal. A few names given in the H

- A records of the bank with their addresses from Nepal are as under:-
- (i) Bihari Mandal, Biral Nagar, Nepal.
 - (ii) Nageshwar Mandal, Inarwa, Nepal.
 - (iii) Narain Prasad Shah, Lahi, Nepal.
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- (iv) Deo Narain Yadav, Lahi, Nepal.
 - (v) Jageshwar Mandal, Bhim Nagar, Nepal.
7. It is learnt that Birpur Branch is a medium grade Branch and the financial competence of the Branch Manager in respect of over draft is Rs. 10,000 only. Shri S.K. Roy, A-1 transgressed his financial competence and allowed the following clean over drafts and that to the same parties several times on different dates:-
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- 1. Shri Hardeo Singh: Rs. 13,50,000 on 28.1.85 and Rs. 14,00,000 on 16.2.85.
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- 2. Shri D.M. Tiwari: Rs. 1,00,000 on 13.3.84, Rs. 1,00,000 on 28.6.84 and again Rs. 1,50,000 on 23.6.84.
8. The aforesaid facts disclose commission of offence U/S S120B, 409, 420, 468, 471, 477A IPC and 5(2) r/w 5(1)(c) & (d) of the P.C. Act (Act II of 1947) by Shri S.K. Roy, Branch Manager, Central Bank of India, Birpur Branch, Shri Ved Prakash Agrawal, Shri Satya Narain Agrawal, M/s. Arun Khadya Tel Udyog all of Birpur and others.”
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While it is true that the First Information Report has not named the appellant herein but the appellant's name does figure as a person receiving loan on clear breach of financial obligation. The facts depict that the appellant was however, subsequently made an accused and the chargesheet No.7/87 submitted by the SPE (CBI) Patna in the Court of Special Judge, CBI, Patna was filed against the appellant, wherein it has been stated:

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“Shri Hardeo Singh, a contractor having an Account No. 335, in the Central Bank of India, Birpur Branch, made an application on 8.2.85 to the Branch Manager of the said Bank for sanction of Rs. 14 lacs for payment to labourers in a contract work. The said Shri Roy put his remarks on the said letter “allowed Rs.14 lacs in view of the party's difficulty.” The said Shri Roy allowed overdraft of Rs. 21.5 lacs on different dates to the said Shri Hardeo Singh in the same fashion.

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In this way the said Shri Roy allowed the overdraft facility to the tune

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of Rs.35.5 lacs fraudulently and dishonestly to the said Shri Hardeo Singh.”

The records depict further that the learned Special Judge, North Bihar, Patna took cognizance of the matter and issued summons in terms of his Order dated 12th August, 1987 and the Appellant in terms thereof appeared before the Special Court and was granted Bail. Subsequently, however, upon receipt of the copies of the documents, the Appellant moved an application in Special Case No. 115/85, before the Special judge, CBI for discharging him of the case and to drop the proceedings against him. Similar application for discharge was also filed by other accused persons and the Special Court in a common judgment came to a conclusion that there are sufficient materials existing for a *prima facie* case against the accused person for framing of charges. The Appellant herein as against the order as above, moved the High Court under Section 482 Cr.P.C. to quash the proceeding against the petitioner pending before the Court of Special Judge, CBI, North Bihar, Patna. The High Court, however, dismissed the application of the Petitioner and hence the Appeal before this Court.

Mr. Mishra, the learned Senior Advocate very strongly commented upon the factum of total omission of repayment of the loan in the charge by the Appellant herein within forty six (46) days, being the shortest possible time. Be it noted that similar submission was also made before the High Court and the learned Single Judge though recorded the same but did not take note of the same by reason of the submission of the learned Advocate appearing for CBI that the court below decided the matter, has come to a positive finding that there are material evidence against the Petitioner for framing of charges and as such the Court ought not to intervene or interfere in exercising its inherent jurisdiction.

Apart from the above, the accusation against Shri S.K. Roy and Shri B.N. Choudhary is also of some significance and as such the same is set out herein below:

“The said Shri S.K. Roy and Shri B.N. Choudhary were in *habit of receiving illegal gratification from Shri Ved Prakash Agrawal* which is evident from the entries made in personal diaries of Ved Prakash Agrawal and the account of Sri Roy.” (Emphasis supplied)

It is on this score also Mr. Mishra very strongly contended that a specific person has been named in the matter of formation of habit so far as illegal gratification is concerned and since the appellant's name does not find

- A any place, question of continuation of proceedings as against the appellant does not arise. It is no doubt true that only one person has been named to be providing the illegal gratification but does that mean and imply release of another beneficiary of largess of the Branch Manager and it is on this score the totality of the situation shall have to be scrutinised in a little more greater detail. It appears that the appellant herein has obtained some overdraft facilities
- B from the Bank which is stated to be much beyond the financial power of the Branch Manager but paid back the same within 46 days inclusive of all interests therein and the Branch Manager is in the habit of receiving illegal gratification from Shri Ved Prakash Agrawal which is apparent from the entries in the personal diary of Shri Ved Prakash Agrawal and account of S.K. Roy.
- C The charge pertaining to the appellant, therefore, is restrictive but allowing him overdraft of Rs. 21.5 lacs on different dates which stands repaid alongwith interest and which according to the charge is much beyond the financial powers of the Branch Manager also needs a probe. The chargesheet has been filed against the persons named in the charge, including the appellant under Sections 120B, 420, 418, 467, 477A of the IPC and Sections 5(1)(a), 5(1)(c) and 5(1)(d) of the Prevention of Corruption Act for taking cognizance and the Special Judge did take cognizance in regard to such offences so far as the Appellant is concerned.
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- E True there is no accusation that the account of Roy depicts a balance which is much higher than the amount shown in the personal diary of Shri Ved Prakash, but two several sums of Rs. 60,000 have been stated to have been deposited on 14.2.85 and 26.3.85 which though by itself not, connote any culpability of the Appellant Hardeo Singh, neither the same however proves his innocence at this juncture. There may not be any direct evidence against the appellant herein as regards the payment of illegal gratification by
- F the appellant to the Branch Manager or the Accountant, but factum of having enjoyed the privilege of having large sums of money on term loans without any authorisation to allow the same obviously raises some eye-brows somewhere and this is in spite of the fact of repayment of the term loan with interest: The question cannot be avoided as to the reasons for such an act
- G which stands beyond the powers-Is this a purely customer and the Bank relationship or something else-This is what is to be investigated more so having regard to this so-called habit of Roy as noticed above.

- H Mr. Altaf Ahmed, Additional Solicitor General, contended that there is a charge under Section 120B and as such, question of setting free the Appellant at this stage of the proceeding does not and cannot arise. Mr. Ahmed

contended that the offence under Section 120B, is an independent offence, and while it is true that the gist of the offence, is the agreement between two or more offenders but particular facts of the conspiracy need not even be show in the charge. Some general evidence pertaining to the conspiracy would be sufficient to form part of the charge of conspiracy in the chargesheet. As a matter of fact some connecting link or connecting factor somewhere would be good enough for framing of charge since framing of charge and to establish the charge of conspiracy can not possibly be placed at par: To establish the charge of conspiracy, there is required cogent evidence of meeting of two minds in the matter of commission of an offence-in the absence of which the charge cannot be sustained-This is however not so, in the matter of framing of charge since the incidence of the offence shall have to be investigated. It is on this count Mr. Additional Solicitor General contended that since conspiracy is generally a matter of inference and since Appellant herein did take advantage of the overdraft facility knowing fully well that the same is beyond the financial limits of the Branch Manager, the natural inference may be drawn that the same must have been done upon some other consideration and it is the assessment of the same which should prompt this Court not to toward such an attempt.

The criminal purpose in the matter cannot possibly be ruled out as against the appellant. The allegation pertains to the factum of the habit of Branch Manager, of receiving illegal gratification from Shri Ved Prakash Agrawal, however, by itself, in our view, may or may not be sufficient to bring home the charge of conspiracy but that by itself would not authorise the court to call it a day in regard to the charge of conspiracy on the wake of the factual matrix of the situation at this stage of proceedings. Criminal prosecution does not necessarily mean harassment and in the event the prosecution of this nature is allowed to be continued, it would not be in our view a travesty of justice or any undue prejudice or even otherwise prejudicial, since ultimately in the event the charge is not proved, he would be acquitted. The Counter Affidavit filed by the respondents herein does disclose some materials for scrutiny against the appellant as such we are unable to render any assistance to the appellant herein.

In that view of the matter this Appeal fails the order of the High Court as passed by the learned Single Judge cannot and ought not to be interfered with on the given set of facts as noted above. There shall, however, be no order as to costs.