

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1354 OF 2007

C.B.I.

.... APPELLANT

Versus

V.K. BHUTIANI

.... RESPONDENT

ORDER

1. The appellant-Central Bureau of Investigation has come up in this appeal against the order dated 20.4.2005 passed by the High Court of Delhi in Criminal Revision Petition No. 945 of 2003. In that Revision Petition, V.K. Bhutiani (respondent herein) had challenged the order on charge dated 23.8.2003 passed by the Special Judge, Delhi. Those charges are as under:

“I, P.K. Bhasin, Special Judge, Delhi hereby charge you V.K. Bhutiani, O.P. Rajvanshi, Mrs. Rashmi Aggarwal Parveen Aggarwal and Neeraj Jain as follows:

That your accused V.K. Bhutiani, while being posted as a Senior Manager in New Bank of India, E-Block, Connaught Circus, New Delhi and you accused O.P. Rajvanshi, Mrs. Rashmi Aggarwal, Praveen Aggarwal and Neeraj Jain along with S. Mohd. Yusuf (now dead) had entered into a

criminal conspiracy sometime during November and December 1989 at New Delhi for defrauding/cheating New Bank of India to the tune of Rs. 17.20 lacs by

resorting to cheating, forgery of documents in the nature of valuable securities and for using those documents for getting loan facilities to the extent of Rs. 17.20 lacs in the name of M/s. Vikram Enterprises, proprietorship concern of you, accused, O.P. Rajvanshi and also by abuse and misuse of authority and also by abuse and misuse of authority as a public servant you, accused V.K. Bhutiani and thereby you all committed an offences punishable under Section 120-B r/w Section 420/467/468/471 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

Secondly, in furtherance of the aforesaid conspiracy your accused V.K. Bhutiani, O.P. Rajvanshi, Rashmi Aggarwal, Parveen Aggarwal and Neeraj Jain cheated New Bank of India and got released loans amount of Rs. 17.20 lacs in the name of M/s. Vikram Enterprises by way of two orders dated 28.12.1989 and 26.12.1989 respectively for Rs. 12.65 lacs and Rs. 2.25 lacs in favour of M/s. Hazi Gubar and S. Abdul Kareen and one pay order dated 26.12.1989 for Rs. 2.30 lacs in favour of M/s. Multiple Traders and thereby you all committed an offence punishable under Section 420 IPC.

Thirdly, that in furtherance of aforesaid conspiracy you accused O.P. Rajvanshi forged on receipt dated 20.12.89 for Rs. 4,35,000/- purporting to have been issued by M/s. Hazi Gudar S. Abdul Kareen in favour of M/s. Vikram Enterprises and you also forged one letter dated 17.12.1989 purporting to have been written by M/s. Hazi Gudar S. Abdul Kareem to Vikram Enterprises for using the same for cheating New Bank of India by obtaining loan of Rs. 17.20 lacs and you also used these forged documents dishonestly and fraudulently and

thereby you committed an offence punishable under Sections 467/468/471 IPC.

Fourthly, that in furtherance of the aforesaid conspiracy you accused Parveen Aggarwal forged on invoice dated 15.12.89 for Rs. 2.30 lacs purporting to have been issued by M/s. Multiple Traders, proprietorship concern of your co-accused Rashmi Aggarwal, in the name of Vikram Enterprises for being used for the purpose of cheating New Bank of India by obtaining loan of Rs. 17.20 lacs in the name of Vikram Enterprises, firm of you co-accused O.P. Rajvanshi and you also forged a receipt of Rs. 1 lac for the same purpose purporting to have been issued by Multiple Traders in favour of M/s. Vikram Enterprises and these documents were then used for cheating New

Bank of India and thereby you committed an offence punishable under Sections 467/468/471 IPC.

Fifthly, that in furtherance of the aforesaid conspiracy that you accused V.K. Bhutiani by corrupt or illegal means and by abusing your position as a public servant being a Senior Manager of New Bank of India sanctioned loan of Rs. 17.20 lacs for M/s. Vikram Enterprises, proprietorship concerns of your co-accused O.P. Rajvanshi without any public interest and thereby you committed an offence punishable under Section 13(1)(d) of Prevention of Corruption Act, 1988.

And I hereby direct that all be tried by this Court for the aforesaid offences.

Sd/-

Special Judge/Delhi

27.9.2003.”

2. The Revision Petition was basically on the ground that the respondent, who was a Senior Manager of the New Bank of India at the relevant time, was in fact exonerated by the Central Vigilance Commission and in its report, he was found to be innocent. The charges, which we have quoted above, were extremely serious and included also the charge of conspiracy with a view to defraud the bank. In

the process, it is apparent from the charge that the respondent along with other co-accused had entered into a criminal conspiracy to defraud the bank by granting the loans which should never have been granted. The allegation is regarding the securities which have been accepted against those loans were worthless. It has also come on record that the loans were never repaid.

3. The High Court in its judgment has basically relied upon the report of the Central Vigilance Commission and also relied on the ruling of this Court in *P.S. Rajya Vs. State of Bihar* (1996) 9 SCC 1.

4. We have carefully gone through the aforesaid ruling. In paragraph 8 of the impugned order, the High Court opined as under:

“In my opinion, this judgment squarely applies in the present case. The basic factors to establish conspiracy of petitioner were all before the Central Vigilance Commission. After taking all these factors into consideration, it found that the petitioner was not actually involved in any corrupt practice or in the conspiracy of the other accused persons intended to cheat the bank. The discrepancy between the dates of making

a prayer for loan and the recommendation for it or

opening of the account were all observed to be in accordance with practice, although a haste on the part of the petitioner was proved. So far as valuation of the property offered as security is concerned, the petitioner had actually not committed any fraud. He did not over value the property. The Central Vigilance Commission having taken note of the fact has held that it was a case of misjudgment rather than a case of conspiracy. The vigilance commission also went into the question whether the petitioner was at fault in not making enough inquiries about the genuineness of the documents issued by A-3 and others and about the genuineness of the business run by A-3. Yet the Vigilance Commission has given a clean chit to the petitioner although it found the petitioner guilty to the extent of making a faulty judgment in recommending the proposal.” (emphasis supplied)

5. We have deliberately quoted the above paragraph to note that the High Court did not bother to examine the charge-sheet and the allegations made therein nor did it examine the statement of the witnesses and/or the reports of the handwritten experts which were the part of the charge-sheet.

6. In our opinion, the reliance of the High Court on the ruling of P.S. Rajya (supra) was

totally uncalled for as the factual situation in that case was entirely different than the one prevalent here in this case.

7. We were also taken through the report of the Central Vigilance Commission. Para 7.1 of the said report reads as under:

“The allegations against Shri V.K. Bhutiani are held proved only to the extent of making a faulty judgment in recommending the proposal for the PC limit as pointed out in para 6.61 and the article of charge is held proved only to the extent as various allegations have been substantiated or otherwise as mentioned in the assessment portion of the report.”

8. Thus, it cannot be held that the Central Vigilance Commission had given a clean chit to the respondent-accused.

9. In para 18 of the ruling in P.S. Rajya (supra), relevant part of the report of Vigilance Commission was quoted. Para 18 of the said judgment reads as under:

“It may not be out of place to extract a portion from the order exonerating the appellant from the charge framed in the departmental proceedings. It reads as follows:

“The Commission after careful consideration of the facts and records of the case, have advised that the savings of the applicant, Shri P.S. Rajya, were more than the assets acquired by him and, therefore, the charge of acquisition of assets disproportionate to income does not stand proved. A copy of the advice of the Commissioner is enclosed. The Commission have also advised that the ends of justice would be met by exonerating the charged officer Shri P.S. Rajya.”

The President has given careful consideration to the facts and records of the case and advice of the UPSC. The President has come to the conclusion that the advice of the UPSC be accepted. It is, therefore, held that the articles of charge framed against Shri Rajya has not been proved. The President is, therefore, pleased to exonerate Shri Rajya, AIT (Retd.) of the charges framed against him and drop the proceedings initiated against him”

10. From a mere glance of this, it will be seen that the Central Vigilance Commission had exonerated the accused therein by writing a clear cut finding that the charge of acquisition of assets disproportionate to the income did not stand proved against the accused in that case. Such is certainly not the case here.

11. In our opinion, though the report of the Central Vigilance Commission may be a relevant factor, it cannot be held to be “be all or end all” of the matter for prosecuting the accused persons of such serious offences.

12. Mr. Manoj Jain, learned Additional Solicitor General appearing on behalf of the appellant-C.B.I. very rightly argued that the High Court has treated the said report to be “be all or end all” of the matter. He submitted that the High Court was not correct in doing so.

13. Learned counsel appearing for the respondent very candidly admitted that from the report, it cannot be said that the respondent-accused in this case was totally exonerated. We have deliberately quoted aforesaid para 7.1 of the report only to show that the respondent

was not totally exonerated. Thus, the reliance by the High Court on the aforementioned ruling of P.S. Rajya (supra) was uncalled for.

14. The ruling of P.S. Rajya (supra) was considered by this Court in *State through SPE & CBI, Andhra Pradesh Vs. M. Krishna Mohan and Another* (2007) 14 SCC 667 wherein this Court, after elaborate discussion, found that where the fact

situation was different, the reliance could not be made all together on the report of the Central Vigilance Commission. Relying on the ruling of *State of Haryana Vs. Bhajan Lal* 1992 Suppl.(1) SCC 335, this Court reiterated the position that where there could be some material found in the charge sheet, then it would not be the function of the court to examine the charge-sheet with a view as to whether the accused could be convicted or not. That would be a pre-mature exercise. The judgment in the case of *M.Krishna Mohan* (supra) was against acquittal and reliance on behalf of the defence was placed on the report of the Central Vigilance Commission. In para 32 of the said judgment, this Court has made a clear reference that there was a clear cut finding by the High Court to the effect “we have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued.”

15. We do not find any such reasoning having been given in the present case by the High Court. On the other hand, a perusal of the impugned order suggests that the High Court did not examine the

material available by way of charge-sheet and has proceeded

to follow the ruling of P.S. Rajya (supra). We are, therefore, satisfied that this appeal has to be allowed by setting-aside the impugned order passed by the High Court. Accordingly, the appeal succeeds. The impugned order is set-aside and the matter is remanded. Now the trial court shall proceed with the trial since the charges have already been framed. All the contentions in law and fact shall be available to the respondent as well as the prosecution. This judgment shall not be treated to be an expression of opinion on our part.

.....J.
[V.S. SIRPURKAR]

.....J.
[DEEPAK VERMA]

NEW DELHI
AUGUST 11, 2009.