

Central Bureau of Investigation Vs. Srinivas D. Sridhar

Criminal Appeal No. 2891 of 2023 · Supreme Court of India · 2024-10-16 · Abhay S Oka · Ujjal Bhuyan · F2J-C-1438

Full judgment text

Central Bureau of Investigation Vs. Srinivas D. Sridhar

[Criminal Appeal No. 2891 of 2023]

Abhay S. Oka, J.

Factual Aspects

1. The present appeal arises out of a charge sheet filed in First Information Report bearing no. RC 7/E/2014 registered with the Central Bureau of Investigation (CBI) (Bank Securities and Fraud Cell), Mumbai, for the offences punishable under Sections 420, 468, 471 and 120-B of IPC and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 (for short, 'the PC Act'). Charge sheet was filed for the said offences on 8th August 2014. A total of seven accused persons were chargesheeted, including the respondent herein, who was shown as accused no.7.

At the relevant time, he was the Chairman and Managing Director of the Central Bank of India (for short "the Bank"). Accused no.1 was M/s Electrotherm (India) Limited (for short, "the Company"). Accused no.2-Mukesh Bhanwarlal Bhandari was the Chairman of the Company. Accused no.3- Shailesh Bhanwarlal Bhandari was the Managing Director of the Company. Accused no.4-Avinash Prakashchandra Bhandari was the Joint Managing Director of the Company. Accused no.5 was one Hector Keki Vesuna, who was, at the relevant time, the Chief General Manager (Credit) of the Bank. Accused no. 6 was Ramnath Pradeep, who was an Executive Director of the Bank at the relevant time.

2. During the years 2010-2011, the Bank sanctioned following three facilities to the Company: - a. Short-term loan of Rs. 50 crores; b. Letter of credit having a limit of Rs. 100 crores; and c. Export Packing Credit (EPC) facilities of Rs.330 crores.

3. The Bank disbursed a sum of Rs. 247.50 crores against EPC on various dates. The Company claimed that it was awarded a contract by M/s Kamal Alloys Ltd., Tanzania, for the execution/setting up of a steel plant in Tanzania on a turnkey basis. Therefore, the EPC facility was granted for procurement of raw materials and components for the said project in Tanzania. The allegation is that instead of using the amount of Rs. 247.50 crores for procuring raw material for the project, the amounts were transferred by the Company to its accounts with various other Banks as well as to builders. The amounts were also used for payment of ECGC premium.

4. It was alleged that the Company requested Lal Darwaja Branch of the Bank at Ahmedabad, to open a Standby Letter of Credit (SBLC) for an amount of USD 15 million in favour of Apple Commodities Ltd in Hong Kong for the supply of coal. Under the said facility, while the Bank had to pay USD 15 million to the banker of Apple Commodities Ltd., the Company neither imported the coal to India nor was any payment arranged from the overseas buyer to whom the Company allegedly sold the coal.

Similarly, the Company opened another SBLC for Euro 2.05 million in favour of Castleshine Pte. Ltd., Singapore, for the supply of a Continuous Hot Strip Mill for the proposed steel plant to be set up in Tanzania. The Bank had to pay Euro 2.05 million to the bank of M/s. Castleshine Pte. Ltd., though the Company did not procure any machinery. The allegation is that the Bank was put to an undue loss of Rs.436.74 crores, and there was a corresponding gain to the Company.

5. An application for discharge made by the respondent (accused no.7) was rejected by the learned Special Judge of C.B.I., Court. In a revision application filed by the respondent before the High Court, by the impugned judgment, the High Court has discharged the respondent. The Appellant-CBI, being aggrieved by the said judgment, is before this Court.

Submissions

6. In support of the appeal, the learned Additional Solicitor General (ASG) submitted that though the conduct of a minitrial was not contemplated at the stage of framing of the charge, the High Court has purported to conduct a minitrial in this case. She submitted that to prove allegations of conspiracy, it is not necessary that all the co-conspirators must know every detail of the conspiracy, and it is not essential that every accused must participate in the conspiracy from its inception to the last. She submits that even a strong suspicion created by the material forming part of the charge sheet is sufficient for framing the charge.

The learned ASG pointed out the material forming part of the charge sheet against the respondent. She submitted that a proposal regarding the EPC facility of Rs.330 crores was added by a witness-V.K. Nagpal, on instruction of accused no.5, though there was no recommendation made by the zonal office to the proposal. She submitted that this was done on 10th August 2010, and on the same day, accused no.5 and 6 prepared a Memorandum to be submitted to the management committee. The said two accused and respondent signed the Memorandum on the same date.

She submitted that undue hurry was shown for sanctioning an EPC facility of Rs.330 crores to the Company. She submitted that for the sake of alleged efficiency, the due process required to be followed for sanctioning credit facilities could not have been sacrificed. She submitted that no application was made by the Company for a grant of EPC facility.

It is submitted that though there may not be any allegation of receipt of pecuniary benefits against the respondent, he abused his official position as a public servant and indulged himself in mischief or criminal misconduct, as provided in Section 13(1)(d) of the PC Act. She submitted that at the stage of framing of the charge, the High Court could not have gone into the veracity of the allegations made by the prosecuting agency in the charge sheet, and this is a case where trial ought to proceed against the respondent.

7. Learned senior counsel representing the respondent has taken us through the material forming part of the charge sheets. His submission is that taking the material in the charge sheets as it is, no case was made out to proceed against the respondent, and therefore, no interference was called for. High Court has rightly discharged the respondent.

Consideration of Submissions

8. We have perused the charge sheet, the statements of witnesses and other material accompanying the charge sheet. The allegations against the respondent are found mainly in paragraph no.3 of the chargesheet. It is alleged that the accused, with the object of cheating the Bank, granted the three facilities mentioned above to the Company. In paragraph 3 of the charge sheet, it is stated that in furtherance of the conspiracy, accused nos.5 to 7:

(i) hurriedly got the Memorandum to the Management Committee prepared;

(ii) without proper appraisal by the Credit Department/Central Office, without clearance by the New Business Group added/inserted EPC limit of Rs.330 crores for execution of an export order for setting up a steel plant in Tanzania, Africa by the Company. Standby letters of Credit (SBLC) within the LC limit, without any written request from the Company were allowed.

(iii) The Memorandum was hurriedly approved by accused no.6 and the respondent on 10.08.2010 for placing the Memorandum before the Management Committee of the Board of Directors. The said Memorandum was placed before the Management Committee in its meeting held on 13.08.2010, and based on the recommendations in the Memorandum to the Management Committee, the credit facilities, i.e. (i) Short Term Loan of Rs.50 crore, (ii) LC/SBLC/Buyer's Credit limit of Rs.100 crore and EPC limit of Rs.339 crore were sanctioned to the Company. The sanction was conveyed by the Credit Department, Central Office of the ZO/Branch vide letter dated 18.8.2010."

These are the allegations against the respondent in the charge sheet.

9. We have perused the statements of the relevant witnesses and the documents on record in the charge sheet and the supplementary charge sheet. We may note here that there are no allegations against the respondent as regards the sanction of SBLC. There is no material placed in the charge sheets to show that the respondent has played any role in sanction of SBLC. The statement of Shri Ayodhya Prasad Dwivedi, who is retired General Manager of the Bank (PW-3), refers to recommendations of the zonal office for sanctioning the first two facilities of Rs. 50 crores and Rs.100 crores respectively.

He stated that he could not find any recommendation from the zonal office for sanctioning the EPC facility. He has referred to the Memorandum submitted to the Management Committee, which refers to the EPC facility of Rs.330 crores. He stated that there was a summary note bearing the signatures of accused nos.5 to 7. He stated that the Memorandum was put up before the Loan Advisory Committee on 11th August 2010. The Loan Advisory Committee recommended the proposal.

He duly signed the recommendation along with accused no.6 and Dr. Ram Saduba Sangapure, Manager, Risk Management. The Loan Advisory Committee recommended the proposal on the terms and conditions proposed in the Executive Brief. He stated that the Management Committee meeting held on 13th August 2010 was attended by respondents nos. 5 to 7, Executive Director Shri Arun Kaul, Shri M.S. Zohar, Shri Ved Prakash, Shri B.S. Rambabu, Shri B.S. Srivastava, General Manager and Shri R. Tyagrajan, AGM as well as the General Secretary to the Board.

10. At this stage, we may note that according to the prosecution, the usual procedure followed by the Bank at the relevant time was that credit proposals were processed by the Branch and submitted to the zonal office. After the recommendation of the zonal office, the proposals were examined by the Credit Department in the Head Office. The Memorandum duly signed was used to be placed before the Loan Advisory Group of six General Managers.

The loan proposals were thereafter presented before the Management Committee, comprising the Chairman and Managing Director, whole-time Directors, RBI Nominee Director, and 3 other directors, including at least 2 independent directors, one of them being chairman of the Audit Committee. The Memorandum placed before the Management Committee was prepared by the Bank's Credit Department and signed by the Deputy General Manager (Credit) and General Manager (Credit).

11. Dr Ram Saduba Sangapure (PW-4) was a Member of the Committee of New Business Group (NBG) and Loan Advisory Committee (LAC). He stated that NBG examines large credit proposals concerning new borrowers and takes a view. He stated that as per the practice that prevailed at the relevant time in the Bank, after receiving regular proposals from the branch/zonal office, the same was processed by the Credit Department.

Recommendations of the Credit Department in Executive Brief format used to be sent to the Risk Management Department to weigh the risk involved. After that, it used to be placed before the LAC. Subsequently, the proposal used to be placed before the Executive Director and CMD. After their clearance, the proposal was placed before the Management Committee for a final decision. He also referred to the Memorandum of Management Committee dated 10th August 2010, which contained a proposal for the grant of EPC facility in the sum of Rs. 330 crores.

He stated that the summary note containing the signatures of the accused nos. 5 to 7, and the Memorandum were placed before the Loan Advisory Committee on 11th August 2010, which recommended sanction on the terms and conditions proposed in the Executive Brief. After that, on 13th August 2010, the Management Committee approved the proposal. Witness Shri Sivasubramanian Gopalakrishnan (PW-5) stated that NBG clearance for admitting the proposal was issued.

12. The statement of Shri Vinod Kumar Nagpal (PW-10) refers to NBG approval given on 10th August 2010. However, witness Shri Salim Gangadharan (PW-18) stated that the central office entertained the proposal without the recommendation of the zonal office. He stated that though he was a nominee Director of RBI, he did not attend the Management Committee meeting dated 13th August 2010, as in view of the instructions of RBI prevailing at that time, he was not supposed to attend the meeting.

This witness and another witness, Mrs.V R Iyer, had visited Tanzania to conduct a survey and explore the possibility of opening a Branch. He stated that he met Shri Gagan Gupta, the Director of M/s Kamal Alloys Ltd. in Tanzania. He doubted whether M/s Kamal Alloys Ltd could generate funds to set up a plant on the company's marshy land. But the witness agreed that he did not submit a report to that effect. Witness Mrs. V.R. Iyer, who was the Executive Director of the Bank, in her statement stated that the Bank could have been more prudent in doing the due diligence of the foreign entity.

13. We find that the Loan Advisory Committee's favourable recommendations regarding the Company's proposal are also on record, apart from the memorandum submitted to the Management Committee. We have also seen the Executive Brief prepared containing the proposal.

14. After perusing the entire material and taking it as correct, perhaps the only material that creates suspicion is the speed with which the proposal of the Company was sanctioned. As far as the

respondent is concerned, considering his position and the role ascribed to him in the grant of sanction to the loan proposal of the Company, mere suspicion against him is not enough to frame a charge against him.

The proposal had passed through the Loan Advisory Committee which recommended the same. The proposal was placed before the respondent on 10th August 2010. As the credit proposal was beyond the sanctioning authority of the respondent, it was directed to be placed before the Management Committee. Apart from the Loan Clearance Committee, the proposal was approved by the Bank's Chief General Manager (Credit).

15. The respondent's role started with signing the Memorandum after it was approved by the Chief General Manager (Credit) and the Executive Director. A perusal of the Memorandum placed before the respondent for sanction showed that as many as 14 Public Sector Banks were lending to the Company apart from an international private sector bank.

The respondent's role was confined to signing the memorandum prepared by the senior officers and participating in the Management Committee meeting, which approved the proposal. No material is placed on record to show that any of the accused other than bank officials ever met the respondent before the sanction of the proposal by the Management Committee. Only because the entire proposal was processed and cleared within a short span of time, no offence is made out against the respondent. Taking the material in the charge sheet as it is, complicity of the respondent is not made out.

16. Therefore, we see no scope to interfere with the impugned order. While we say so, we must observe here that we have examined only the role ascribed to the respondent in the process of sanctioning the facilities to the Company. We have examined the charge sheet only for that limited purpose. Therefore, any observation made in the judgment will not affect the trial against the other accused persons as we have not recorded any findings about the material against them.

17. Subject to what is stated above, the appeal is dismissed.

.....J. (Abhay S Oka)

.....J. (Ujjal Bhuyan)

New Delhi;

October 16, 2024.

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