

HIGH COURT OF JUDICATUTE AT JABALPUR (M.P.)
SINGLE BENCH : HON'BLE JUSTICE NANDITA DUBEY
(HEARD THROUGH VIDEO CONFERENCING)
Criminal Revision No. 3250/2015

Pramod Kumar Likhkar
Vs.
State of Madhya Pradesh

Criminal Revision No. 197/2016

Bhupendra Kumar Prabhat
Vs.
State of Madhya Pradesh

Shri Manish Datt, learned Senior Advocate with Shri
Ambar Mishra, Advocate for the petitioners.

Shri Sanjeev Singh, learned Panel Lawyer for the
respondent/State.

Whether approved for reporting : **Yes**

Law Laid Down :

While framing a charge, the Court is expected to apply its mind to the entire record and documents placed therewith before the Court. No meticulous examination of evidence is needed for considering whether the case would end in conviction or not. However, the Court is required to consider and apply its judicial mind, whether the allegations taken as a whole will, prima facie constitute an offence and if so, whether continuation of proceedings is an abuse of process of Court leading to injustice.

Significant paragraph numbers : **10, 11, 19.**

Arguments heard on : 16.06.2021
Order delivered on : 14.07.2021

ORDER

- 1) Both these Criminal Revisions have been filed against the order(s) dated 02.12.2015, passed by Second Additional Sessions Judge, Dindori, framing charges under Sections 467 read with 109, 420 read with 120-B, 468 read with 109, 471 read with 120-B, 409 read with 120-B and 201 of I.P.C. against Pramod Kumar Likhkar (petitioner in Cr.R. No.3250/2015) and under Sections 467 read with 109, 420 read with 120-B, 468 read with 109, 471 read with 120-B and 409 read with 120-B of I.P.C. against Bhupendra Kumar Prabhat (petitioner in Cr.R. No.197/2016).
- 2) The brief facts of the case, as emerged from the material on record are that the First Information Report came to be registered on the basis of a written complaint dated 08.09.2005, filed by Pramod Kumar Likhkar (petitioner in Cr.R. No.3250/2015), Branch Manager, Central Bank of India, Branch Ajwar, district Dindori, wherein it was disclosed that Ramanand Jha and Suresh Chourasiya, who

had their accounts with the Central Bank of India, committed fraud by depositing fictitious cheques drawn on State Bank of India, Dindori Branch in their accounts and later on withdrew the money. After registration of the FIR, the investigating officer recorded the statement of witnesses and seized the account opening forms, withdrawal forms and deposit slips/receipts/counter slip received from the SBI, Dindori, from the office of Central Bank of India.

- 3) Upon completion of investigation, initially charge sheet was filed against four accused persons, namely, Abhinandan Soni, Yogesh Pandey, Suresh Chourasiya and Ramanand Jha. By way of additional charge sheet, the petitioners have been arrayed as accused, as they were respectively posted as Branch Manager and Cashier in the Central Bank of India, Branch Ajwar, district Dindori, at the relevant time. Upon committal, the Second Additional Sessions Judge, Dindori framed the charges against the accused persons, who pleaded non-guilty. The petitioners/accused persons have therefore filed the present revisions challenging the order dated 02.12.2015, framing the charges as aforementioned and continuation of proceedings.

- 4) Shri Manish Datt, learned Senior Counsel appearing for the petitioners/accused persons submitted that the charges are completely untenable in the facts and circumstances of the case, as there was no material gathered by the prosecution. He further submitted that the account of Suresh Chourasiya and Ramanand Jha were opened after complying with the KYC norms. The cheques after being deposited by the aforesaid persons were sent for clearance to SBI, Dindori (local collection), on the same day. Referring to the provisions of clause 2.1, 2.2.1 and 3.1.1. of the Central Bank of India policy, which provides as under :-

2.1 Bank will extent the facility of immediate credit of local/outstation cheques upto to a maximum of Rs.15,000/-.

2.2.1 This facility will be extended to all individual depositors without making a distinction about their status, i.e., Savings Bank, Currentor Cash or Cash Credit account.

3.1 LOCAL CHEQUES

3.1.1. The customer's account should be credited and they should be allowed use of funds latest on the third working day from the date of acceptance of the cheques at the counters;

and the documents on record, it is urged that Munnalal Burman, Messenger of Central Bank of India deposited the cheques with SBI and obtained signed receipts in this

regard, which were later on seized by the Investigating Officer and form a part of the charge sheet.

- 5) The contention of learned Senior Counsel is that as per Bank policy, the cheques sent for local collection/clearance, if not returned by the clearing Bank, the account of account holder/customer is then credited and he is allowed to use the funds on third working day. The cheques, after being deposited in SBI Dindori Branch, were not returned by the SBI rather the Central Bank of India received the counter foil/deposit receipt, which were initialed and had seal of SBI, with an endorsement "sufficient funds". Hence, there was no occasion or need for the petitioners/accused persons to raise alarm or to make any enquiry and therefore the amount was credited to the accounts of Suresh Chourasiya and Ramanand Jha. He submitted that in the backdrop of aforesaid case, as set up by the prosecution, the ingredients of offences, as alleged are not made out. Taking this Court through the written complaint, the FIR, the statement of the witnesses, as well as the seizure memo. It is submitted that merely because the petitioners/accused persons were posted as Branch Manager and Cashier respectively at the relevant time would not be sufficient to charge them with the alleged offences.

- 6) Per contra, the stand of Shri Sanjeev Singh learned Panel Lawyer appearing for the respondent/State is that there is sufficient material available against the present petitioners and considering the allegations, prima facie the ingredients of offence alleged against the petitioners are made out. Referring to the averments in charge sheet, it is submitted that once the conspiracy to commit an illegal act is proved, the act of one conspirator becomes the act of another. It is pointed out that the petitioners herein alongwith the other conspirators/co-accused defrauded the Bank's money by releasing the payment on various dates.
- 7) I have considered the rival submissions and material placed on record.
- 8) In order to appreciate the defence of petitioners and the stand of respondent/State, it is necessary to refer the specific allegations against the petitioners/accused persons in the charge sheet. The petitioners herein have been arrayed as accused No. 5 and 7 in the additional charge sheet and the allegations against them are as under :-

“ विवरण इस प्रकार है कि प्रार्थी प्रमोद लिखार सेन्ट्रल बैंक ऑफ इंडिया शाखा अझवार डिण्डोरी के अपराध सदर में रिपोर्ट दर्ज करने पर विवेचना में लिया गया आरोपी अभिनंदन सोनी एस0बी0आई0 डिण्डोरी में मैसेन्जर के पद पर कार्यरत् है अभिनंदन सोनी ने पूर्व में अपने खाते का चेक क्रमांक 453149 पर एवं कृष्ण राव धोखा देकर बैंक से राशि आहरित करने की नियत से

सुरेश प्रसाद चौरसिया जिसका खाता क्र०-3024 सेन्ट्रल बैंक ऑफ इंडिया में है जिसमें कुल 33000 हजार की राशि मिथ्या भरकर दिया। आरोपी सुरेश प्रसाद ने उक्त चैक को अपने खाते में दिनांक 21.02.05 को जमा किया सेन्ट्रल बैंक में जमा पर्ची के माध्यम से उक्त चेक को एस०बी०आई० डिण्डोरी में किलेरेंस हेतु भेजे जाने पर आरोपी अभिनंदन सोनी ने बैंक के काउंटर से उक्त चेक को गायब कर दिया तथा सेन्ट्रल बैंक की जमा पर्ची पर अंग्रेजी में सफीसेंट एमाउन्ट अपने हाथ से लेखकर उसमें एस०बी०आई० की शील लगाकर तथा अपने लघु हस्ताक्षर करके दिया। जो सेन्ट्रल बैंक में अधिकारियों ने बिना समुचित जानकारी प्राप्त किये बगैर नियमों को अनदेखाकर बिना किलेरेंस के प्राप्त किया आरोपी सुरेश प्रसाद चौरसिया को 33000 रु. की राशि का भुगतान कर दिया गया है उसके पश्चात आरोपी अभिनंदन सोनी ने आरोपी योगेश पांडे एवं रामानंद झा के साथ मिलकर रामानंद झा का सेन्ट्रल बैंक ऑफ इंडिया में दिनांक 11.06.05 को खाता क्र०-3944 खुलवाये तथा अपने सहयोगी आरोपी योगेश कुमार के माध्यम से आरोपी रामानंद झा के खाते में अपने खाते का चेक क्र. 453156 राशि 47000 दिनांक 11.06.05 को एवं चेक क्र०- 453157 राशि 46395 रु० दिनांक 20.06.05 को भरकर रामानंद झा के खाते में जमा किये उक्त चेकों को सेन्ट्रल बैंक द्वारा ए०बी०आई० डिण्डोरी में किलेरेंस हेतु भेजा गया एस०बी०आई० में चेक प्राप्त होने की पश्चात आरोपी अभिनंदन सोनी ने इन चेकों को काउंट से गायब कर दिया तथा पुनः सेन्ट्रल बैंक डिण्डोरी ने बिना चेकों का किलेरेंस प्राप्त किये उक्त चैकों की राशि आरोपी रामानंद का भुगतान कर दिया गया। एस०बी०आई० के पूर्व खातेदार ब्रजेश कुमार बगुलिया उपयंत्री डिण्डोरी स्थानांतरण होने से अपना खाता बंद करने हेतु आवेदन पत्र के साथ चैक बुक भी बैंक में जमा कर दिया था आरोपी अभिनंदन सोनी ने उक्त चेक बुक को बैंक से गायब कर ब्रजेश कुमार बागुलिया का गायब किया गया चैक क्र-549196 राशि 325588 रूपये में फर्जी रकम भरकर आरोपी रामानंद झा को आरोपी योगेश पांडे के माध्यम से दिनांक 30.06.05 को दिया चैक को भी किलेरेंस हेतु एस०बी०आई० डिण्डोरी में भेजे जाने पर आरोपी अभिनंदन सोनी ने काउंटर से गायब कर दिया तथा 2 दिन पश्चात ही सेन्ट्रल बैंक के अधिकारी कर्मचारी द्वारा पुनः स्टेट बैंक इंडिया से चेकों का किलेरेंस प्राप्त किये रिजर्व बैंक एवं अपने बैंकों के दिशा निर्देशों के अपेक्षा करते हुये दिनांक 04.07.05 को एवं 05.07.05 को 8,400 रूपये की राशि का भुगतान कर दिया गया विवेचना के दौरान उपलब्ध साक्ष्य एवं से आरोपी अभिनंदन सोनी योगेश

कुमार पांडे सुरेश प्रसाद चौरसिया रामानंद जानबूझकर धोखा देने के नियत से फर्जी एवं चुराये गये चैकों को समझाकर उन चैको को स्टेट बैंक ऑफ इंडिया से गायब करना तथा बैंक कर्मचारी एवं अधिकारियों के साथ मिलकर षडयंत्र पूर्वक 4 चैको के माध्यम से क्रमशः दिनांक 21.02.05 को 33000 रु0 हजार आरोपी सुरेशप्रसाद चौरसिया के खाते से तथा आरोपी रामानंद झा के खाते के माध्यम से दिनांक 14.06.05 को 45000 रु0 दिनांक 21.06.05 को 1500रु0 दिनांक 23.06.05 को 40,000 रु. दिनांक 25.06.05 को 6700 रु. दिनांक 04.07.05 को 212000 रु. एवं दिनांक 09.07.05 को 111000 तथा दिनांक 16.07.05 को 2000 रु. इस प्रकार कुल ये चैको के माध्यम से 451200 रु. की राशि का आहरण जो लोकधन है कपटपूर्वक करना सिद्ध पाये जाने से उक्त चारो आरोपियों को गिरफ्तार कर रिमांड लिया गया है आरोपियों की गिरफ्तारी की 90 दिन पूर्व होने से आरोपियों के विरुद्ध प्रथम दृष्टया उपलब्ध साक्ष्य के आधार पर धारा सदर का अपराध घटित करना सिद्ध पाये जाने से चालान तैयार किया जाकर दिनांक 13.02.06 को सी0जे0एम0 न्यायालय में पेश किया गया जिसका दांडिक प्रकरण 67/06 है।

प्रकरण में अन्य आरोपीयान शाखा प्रबंधक प्रमोद कुमार लिखकर उप प्रबंधक हेमंत कुमार साहू कैशियर भूपेन्द्र सिंह सेन्ट्रल बैंक ऑफ इंडिया अझवार डिण्डोरी के द्वारा जानबूझकर बैंको के दिशा निर्देश का उल्लंघन एवं अनदेखी करते हुए अन्य गिरफ्तारी शुदा आरोपियान रामानंद झा, अभिनंदन सोनी, योगेश सिंह पाण्डे सुरेश चौरसिया के साथ मिलकर कपटपूर्वक बैंक की राशि लोकधन 32858/- रु. का भुगतान कर दुरुपयोग करना सिद्ध पाये जाने से आरोपियों को दिनांक 19.04.06 24.04.06 को गिरफ्तार कर आरोपियों की हाई कोर्ट जबलपुर से अग्रिम जमानत स्वीकृत होने से जमानत मुचलका पर रिहा किया जा चुका है तीनों आरोपियों के विरुद्ध अन्य आरोपियों के साथ मिलकर लोकधन का दुरुपयोग करना मित्र पाये जाने से आरोपियों के विरुद्ध पूरकचा लानक-27/08 17.02.08 तैयार किया गया जो न्यायालय प्रस्तुत है। “

- 9) Section 397 of the Code of Criminal Procedure vests the Court with the power to call for and examine the record of the trial Court for the purpose of satisfying itself as to the legality and regularity of any proceedings or order made in

a case. The revisional jurisdiction, however, is limited one and has to be exercised cautiously. It can only be invoked where the decision under challenge is grossly erroneous, there is no compliance with the provisions of the law, the finding recorded is based on no evidence, material evidence is ignored or the jurisdiction is exercised arbitrarily or perversely.

- 10) It is settled that the Judge while framing charge 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 material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge. If two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the Judge will be justified in discharging him. The trial Judge is expected to exercise its judicial mind to determine as to whether a case for trial has been made out or not and should not act as mouth piece of prosecution. [See **(2019) 7 SCC 148 Asim Shariff vs National Investigation Agency, (2018) 13 SCC 455 State Of Karnataka vs Selvi J. Jayalalitha and others, (2013) 11 SCC 476, Sheoraj Singh Ahlawat and others vs.**

State Of U.P. and another and (2012) 9 SCC 512, CBI, Hyderabad vs K. Narayana Rao].

- 11) In **Sajjan Kumar Vs. Central Bureau of Investigation (2010) 9 SCC 368**, after considering various authorities about scope of Section 227 and 228 of the Code has summarized the following principles :-

21. On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:-

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. 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 Sections 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 discloses 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.

- 12) In the light of above principles, it is to be examined whether there is prima facie allegations and materials on record in order to pursue the trial against the petitioners herein.
- 13) The allegations in the FIR, charge sheet and the documents seized reveals that one Abhinandan Soni, who was working as Messenger with State Bank of India conspired with Suresh Chourasiya, Yogesh Pandey and Ramanand Jha with the intention to defraud the Central Bank of India and got some fictitious cheques/stolen cheques deposited in the account of Suresh Chourasiya and Ramanand Jha in Central Bank of India. These cheques were sent for local clearance

to SBI Dindori, through Messenger Munnalal Burman, where Abhinandan Soni affixed the seal of SBI with initials and remark "sufficient funds" on the deposit slip/counter slip of Central Bank of India. Thereafter, Abhinandan Soni removed these cheques from the counter of SBI. The officers of Central Bank of India after receiving the deposit slip/counter slip credited the money to the account of Suresh Chourasiya and Ramanand Jha. The amounts deposited vide these cheques were drawn on different dates by the aforesaid persons. The statement of Munnalal Barman, Messenger, recorded on 09.09.2005 shows that he deposited these cheques in SBI, Dindori Branch for collection (local collection) on 21.02.2005 and 11.06.2005 and after depositing the cheques, obtained receipts, filed the same after informing the Manager. Later on, on realizing that the cheques were fictitious, FIR was lodged by the petitioner/accused No.5 and counter slips/Peon book, Account opening form, withdrawal form etc. were submitted to the Investigating Officer.

- 14) The only allegation made against petitioners herein are that they without making proper enquiry, credited the account of Ramanand Jha and Suresh Chourasiya, ignoring the bank guidelines/policy and permitted them to withdrew it. It is

interesting to note that the present petitioners were not named in the FIR, rather the FIR was lodged by petitioner/accused No.5, Promod Kumar Likhkar. The petitioners/accused persons were not named in the first charge sheet filed on 08.09.2005. They have been impleaded as accused No.5 and 7, by way of additional charge sheet dated 17.02.2008. The allegations in the charge sheet are that Abhinandan Soni, Yogesh Pandey, Suresh Prasad and Ramanand Jha conspired together and cheated the Bank (Central Bank of India) to the tune of Rs4,51,000/- The offence alleged against them are under Sections 467, 468, 471, 420, 120-B, 201, 34 of I.P.C. As stated earlier, the only allegation against petitioners herein are that they ignored and overlooked the RBI guidelines, Bank policy and without proper information and without obtaining clearance, made the payment to Suresh Chourasiya and Ramanand Jha. The stand of petitioners is that these cheques were deposited for collection/clearance in SBI Dindori by the Messenger Munnalal Barman, who thereafter obtained receipt/counter foil bearing seal of SBI with initials. After receiving the signed deposit slip/counter slip with endorsement "sufficient funds", the petitioners had no reason to doubt the genuinity of cheques and therefore the amount was released/credited in the account of

accounts No. No.3144 and 3027. As soon as the mistake came to the knowledge of the petitioner/accused No.5, he immediately lodged the FIR and furnished all the relevant documents to the investigating officer.

- 15) The offence alleged against the petitioners herein is one of abetment of forgery and of using forged document as genuine for the purpose of cheating under Sections 467, 468 read with Section 109 of I.P.C.
- 16) Forgery as defined under Section 465, implies making of a false document with intent to cause injury/loss to public or any other person. Section 107 defines abettment of a thing. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abettment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. To bring home the offence of forgery and abettment, the prosecution is required to establish from evidence/documents on record that accused instigated or aided in creating the false document.
- 17) The next offence alleged against the petitioners/accused persons are that they conspired to cheat and dishonestly induced delivery of valuable security/property and

misappropriated it for their own use for the purpose of committing criminal breach of trust under Sections 409, 420, 471 read with Section 120-B of I.P.C. Petitioner/accused No.5 in addition is charged with Section 201 I.P.C.

- 18) To bring home the charge of criminal conspiracy, criminal breach of trust and cheating within the ambit of Sections 409, 420, 471 read with Section 120-B of I.P.C., it is necessary to establish that there was an agreement between the parties for doing an unlawful act in furtherance of which the petitioners/accused persons dishonestly induced the person deceived to deliver any property or valuable security, cheated and misappropriated that property to his own use.

- 19) On careful consideration of the FIR and the material brought on record in the form of charge sheet, I find that the essential ingredients of Sections 467, 468 read with Section 109 of I.P.C. as well as Section 420, 471 read with Sections 120-B and 201 of I.P.C. are conspicuously absent. There is no factual foundation, no evidence at all that petitioners herein prepared the forged cheques or intentionally aided or conspired or joined hands with the other co-accused in preparing the instrument. Further, there can be no element

of cheating or entrustment, once payment is released in the account of the account holders. In absence of direct material, petitioners cannot be implicated as conspirators on mere suspicion and surmises.

- 20) While framing a charge, the Court is expected to apply its mind to the entire record and documents placed therewith before the Court. No meticulous examination of evidence is needed for considering whether the case would end in conviction or not. However, the Court is required to consider and apply its judicial mind, whether the allegations taken as a whole will, prima facie constitute an offence and if so, whether continuation of proceedings is an abuse of process of Court leading to injustice.

- 21) In the present case, as discussed herein above, prima facie, there is no evidence to prove that petitioners herein abetted or aided the original conspirator for the offence alleged. Petitioners herein acted in their official capacity and as per banking practices sent the cheques for local collection and after receipts of signed and sealed deposit slip, credited the money in the account of account holders. Merely, because, petitioner over-looked or ignored the RBI guideline/policy or did not make proper enquiry, they cannot be saddled with criminal prosecution. The act attributed to the petitioners

herein, even if accepted to be true, could be described as an act of negligence at the most. For this act of negligence, they may be liable for disciplinary proceedings, but cannot be made criminally liable.

- 22) In the result, the revisions are allowed. The order(s) dated 02.12.2015, framing charges are set aside.

(Nandita Dubey)
Judge
14/07/2021

gn