

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. Rev. Pet. No. 113 of 2003**

Reserved on: July 20, 2007

Date of Decision: 30th July, 2007

STATE THROUGH CBI

... PETITIONER

Through Mr. R.M. Tewari, Advocate

Vs.

RAKESH BIST AND ANOTHER

... RESPONDENTS

Through Mr. Siddharth Luthra, Sr. Advocate with
Ms. Smriti Sinha, Advocate for accused No. 2

CORAM:

Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be Yes
allowed to see the judgment.?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported Yes
in the Digest?

Mr. Justice S. Ravindra Bhat:

1. The present revision petition is preferred by the Central Bureau of Investigation (CBI) against an order dated 2.11.2002 of the Special Judge, discharging the respondent accused of the offences punishable under section 120-B, 420, 419, 467, 468, 477 and 477-A of the Indian Penal Code (IPC) and under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act. The trial court by its order dated 2.11.2002 discharged the Respondents.

2. The brief facts necessary to decide present case are that Sh. Rakesh Pahwa (hereafter **A-1**) was employed as the clerk cum cashier and Sh. Rakesh Bist, Clerk,(hereafter Respondent -1) in the Oriental Bank of commerce(OBC), Wazirpur, Delhi. It was alleged that both cheated the bank to the tune of Rs.24.75 Lakhs. During investigation, allegedly the role of Sh. Sanjeev Pahwa, brother of A-1 and Smt. Sushma Pahwa (Respondent no.2) wife of Sh. Rakesh Pahwa came to light. The allegation of Cheating the bank was mainly against the accused Rakesh Pahwa. The allegations regarding the others were that they entered into criminal conspiracy with him, and cheated the bank.

3. A-1 was posted in OBC since 1983 and from the year 1988 to 1991, he performed duties on the teller seat in the branch. From 1991 onwards, till mid-May 1994, he worked on book writing and posting in general ledger etc. He also did the job of bringing the inward clearing from the service branch. The Respondent no 1 performed the job of bringing the inward clearing from the service branch during that period. They allegedly committed fraud by using the various SB/CA accounts being maintained at the branch and also with some other accounts of different banks. A-1 and Respondent -1 used to write the schedule jointly and either of them used to go to the service branch for collecting the inward clearings.

4. SB A/c No.3605 was allegedly opened on 22.3.87 jointly by the accused

and his wife Smt. Sushma Pahwa at Punjab National Bank (PNB) Pitampura branch. The account opening form was signed by both and the specimen signatures card also bore their signatures. Smt. Sushma Pahwa was then working with the PNB. A sum of Rs.50, 000/- was credited in that account and A-1 maintained it. On 17.7.92 a sum of Rs.50, 000/- was allegedly withdrawn by Smt. Sushma.

5. The Respondent no.1, Rakesh Bist allegedly maintained SB a/c no. 13256 with the OBC in the name of Rakesh Bist, Dinesh and Usha Bist. He used two cheques bearing no.220893 and 22894 dated 5.2.94 for 18,000/- favouring ANZ Grindlays Bank IFCI equity shares issued in SB a/c no.4577 out of the cheque book against SB a/c 11111 of A-1 and his wife. It was also alleged that on 24.4.93, the inward clearing was brought by him and while recording the return cheques in the clearing schedule he deliberately omitted mentioning the return cheque as Rs. 10,000/- relating to SB a/c no.7576 of the accused and his brother. The entry of the return cheque appeared on the upper copy of the clearing schedule but its impression was missing in the lower copy.

6. It is further alleged that a fictitious entry of Rs. 52,500/-was recorded in the day book of credit side against SB ledger no.43 and corresponding depot entry in the SB a/c No.13256 of Respondent no.1 and against 15 cheques bearing no.248101 to 248115 of Rs.3500 each following IFCI equating issue were

presented by SBI Darya Ganj. All the instruments were missing from the record but the cheque book issue register showed that cheque nos.248101 to 248115 were out of the cheque book issued to, and collected by A-1.

7. Learned counsel for CBI argued that Rakesh Bist, Respondent no.1 used to assist A-1 on the day book seat. They would write the schedule jointly and either of them would go to the service branch for collecting inward and outward collection of cheques. The Learned counsel urged that without the active connivance of the 1st Respondent A-1 could not have achieved his motive. The counsel also contended that A-1 and Rakesh Bist processed the record relating to saving bank account maintained by them with Oriental Bank of Commerce, Wazirpur Branch.

8. The learned counsel further contended that Smt.Sushma Pahwa was maintaining SB A/c no. 3605 at Punjab National bank, Pitampura. She is a joint account holder with her husband at the Oriental bank of Commerce, Wazirpur. The account No. is 11111. On 15.7.92 a sum of Rs.50,000/-was fraudulently credited in SB account No.3605, which was withdrawn by her on 17.7.92 and thus she was fully aware of her husband's ill intentions.

9. The Learned Counsel further argued that Rakesh Bist prepared schedule dated 24.4.93 mentioning return of cheque of the sum of Rs.10,000/- in the SB A/c

No.7576 of the accused but that entry was not reflected in the carbon copy of the schedule. Thus he facilitated a wrongful gain of Rs.10,000/- to A-1. Counsel urged that making of false clearing schedule and receipt of two cheques of Rs.1800/- each by Respondent no.1 from the account of the accused established the involvement of the Respondent no.1. He also submitted that immediately after a fraudulent credit of Rs.50,000/- on 15.7.92 in the joint account of A-1 and his wife, she withdrew the said amount. It was urged that the Court erred as much as it weighed and considered the impact of the evidence, as if it were conducting a trial.

10. The trial court by its order dated 2.11.2002 discharged the Respondent no.1 and 2. The court held that the element of criminal conspiracy vis-à-vis them was absent and further there was no cogent and sufficient evidence against them. The court was constrained to discharge the first respondent because of the following reasons:

- i) withdrawal slips of Wazirpur Branch of all the accounts by which the defrauded amounts had been withdrawn and all the documents/entries made in the Ledger, Day-book, long-book, etc., are in the hand writing of accused Rakesh Pahwa and not in the hand of accused No.2 Rakesh Bist.
- ii) Rakesh Pahwa was at liberty to use any of the cheque book leaves for any

of the accounts maintained by him at the Branch.

iii) the fictitious entry of Rs.52,500/- recorded in the Day-book on credit side against SB ledger No.43 and corresponding debit-entry in SB ledger No. 38 in transfer column on 19.12.93 and credited in SB a/c No.13256 of Accused No.2 Rakesh Bist against which entries of 15 cheques bearing No. 248101 of Rs.3500/- each presented by SBI, Daryaganj, Delhi for clearing were not passed by him;

iv) The case of the prosecution that all the cheques were found missing from the record but the cheque-book issue register showed that the cheque book out of which cheque No.248101 to 248115 were issued and collected by accused Rakesh Pahwa. Here too, the involvement of Rakesh Bist was not indicated.

11. As regards Sushma Pahwa, the court was of the opinion that the only material put forward against her was D-271, which indicated that the amount of Rs. 50,000/- was withdrawn on 17-7-1992, and not the same day it was put into the account, apparently at the bidding of her husband. The court noticed that the account was maintained jointly with A-1, as also in the case of another account in Wazirpur branch. The solitary instance, in the absence of any other transaction or act, was insufficient to indicate commission of any offence or complicity in its commission, warranting a charge under Section 120-B, IPC.

12. It is trite law that conspiracy is seldom established by direct evidence; it is

hatched in stealth. Oftentimes, it involves series of acts by diverse acts of persons; in many cases, one set of actors may well be unaware about the role, or existence of others. Yet, that does not lower the threshold for the prosecution, which still has to rely on solid foundation, even while surmising about a kind of behaviour, or pattern. The threshold still remains, "grave suspicion" that the accused were involved in the commission of the offence. It is not mere suspicion, or reasonable suspicion arising from such surmises (*State of Maharashtra -vs- Sukhdeo Singh* 1992 (3) SCC 700; *P. K. Narayanan v. State of Kerala* 1995 (1) SCC 142). Judged from this yardstick, the court was justified in proceeding, as it did, as regards both the respondents. Though A-1 and the second respondent were colleagues, the vital documents showed involvement of A-1 alone; he had also manipulated the situation to get the cheque withdrawal slips/ cheque books; the entries in question, in the concerned books of the bank were in his handwriting. The involvement of Rakesh Bist was only sketchy; it cannot be termed as one resulting in "grave suspicion". So far as Sushma Pahwa was concerned, the solitary instance of her signature on one cheque signifies nothing. There cannot be any automatic presumption that being the wife of A-1, she was aware of all his activities, or was party to them.

13. Having given my anxious consideration to the submissions on behalf of the CBI, and also after examining the reasoning of the trial court, as well as the

materials, I am of the opinion that the view taken by the Special Judge does not call for interference. It neither acted in material irregularity, nor did it overlook any material evidence, or err in law, in discharging the respondents. Resultantly, the revision has to fail; it is dismissed. In the circumstances, there shall be no order on costs.

(S. RAVINDRA BHAT)

July 30, 2007

JUDGE