

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

CRL.REV.(P) 741/2006 & CRL.REV.(P) 783/2006

Reserved on : July 17th , 2007

Decided on : July 30th , 2007

1. CRL.REV (P) 741/2006

PRADUMAN KR. SHARMA

..... Petitioner

Through Mr. Vikas Pahwa with Mr. Asim,
Advocates

versus

CBI

..... Respondent

Through : Mr. R.M.Tiwari, Advocate

+2. CRL.REV.(P) 783/2006

C.M.VASUDEVA

..... Petitioner

Through Mr. R.K.Dhawan, Advocate

versus

CBI

..... Respondent

Through : Mr. R.M.Tiwari, Advocate

CORAM:

Mr. Justice S. Ravindra Bhat

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

Mr. Justice S. Ravindra Bhat:

1. This common judgment will dispose of two revision petitions filed against an order on the point of charge dated 20.7.2006. The petitioner Shri C.M.Vasudeva (referred to as “Vasudeva”) was charged with committing offences punishable under Sections

420/465 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act (hereafter referred to as “the Act”). The second petitioner Shri P.K.Sharma (referred to as by his name “P.K.Sharma”) was charged with committing offences under Sections 420/468 read with Section 471 IPC.

2. The facts, according to the prosecution (hereafter referred to as “CBI”) are that Vasudeva, the Branch Manager, Oriental Bank of Commerce, (OBC) Greater Kailash-II, allegedly conspired with P.K.Sharma (hereafter "P.K. Sharma") who as the Chairman of the Kuber Group of Companies (which was arrayed as accused No.3 and hereafter referred to as "A-3"). He consequently renewed 17 CDRs out of 40 CDRs which were seized by the Income Tax Authorities during a raid in the residential premises of P.K.Sharma. The premises were raided on 8.5.1997. The CBI alleged that Vasudeva sanctioned overdraft (OD) limits to the tune of Rs. 14.23 crores against such CDRs thus conferring undue gain and corresponding loss to the bank and thereby to the public interest.
3. The CBI further alleged that between 1997 and 2000 Vasudeva created false process notes favouring the other accused persons and companies, without any securities, according to the records revealed by the bank. Vasudeva with dishonest and fraudulent motive allowed accrued interest on the CDRs, seized by the Income Tax Department on 8.5.1997 without any request for renewal of the instruments either by Income Tax Department or by the depositor; created two CDRs favouring A-3 on 29.8.1998 thereby conferring undue advantage to the extent of Rs.83.43 lakhs. 17 CDRs were renewed on different dates between June, 1999 and June, 2000 (of the 40 CDRs that

has been seized by the Income Tax Authorities on 8.5.1997). These renewed CDRs were shown and used as security for the OD facilities, dishonestly sanctioned and released by Vasudeva. It was alleged that these caused loss to the bank to the extent of Rs. 1.38 crores.

4. The other allegations against Vasudeva were that he, in conspiracy with P.K.Sharma recommended, on 16.9.1998 the proposal submitted on behalf of A-3 for issuance of a bank guarantee for Rs. 14.5 crores favouring the Income Tax Authorities, to secure release of the CDRs and no supporting documents had been furnished.
5. It was urged on behalf of Vasudeva that the trial court committed error in not considering the terms of the IBA guidelines/circular dated 29.7.1991, which was duly circulated by the OBC; that document was D-161 on the record. It was urged that such deposits or instruments could be renewed at the request of the depositor in such cases, to earn interest for the overdue period. In these circumstances the entire prosecution story about wrongful loss or cheating had no basis.
6. Learned counsel contended that the overdraft facilities granted were to the tune of 14.73 crores. However as of the same year namely May 2000, the bank had fixed deposits to an extent of Rs. 15.82 crores, to the credit of the company. In these circumstances the question of any cheating, conspiracy to commit any of the offences much less the offence under Section 13 of the Act could not be reasonably inferred. It was submitted that no money had been transacted or transferred from out of the account. Therefore, the question of causing wrongful loss to the bank on the one hand

or wrongful loss to somebody else did not arise. Mr. R.K.Dhawan, learned counsel urged that no duplicate FDRs or CDRs were admittedly issued contrary to the order of the Income Tax Authorities dated 8.5.1997.

7. Mr. Pahwa, learned counsel for P.K.Sharma submitted that the trial court wrongly framed the charges. According to him the letter dated 8.5.1997 relied upon could not be treated as restraint and in any case it never restrained renewal of CDRs or other instruments relating to the money of A-3 held by the bank. He further relied upon a letter dated 16.5.1997, of the Income Tax Department intimating the bank that the account of A-3 could be operated. He submitted that at all relevant times the bank had sufficient funds available which more than covered the advances and loans sanctioned. He stated that till April, 1997 the deposits were to the tune of Rs. 27 crores and later another 15.82 crores of FDRs were with the bank. He submitted that on date the bank continues to benefit by holding on Rs.60 crores. Under these circumstances, instead of considering the overall features, the trial court wrongly construed some of the documents and erroneously held that the petitioners were *prima facie* liable to be charged.

8. The order of the trial court reveals that it considered the materials on record. It adverted to the statement of PW-36, who was present at the time when panchnama was prepared at the time of seizure of 40 CDRs from A-2 on 8.5.1997. It also considered the statements of PW-39 Subash Chaddha; of PW-28 Rajesh Tandon, according to whom the CDRs unlike other deposits cannot be renewed in the absence of mandate from depositors, by surrender of duly discharged deposit receipts. PW-20 had stated

that the renewed CDRs were prepared by him under instructions of Vasudeva. It considered the credit and debit vouchers and the CDRs vouchers, all of which were documents relied on by the CBI.

9. The order of the Income Tax Officer dated 8.5.1997 adverts to the restraint order dated 8.5.1997 under Section 132(3). That order was served on the Chief Manager of the Oriental Bank of Commerce. The ITO requested the bank to furnish details of all the FDRs term deposits etc. held by companies (of the Kuber group) and individuals. It specifically named P.K.Sharma and sought particulars about him. The bank was given a categorical direction to give full details of all the FDRS and term deposits with amounts etc. by 4' 0 clock in the afternoon on that day. The bank was further directed not to issue any duplicate FDRs in respect of the company or individual. The subsequent letter dated 8.5.2007 merely permitted the four named companies to operate their bank accounts. The intention of the first letter and the freeze order are clear. *Prima facie*, the Income Tax Authorities did not want any company or entity or individual who had connection with Kuber Group of Companies to deal with or deplete its assets, lying with the bank. At that time admittedly 40 CDRs had been issued by the bank. They were to mature later after a period of 2-3 years. I am therefore of the opinion that there is no merit in the contention raised on behalf of P.K.Sharma that the letters issued by the Income Tax authorities were unclear and did not amount to a freeze order. They were understood as such and implemented by the bank.

10. As far as the role of Shri Vasudeva is concerned, the CBI alleged that he had created false process notes in December, 1997 and January, 1998, represented as if OD limits

had been sanctioned to the companies. The total value of these worked out to above Rs. 10 crores. These allegedly were without any valid security. The further allegations were that without any request by either the depositor or the Income Tax Authorities the CDRs were renewed by giving benefit of accrued interest. He is alleged also to have created two CDRs favouring Kuber Mutual Benefits Ltd. on 29.8.1998 to the tune of 83.43 lakhs and conferred undue advantage upon it. Another allegation against Vasudeva was that he deleted or got deleted a “stop operation order” and renewed 17 CDRs on different dates namely 26.6.1999, 25.11.1999, 16.3.2000 and 2.6.2000. These 17 CDRs were amongst the 40 FDRs seized by the Income Tax Authorities. They were allegedly shown as security against overdraft facilities, sanctioned dishonestly and released by him earlier. These, allegedly caused loss to the bank, by way of interest between secured advance and unsecured advances to the tune of Rs.1.38 crores and correspondingly resulted in undue benefit and gain to the Kuber Group of Companies. The acts of Vasudeva resulted in wrongful loss to the extent of 14.23 crores as the accused did not repay the overdraft amounts granted in such a fraudulent manner.

11. The CBI alleged that Vasudeva in conspiracy with P.K.Sharma on 16.9.1998 falsely recommended a letter/ proposal submitted on behalf of M/s Kuber Mutual Benefits Ltd. for issuance of bank guarantee to the tune of 14.5 crores favouring Income Tax Authorities, for the release of CDRs. The Income tax Authorities had never issued a direction for bank guarantee in their favour. The proposal was turned down by the head office of the bank.

12.The argument with regard to a standing permission as it were, on overdue deposits, upon a circular dated 29.7.1991; authorizing renewal of FDRs seized by the Income Tax Department, in my considered opinion is merit-less. The circular reads as follows :

*“Circular No.P&D/36/91/119 Dated 29.07.91
Payment of Overdue interest on FDR seized by Income-Tax
Department-Clarification*

Income-tax authorities instructed some banks to pay overdue interest on deposit receipts seized and held on them without being released on due date for payment and surrendered by the tax-authorities for payment on a subsequent date, duly discharged by the depositors towards their Income-Tax dues.

A matter has since been examined by India/Bank's association in consultation with Reserve Bank of India and advised the banks to get the deposits renewed for a further date at the request of the depositor in such cases, to earn interest for the overdue period. Overdue interest for the deposits not renewed shall not be paid.”

13.According to the CBI there was no request by either the depositor or the Income tax Authorities. Indeed the letter of the Income Tax Authorities dated 21.5.1997 to the bank specifically required that amounts of FDRs on the date of maturities should not be released without prior permission. Therefore the argument of the revisionist about the absence of any culpability in regard to renewal of the CDRs, has to be rejected.

14.The common argument of the revisionist regarding adequacy of funds with the bank to cover the liabilities of the Kuber Group of Industries, is not an issue. Whether those companies are solvent; the merits of the civil disputes between the bank and those companies, the extent of liability and whether the banks interests are secured due to assets to the tune of Rs. 60 crores lying with it are besides the point. In these

proceedings the question is whether after receiving the mandate of the Income Tax Authorities not to disburse the amounts lying with the bank any CDRs could have been renewed and whether they or any part of such assets could be used as security in the absence of a mandate by the Income Tax Authorities.

15. The freezing order in respect of 17 CDRs were deleted at the behest of the Vasudeva.

The beneficiaries to all these were A-3 and P.K. Sharma. Further, Vasudeva, allegedly created false process notes, showing as if OD limits have been sanctioned without any valid securities. Interest on the accrued CDRs were allowed and two fresh CDRs were created, to those proceedings to the extent of Rs. 83.43 lakhs. The renewed CDRs shown as security against overdraft facilities, said to have been sanctioned dishonestly and released by Vasudeva caused loss to the bank to the extent of 1.38 crores. The CBI alleged (and the trial court has considered) that Vasudeva recommended the proposal of P.K.Sharma dated 16.9.1998, on behalf of Kuber Mutual Benefits Ltd. for issuance of Rs. 14.5 crores. That this proposal did not eventually mature is a matter of detail.

16. At the time of the framing of charges what has to be considered is not whether the evidence or materials measure up to the standard of proof ultimately insisted on by law, i.e proof beyond reasonable doubt . The court has to weigh and sift them to see whether on probabilities, they point to grave suspicion about the culpability of those accused before it. If, of course, two views are reasonably possible on such probabilities and sifting of the evidence, by all means the court should prefer the view which favours the accused. Yet the sifting exercise should not be a meticulous one. The court also is not expected to for the self same reason, make a detailed reasoned order.

17. Having considered the above submissions, I am of the opinion that the concerns and pleas raised on behalf of the revisionist before this court are groundless. *Prima facie* there is sufficient and adequate material indicating grave suspicion about their having committed the offences concerned. The fact that CDRs existed which could cover advances given during the intervening period in 1998, conveniently glosses over the serious allegations by the CBI that such loans were not authorized. The issuance of false process notes, renewal of CDRs without mandate, creation of two CDRs after the freeze orders, by utilizing interest amounts, again unauthorizedly, leading to use of such deposits for securing further loans, are sufficient materials to support the framing of charges. The court cannot at this stage examine the soundness of the defence to the charges. The trial court, in my opinion, did not commit any material irregularity, or act contrary to the law or evidence presented to it, by framing the charges against the revisionists.

18. For the above reasons I find no merit in these revision petitions. They are accordingly dismissed.

(S.RAVINDRA BHAT)
JUDGE

JULY 30th, 2007
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