

(2008) 04 DEL CK 0164

Delhi High Court

Case No: Criminal Revision Petition No. 559 of 2005

Central Bureau of Investigation

APPELLANT

Vs

Shri Guralp Singh and Others

RESPONDENT

Date of Decision: April 8, 2008

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120B, 409
- Prevention of Corruption Act, 1988 - Section 13(1), 13(2)

Hon'ble Judges: Sanjay Kishan Kaul, J

Bench: Single Bench

Advocate: Ashiesh Kumar, for the Appellant; Nemo, for the Respondent

Final Decision: Dismissed

Judgement

Sanjay Kishan Kaul, J.

The Central Bureau of Investigation (for short "CBI") is aggrieved by the impugned order dated 12.4.2005 passed by the learned Special Judge discharging the accused/respondents for offences under Sections 120B/409 of the IPC read with Section 13(2) and 13(1)(d) of the Prevention of Corruption Act 1988.

2. The case in question was registered on 27.7.1998 by the CBI in respect of transaction during the period of 1994-95. It was alleged that Shri K.S. Bains, the then Chairman and Managing Director of Punjab & Sind Bank (hereinafter referred to as the Bank) was a member of criminal conspiracy with Shri Guralp Singh, the then General Manager (Operations) of the Bank, Shri H.S. Pall, the then Branch Manager of the Bank, Shri A.S. Roy, Managing Director of M/s. Jayanti Business Machines Limited, Mumbai (for short "M/s. JBML"), M/s. Prasad & Company (share broker) and M/s. JBML to cheat the Bank in the matter of purchase and sales of shares of M/s. JBML and sanction of limits for the said company. Shri K.S. Bains was alleged to have passed an order dated 23.12.1994 after meeting with Shri A.S. Roy for purchase of shares worth Rs. 2.00 crore on firm allotment basis and in pursuance to the said

order a note was moved by the Funds Management Department of the Bank to the Investment Committee. The Investment Committee in its meeting held on 9.1.1995 rejected the proposal on the ground that it was not possible to book profits for the Bank for the financial year ending 31.3.1995. Shri Gural Singh was, however, alleged to have submitted a note dated 18.1.1995 without referring to the earlier decision of the Investment Committee in respect of purchase of shares to the extent of Rs. 2.00 crore at a premium of Rs. 70.00 per share. This note dated 18.1.1995 was placed before the Investment Committee, which approved the same on 20.1.1995 and the proposal was subsequently approved by the Board of the Bank on 2.3.1995. The Bank purchased 2.50 lakh shares and paid Rs. 2.00 crore and thus violated the Reserve Bank of India (RBI) guidelines stipulating that the banks could invest up to five (5) per cent of its incremental deposits in shares and debentures. The investment under the head was stated to be more than the permissible limit. The shares were sold by the Bank through M/s. Prasad & Company at rates lower than the prevailing market rates and the share broker was allowed to retain the proceeds from the sale of shares for about six (6) months causing wrongful pecuniary gain to the company and the share broker to the extent of Rs. 2,49,062.00 with corresponding loss to the bank.

3. It was also alleged that the Bank extended underwriting support of Rs. 1.00 crore to the Company, which was sanctioned by Shri K.S. Bains and approved by the Management Committee on 17.2.1995. Shri Gural Singh, however extended the underwriting support by Rs. 1.25 crore which was post facto approved by Shri K.S. Bains on 30.5.1995 and the enhancement of underwriting support by Rs. 25.00 lakh to the Company was not reported to the Management Committee of the Bank. Shri Gural Singh also alleged to have made available bank funds by sanctioning limits to an associate company for purchase of shares and also sanctioned limits by arranging a proposal within his powers though the proposal for a higher limit which was beyond his powers was pending at the Headquarters.

4. On completion of investigation charge sheet was filed only against Shri Gural Singh, General Manager (Operations) of the Bank, Shri A.S. Roy, Managing Director, M/s. JBML and M/s. JBML through its Managing Director, the respondents herein. The allegations forming the basis of the charge sheet are that a proposal for purchase of shares of the company to the tune of Rs. 2.00 crore had earlier been rejected by the Investment Committee on 9.1.1995. The charge sheet was based on the crucial fact that Shri Gural Singh in pursuance to the criminal conspiracy submitted the subsequent note dated 18.1.1995 concealing the fact that the proposal had already been rejected by the Investment Committee on 9.1.1995 and subsequently the Investment Committee approved the proposal on 2.3.1995. It may be noticed that this proposal was based on the fact that the shares would be disposed of before 31.3.1995 which would result in the profit for the financial year ending in question. There was, thus, a violation of the RBI guidelines.

5. The Funds Management Committee in its meeting held on 6.3.1995 authorised Shri Gurpal Singh to sell shares of M/s. Punwire Limited to bring the investment of the Bank in the shares and debentures within the permissible limit of the RBI but he failed to take any action to sell the shares of M/s. Punwire Limited and paid Rs. 2.00 crore to M/s. JBML for investment in their shares on 18.3.1995.

6. The sanction of Rs. 4.00 crore under funded limit and Rs. 3.00 crore under non-funded limit for the Company was placed before Shri Gurpal Singh on 18.1.1995 and Shri Gurpal Singh sanctioned Rs. 2.00 crore under the funded limit which was conveyed to the concerned branch. This funding was stated to be compensation to the Managing Director Shri A.S. Roy for the amount to be paid by him towards cost of shares. Shri Gurpal Singh had invested Rs. 11.50 lakh in the name of his school going daughter, Ms. Ranjeeta K. Singh in M/s. Vihanga Finance Pvt. Ltd., an associate company of the said company on 19.10.1994 by obtaining a loan of Rs. 6.00 lakh from Citibank/Standard Chartered Bank against shares and Rs. 6.00 lakh from Shri Labh Singh, Chairman of M/s. Tex India Silk Mills Limited, which had been shown official favour from time to time by Shri Gurpal Singh. Thus, Shri Gurpal Singh had received Rs. 12.90 lakh from M/s. Vihanga Finance Pvt. Ltd. Which included Rs. 1.40 lakh being interest within a short period alleged to quid pro quo as investment of Rs. 11.50 lakh for about two (2) months.

7. The statements of the prosecution witnesses have been examined in depth by the Special Court and it was found that the allegation against Shri Gurpal Singh that he put up the proposal in the Investment Committee on 20.1.1995 without referring to the earlier decision dated 9.1.1995 was baseless. Shri Gurpal Singh was not present in the meeting of the Investment Committee on 9.1.1995 and the Minutes of this meeting never reached him because they were not signed by the Directors and they were never received by the Funds Management Department from where they were rejected. The Special Court has observed that even if it is assumed that Shri Gurpal Singh was aware of the position of 9.1.1995 on account of one of the witnesses deposing that he had told Gurpal Singh about the same, the important factor which could not be lost sight of was that there was only a lapse of time of about ten (10) days between the rejection of the first proposal and the acceptance of the second one by the Investment Committee. It could, thus, hardly be said that the Investment Committee was unaware of the earlier decision taken by it ten (10) days ago. In fact, the testimony of the witnesses is said to support an apparent interest of Shri K.S. Bains in the clearance of the proposal though he was not named in the FIR and no evidence was produced to put him for trial. Not only that, the evidence collected showed that the shares of the company could not be sold by 31.3.1995 but were ultimately sold by the Bank at a profit and the Bank suffered no loss.

8. Insofar as the sale of shares of M/s. Punwire Limited is concerned it was found that a decision was taken to sell the shares even at a loss but the action of Shri Gurpal Singh of not complying with this decision could be a dereliction of duty which

may have resulted from a better sense of business and economics rather than any criminal conspiracy.

9. The most important aspect is what is noted in paragraph 17 of the impugned judgment/order that the learned PP himself during the course of arguments admitted that there was no evidence that M/s. Vihanga Finance Private Limited is a sister concern of M/s. JBML or that Shri A.S. Roy was connected with the investment in the name of the daughter of Shri Gurpal Singh in the finance company. The two transactions could not be connected.

10. The allegation about the advance allowed by Shri Gurpal Singh was again found to be without basis because what he had sanctioned was within his financial powers.

11. Learned Counsel for the petitioner again sought to emphasise the same aspects which have been dealt with by the Special Court.

12. It is trite to say that in exercising the revisionary jurisdiction this Court has to only examine the legality or propriety of the finding in the order and not to sit as a court of appeal. It is within the said parameters that the rationale of the impugned order has to be scrutinized.

13. In respect of the aforesaid, the Special Court record has been perused and the submissions of the petitioner based on the same lines as before the Special Court do not have any merit.

14. The first aspect relating to the proposal itself shows that the matter at both stages was initiated by Shri K.S. Bains, yet no material was brought against him. It is only the respondents, who were charged as accused. The role of Shri Gurpal Singh was limited to putting up the note on the second occasion without mentioning the factum of rejection of the first proposal. It is not as if the Investment Committee was unaware of the rejection of the first proposal simply for the reason that the time lapse is only ten (10) days between the rejection of the first proposal and the acceptance of the second proposal. The respondents were not present at the meeting when the first proposal was rejected. The Special Court has rightly observed that even if the testimony of one of the witnesses who has stated that he had informed Shri Gurpal Singh is assumed to be correct it would have no material significance for the reasons recorded aforesaid. This reasoning can hardly be faulted.

15. Shri Gurpal Singh is also not charged with violating the sanction limit beyond his authority. All that is stated is that while the sanction for a higher limit was pending Shri Gurpal Singh sanctioned a limit within his authority. This again can hardly be faulted. An important aspect is that the Bank never suffered a loss and has in fact gained profits as noted in the impugned order.

16. The only aspect on which Shri Gurpal Singh can be faulted is not selling the shares of M/s. Punwire Limited to bring the investment in the relevant category

within the permissible limits of the RBI guidelines but as the Special Court has observed that it can at best be an irregularity and can also be better sense of business and economics since the shares were to be sold even at a loss. This can hardly be a ground to charge Shri Gurpal Singh. The allegation against the other respondents is only of conspiracy with Shri Gurpal Singh.

17. In view of the aforesaid, I find no merit in the Revision Petition.

18. Dismissed.