



2025:DHC:6883



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 14.08.2025

+ **CRL.M.C. 194/2019 & CRL.M.A. 838/2019, CRL.M.A. 29676/2023**

ASHOK KUMAR GUPTA

..... Petitioner

versus

**CENTRAL BUREAU OF
INVESTIGATION**

..... Respondent

Advocates who appeared in this case:

For the Petitioner :Mr. Vikas Pahwa, Senior Advocate with Mr. Sumer Singh Boparai, Mr. Sirhaan Seth, Mr. Sidhant Saraswat, Ms. Namisha Jain and Mr. Surya Pratap Singh, Advs

For the Respondent : Mr. Atul Guleria, SPP, CBI with Mr. Aryan Rakesh and Mr. Prashant Upadhyay, Advs

**CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') is filed seeking quashing of RC No. BD121016E0001 registered under Sections 120B/420/467/468/471 of



the Indian Penal Code, 1860 ('**IPC**') read with Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 ('**PC Act**'), and the consequential proceedings arising therefrom, pending before the learned Additional Sessions Judge, Tis Hazari Courts, New Delhi.

2. The Petitioner, superannuated honorably as an Executive Director of Canara Bank on 31.10.2014. The prosecution stems from default on repayment of loan sanctioned to M/s Occasion Silver Pvt. Ltd. (**OSPL**) in the year 2013. It is stated that the petitioner was not named in the original RC and has been implicated based on his role in the ED-CAC (Executive Director-Credit Approval Committee) which sanctioned the proposal for loan to OSPL.

Brief Facts

3. Succinctly stated, on 04.09.2013, OSPL, engaged in the wholesale and retail trading of silver jewellery and articles, gold, diamond and imitation jewellery, crockery, and gift items, submitted a proposal to Canara Bank, Kamla Nagar branch, for a working capital facility of ₹60 crores. Subsequently, on 14.09.2013, the branch forwarded the new business proposal to the Circle Office, Delhi, for appraisal. The Credit Committee at the Circle Office on evaluating the proposal on 18.09.2013, recommended it to the New Business Approval Committee (**NBAC**) at the Head Office, Bangalore.

4. On 26.09.2013, the NBAC accorded in-principle approval in the form of an 'Expression of Interest' for the proposed limit of ₹60



crores, with sub-limit for book debts of ₹30 crore, subject to standard sanction conditions. This approval was communicated back to the Circle Office on 30.09.2013, which then conveyed it to the Kamla Nagar Branch. Accordingly, the Branch submitted a regular proposal for sanction of the same working capital limit, including a sub-limit of ₹30 crores towards book debts.

5. On 19.10.2013, the General Manager–Credit Approval Committee (GM-CAC), Circle Office, recommended the revised proposal to the Corporate Credit Group (CCG) at the Head Office. The CCG, comprising senior General Managers, considered the same in a meeting held on 16.11.2013, and recommended it for final sanction by the Executive Director–Credit Approval Committee (ED-CAC). This proposal was one among 30 credit proposals across various regions, including Delhi, being considered.

6. On 21.11.2013, the ED-CAC, including the petitioner who was then serving as Executive Director, convened to deliberate on the proposal. The petitioner’s secretariat, after internal review, had noted that the proposal ought to be declined in view of the high volatility of the silver market and inadequate collateral cover. Nevertheless, following discussion and insistence on risk mitigation, the Committee sanctioned the proposal, but imposed stricter safeguards than earlier recommended, which are: (i) 100% additional collateral security coverage of sufficient value, (ii) mandatory physical verification and satisfaction of property value by the Circle Head, and (iii) deviation from guidance value to be reported to the Board. These conditions



were formally communicated by Head Office to the Circle Office on 27.11.2013.

7. On 05.12.2013, the Kamla Nagar Branch issued a sanction letter to OSPL as approved by the Executive-Credit Approval Committee. Subsequently, on 13.12.2013, the Branch, through a written letter to the Circle Office, expressed urgency and communicated that the party was in dire need of funds for procurement of stock, and that the working capital limit was being released that day—without complying with the ED-CAC’s stipulated pre-conditions.

8. In due course, significant deviations from the sanctioned terms were noted. On 07.07.2014, the Long Form Audit Report (‘LFAR’) by statutory auditors flagged non-compliance of key conditions. Further, on 25.08.2014, the Corporate Credit Group at Head Office reiterated these compliance failures in a letter to the Circle Office, pointing out that the security verification and enhanced collateral conditions had not been adhered to.

9. Based on these findings, a formal written complaint was submitted on 16.11.2015 by Shri A.K. Das, DGM (HRM Section), Circle Office, Delhi, alleging that OSPL had fraudulently availed ₹68 crores (including interest) by misrepresenting stock and book debts, and had diverted the funds. The complaint also made reference to failure of oversight by certain bank officials. On 27.01.2016, the CBI registered RC No. BD121016E0001 under Sections 120B/420/467/468/471 of the IPC read with Sections 13(2) and 13(1)(d) of the PC Act. During the investigation, statements of key



bank officials were recorded on 14.07.2016 and 15.07.2016, including that of the AGM (Vigilance), who categorically confirmed that the ED-CAC's mandatory pre-disbursement conditions had not been implemented.

10. On 19.03.2018, the CBI filed its chargesheet against nine accused persons, including for the first time the petitioner (arrayed as Accused No. 5). It was alleged against the petitioner that he participated in the ED-CAC meeting of 21.11.2013 and approved the proposal, allegedly overlooking NBAC's caution.

11. Cognizance of the chargesheet was taken by the learned Special Judge, Tis Hazari Courts, Delhi on 24.05.2018. The petitioner filed an application under Section 227 of the CrPC seeking discharge, which remains pending, and the present petition was filed.

Submissions by the learned senior counsel for the Petitioner

12. The learned senior counsel for the petitioner, Mr. Vikas Pahwa, submitted that the entire criminal proceedings initiated against the petitioner in RC No. BD121016E0001 are a gross abuse of the process of law and liable to be quashed in exercise of the inherent powers of this Hon'ble Court under Section 482 of the CrPC. It was contended that even if the allegations made in the chargesheet were taken at face value and accepted in their entirety, they did not disclose the commission of any offence much less an offence under Section 13(1)(d) of the PC Act.



13. At the outset, it was submitted that the petitioner was a highly respected banking professional who had retired as Executive Director from Canara Bank on 31.10.2014 after an unblemished service of over four decades. Post his superannuation, and following the mandatory cooling-off period under Ministry of Finance guidelines, he had served in an advisory capacity with an MNC. The petitioner, it was urged, had always discharged his duties in accordance with law and institutional interest.

14. He submitted that the genesis of the case lay in the credit facility sanctioned to OSPL, and the petitioner's name had surfaced only because he had been one of the nine members of the Executive Director–Credit Approval Committee (ED-CAC) that met on 21.11.2013 to consider a proposal previously cleared by several layers of the bank's internal committees, including the New Business Approval Committee (NBAC). It was argued that even in that meeting, the petitioner had, in fact, dissented initially and had recommended that the proposal be declined owing to high market volatility and insufficient collateral. However, upon detailed deliberation, the Committee had approved the proposal subject to stringent additional safeguards. These facts were fully documented in the minutes of the ED-CAC meeting as well as in the summary note prepared by the petitioner's secretariat.

15. It was emphasized that the petitioner had no role to play in the subsequent disbursement of funds, which was done by the Kamla Nagar Branch on 13.12.2013 without complying with the mandatory



pre-disbursement conditions imposed by the ED-CAC. The petitioner neither approved the disbursement nor had any knowledge of the same. In fact, the lapse in compliance was later confirmed by the statutory auditors in their Long Form Audit Report and by senior bank officials, including the Assistant General Manager, Vigilance, in statements recorded by the CBI during investigation.

16. The learned senior counsel argued that the chargesheet, which was filed on 19.03.2018, had not attributed any overt act of fraud, collusion, or corrupt intent to the petitioner. There was no allegation of *quid pro quo*, pecuniary gain, or gratification. The only allegation was that he participated in a committee meeting where the loan was approved *albeit* on conditions that were stricter than what had been recommended earlier by NBAC and GM-CAC.

17. It was contended that criminal misconduct under Section 13(1)(d) of the PC Act, particularly after its amendment in 2018, required a demonstrable element of *mens rea* and abuse of official position to obtain undue advantage for oneself or others. In the present case, the petitioner had, if anything, attempted to mitigate risk to the bank and enhance safeguards. The learned counsel relied on the judgment of the Hon'ble Apex Court in ***C.K. Jaffer Sharief v. State (CBI) : (2013) 1 SCC 205***, where it was held that "*dishonest intention is the gist of the offence under Section 13(1)(d) of the PC Act*" and mere procedural lapses or errors of judgment could not form the basis of criminal prosecution under the PC Act.



18. The learned counsel further submitted that with the enactment of the Prevention of Corruption (Amendment) Act, 2018, sub-clause (iii) of Section 13(1)(d)—under which the petitioner had been charged stood repealed. In the absence of any allegation of illegal gratification or *quid pro quo*, the provision was no longer attracted. It was urged that the benefit of a beneficial amendment decriminalizing a particular act must be extended to pending proceedings as well.

19. The learned senior counsel further placed reliance on the decision in ***Manoj Kumar v. CBI* : 2023 SCC OnLine SC 139**, wherein the Hon'ble Apex Court reiterated that unless there was a clear linkage between the accused's actions and wrongful gain or loss, continuation of proceedings under the PC Act would amount to misuse of criminal law. The Hon'ble Apex Court had cautioned that criminal prosecution should not be permitted to become a tool for penalizing honest decision-making in high-level committees.

20. Lastly, the learned counsel *inter alia* referred to the well-settled principles laid down in ***State of Haryana v. Bhajan Lal* : 1992 Supp (1) SCC 335**, to argue that where the allegations did not disclose any offence or were manifestly attended with *mala fide*, interference under Section 482 CrPC was warranted to prevent miscarriage of justice.

21. The learned counsel for the petitioner has relied upon the following judgments to buttress his contentions:

- a. C.K Jaffer Shreif v. State (CBI) : (2013) 1 SCC 700
- b. R. Balakrishnan Pillai v. State; (2003) 9 SCC 700
- c. S.P. Bhatnagar v. State; (1979) 1 SCC 535



- d. Major SK Kale v. State; (1977) 2 SCC 394
- e. M. Narayan Nambiar v. State; (1963) Supp. 2 SCR 724
- f. Mahmood Asad Madani. v. CBI; 2019 SCC OnLine Del 11809
- g. CBI v. Vijay Kumar Gupta, Branch Managar; Crl. A. 1409/2016 Gujarat High Court
- h. CBI v. K. Narayanan Rao; (2012) 9 SCC 512
- i. State of Madhya Pradesh v. Sheetal Sahai & Ors.; (2009) 8 SCC 617
- j. Yogesh v. State of Maharashtra; (2008) 8 SCC 394
- k. K.R. Purushottam v. State of Kerala; (2005) 12 SCC 631
- l. V.C. Shukla v. State (Delhi Administration); (1980) 2 SCC 665
- m. Shela Sebastian v. R. Jawaharaj & Anr.; (2018) 7 SCC 581
- n. Mohd. Ibrahim & Ors. v. State of Bihar & Anr.; (2009) 8 SCC 751
- o. State of M.P. v. Sheetal Sahai; (2009) 8 SCC 617
- p. Ramesh Manglani v. ED; 2023 SCC OnLine Del 3234
- q. C.B.I. v. V.K. Jha & Anr.; Criminal Appeal Nos. 1631-1632 of 2009
- r. P. Gopalkrishnan alias Dileep v. State of Kerala and Anr.; AIR 2020 Supreme Court 1

Submissions by the learned counsel for the Respondent (CBI)

22. The learned Special Public Prosecutor ('SPP') for the CBI opposed the petition vehemently and submitted that the petition is devoid of merit and liable to be dismissed. It was submitted that a bare perusal of the chargesheet disclosed sufficient material giving rise to grave suspicion against the petitioner, warranting trial.

23. He submitted that the petitioner, as Executive Director of Canara Bank and a senior member of the ED-Credit Approval



Committee (ED-CAC), had played a key role in the decision to approve a ₹60 crore working capital facility in favour of OSPL, despite glaring deficiencies in the proposal, including inflated property valuation, inadequate collateral, and an unexplained deviation from existing guidelines. The Committee approved the proposal knowing well that earlier vetting committees such as the NBAC had flagged risk factors. The fact that the petitioner's own secretariat recorded a note recommending rejection of the proposal, but the petitioner later voted to approve the same, evidenced a shift in stance that warranted scrutiny during trial.

24. The learned SPP placed strong reliance on the decision of this Court in ***Runu Ghosh v. C.B.I. : 2011 SCC OnLine Del 5501***, to submit that a prosecution under Section 13(1)(d) of the PC Act, did not necessarily require proof of *mens rea* or actual pecuniary benefit being obtained by the accused public servant.

25. He submitted that it was immaterial whether the petitioner derived any personal gain from the transaction. What mattered was the fact that a substantial pecuniary benefit was obtained by a private entity through a public servant's participation in a decision which ultimately lacked due diligence or public interest safeguards. The learned SPP emphasized that Section 13(1)(d)(iii) of the PC Act, as it then stood, criminalized even facilitation of pecuniary advantage to another person when not backed by public interest, irrespective of intent or outcome.



26. It was further submitted that criminal conspiracy under Section 120B of the IPC did not require physical evidence of a formal agreement. The law is well-settled that even tacit understanding among parties and contemporaneous circumstances are suffice to constitute a conspiracy. In the instant case, the collusion was evident from the coordinated manner in which procedural checks were bypassed, and pre-disbursement conditions diluted or ignored, leading to the disbursal of public funds without adequate security. The petitioner, as a key decision-maker in the ED-CAC, had a duty to prevent such lapses but instead actively facilitated the approval of the proposal.

27. The learned counsel referred to the Hon'ble Apex Court's judgment in *State of Tamil Nadu v. Nalini : (1999) 5 SCC 253*, to argue that a criminal conspiracy could be inferred from circumstances and need not be proved by direct evidence. The conduct of the petitioner, when viewed cumulatively with the role of other accused persons, revealed sufficient grounds for prosecution.

28. It was submitted that the petitioner's contention regarding subsequent non-compliance by lower-level officers could not absolve him of liability for the initial sanction. The petitioner was not an outsider to the process, but a senior-most member of the credit decision-making hierarchy. The credit proposal would not have reached the stage of disbursal had the ED-CAC not approved it in the first place. His participation was not perfunctory; it carried institutional weight and authority.



29. With regard to the petitioner's reliance on the Prevention of Corruption (Amendment) Act, 2018, the learned SPP contended that the amendment had no retrospective effect in so far as completed acts or offences committed prior to the amendment were concerned. The chargesheet in this case pertained to decisions and acts between 2013–2014, long before the amendment came into force. Reliance was placed on *K.S. Palanisamy v. State* : 2021 SCC OnLine Mad 182, wherein the Madras High Court held that the repeal of Section 13(1)(d)(iii) of the PC Act by itself did not nullify pending proceedings relating to offences committed before the amendment.

30. The learned SPP further relied upon *State of Maharashtra v. Som Nath Thapa* : (1996) 4 SCC 659, to urge that at the stage of framing of charge or considering quashing under Section 482 of the CrPC, the test to be applied was whether the material on record, if unrebutted, could lead to conviction. A meticulous evaluation of evidence was impermissible at the pre-trial stage.

31. Lastly, it was submitted that the petitioner had already filed an application for discharge under Section 227 CrPC before the Ld. Special Judge, and the appropriate course of action was to allow the trial court to evaluate the material at the stage of charge, rather than invoking extraordinary jurisdiction under Section 482 to short-circuit the process.

32. The learned counsel for the respondent has relied upon the following judgments to buttress his contentions:



- a. Shivnarayan Laxminarayan Joshi and Others v. State of Maharashtra; (1980) 2 SCC 465
- b. Radhey Sharma v. CBI; 2007 SCC OnLine Del 612
- c. R. Venkatkrishnan v. Central Bureau of Investigation; MANU/SC/1411/2009

Conclusion

33. The present petition filed under Section 482 CrPC seeks the quashing of RC No. BD121016E0001 dated 27.01.2016 and the consequential proceedings arising therefrom filed against the petitioner, a retired Executive Director of Canara Bank. The gravamen of the allegation pertains to the sanctioning of about ₹60 crore working capital facility to OSPL, during the petitioner's tenure as a member of the Executive Director–Credit Approval Committee ('ED-CAC').

34. The law governing the exercise of jurisdiction under Section 482 CrPC is well settled. The Hon'ble Apex Court in *State of Haryana v. Bhajan Lal (supra)*, laid down illustrative categories where criminal proceedings could be quashed, notably when the allegations made, even if taken at face value, do not disclose the commission of any offence, or where the allegations are manifestly absurd or attended with *mala fide*. This Court, therefore, does not embark upon an inquiry into disputed facts or evidence, but confines its review to whether a *prima facie* offence is disclosed, and whether the continuance of the proceedings would amount to an abuse of process.



35. As pointed out, the case is at the stage of arguments on charge. The petitioner is stated to have filed an application for discharge under Section 227 of the CrPC before the learned Special Judge some time in 2018 and the same is still pending. This Court is conscious of the fact that here is a limited scope for interference at the stage of framing of charge.

36. The Hon'ble Apex Court in *State of Maharashtra v. Som Nath Thapa (supra)* held that at the stage of framing charges, the court is not required to meticulously weigh the evidence or determine the likelihood of conviction. The test is whether the material on record, if unrebutted, would be sufficient to establish a case against the accused. If the court thinks that the accused might have committed the offence, that is enough to frame charges. Proof beyond reasonable doubt is required only at the stage of conviction, not at the stage of charge.

37. The interference to quash the proceedings at this stage should be very rare and only in exceptional cases, to prevent abuse of process or miscarriage of justice. Ordinarily when the Trial Court has taken cognizance, the High Court should not interfere in view of the alternate remedy of arguments before on charge. However, considering that the present case is pending before this Court since 2019, referring the matter to the learned Trial Court at this stage would be a miscarriage of justice.

38. The present case pertains to undisputed facts, and accordingly, in the interest of justice, this Court deems it appropriate to adjudicate the matter in the instant petition itself.



39. A three-judge bench of the Hon'ble Apex Court in *State of Karnataka v. L. Muniswamy* : (1977) 2 SCC 699, held that where the material on record is inadequate to connect the accused with the offence and continuation of proceedings would be an abuse of the process, the High Court may quash the proceedings even at the stage of framing charge. The Court emphasized that the ends of justice permit quashing when the prosecution material, even if unrebutted, does not reasonably make out the charge.

40. The case made out by the prosecution is that the petitioner, along with other accused bank officials, sanctioned the facility without proper due diligence, which resulted in loss to the bank and constituted offences under Sections 120B read with 420/467/468/471 of the IPC and Sections 13(2) and 13(1)(d) of the PC Act.

41. The primary issue for consideration before this Court is whether the allegations made against the petitioner, as crystallized in the chargesheet dated 19.03.2018, disclose the commission of any offence under Section 13(1)(d) of the Prevention of Corruption Act, 1988, and whether the continuance of criminal proceedings on the admitted facts would amount to an abuse of the process of law.

42. It has been alleged that the petitioner during his tenure as a member of the Executive Director–Credit Approval Committee (ED-CAC), has ignored the NBAC's proposed limit of ₹60 crore to OSPL, which was placed before the committee, in which it was stated that trading in Silver / Gold / Diamond jewellery are high risk activities, and there was a huge difference in the market value of the property



with that of guidance value and collateral comfort was not to the extent of exposure. It is alleged that despite the said observations made in the proposal, the petitioner did not consider mitigating factors and did not give any justifiable reason to accept the market value against the guidance value.

43. It is alleged that the summary note dated 20.11.2013 prepared by the petitioner's secretariat, mentions various serious issues with the proposal however, in the ED-CAC meeting dated 21.11.2013, the petitioner sanctioned the loan on certain terms and conditions.

44. The Corporate Credit Group (CCG) had recommended the revised proposal to the ED-CAC for final sanction including requesting permission to deviate in respect of accepting valuation of properties. The summary note dated 20.11.2013 records that trading activity in Silver / Gold / Diamond jewellery is highly volatile, and it was noted therein that the proposal may be declined. The relevant contents of the said note are reproduced hereinbelow:

Agenda No.16

M/s Occasion Silver Private Ltd.

3F, Kamlanagar Branch, New Delhi, Delhi Circle

- *Fresh FBWC Limit of Rs. 60.00 crs – ROI @ 14.45% pa (floating) – for a period of one year.*
- *Permissions :*
 - *Waiver of Bill Culture norms.*
 - *Waiver of LSDBC / commitment charges.*
 - *Deviation –Market Value (Rs 67.99 cr) considered instead of guidance value (Rs 7.32 cr) (As per sale deed Rs 3.52 cr – property in Kamlanagar, Delhi) (*)*

- *Dealing since*

-*New a/c*

- *Group*

-*None*



- CRR
 - ECAI
 - Bkg arrangement
 - Collateral cover 96.35% (considering the MV) (*)
 - Activity trading in silver / gold / diamond jewellery which is highly volatile. Besides deals in imitation jewellery!
- Moderate Risk (projections)
 - Yet to be done
 - Sole

We may decline – new connection / highly volatile market.

*High Risk / Collateral Low
Should decline*

45. The 9 member ED-CAC meeting held on 21.11.2013, after noting that there was a huge difference in the market value of the property with that of guidance value and that collateral comfort was not to the extent of exposure, sanctioned the proposal, subject to additional terms and conditions, which are extracted hereunder:

- *There is variation in the value of the security in respect of both the properties offered as collateral as per valuation and enquiries made by the Circle. Circle head to visit the properties and satisfy about the value of Rs. 37 to Rs. 40 crore as reported by the Circle.*
- *Additional security of sufficient value covering 100% collateral coverage to our exposure should be ensured before making available the Limit.*
- *Deviations of accepting market value instead of guidance value, to be reported to the Board.*

46. As noticed above, the Circle Head was directed to ensure satisfaction regarding the valuation assessed at ₹37 to ₹40 crore. The involvement of the petitioner in the matter stands confined up to this stage. The proposal thereafter concededly never brought to the



petitioner. Whether the physical verification of the property was carried out or not, undisputedly was not required to be brought to the knowledge of the petitioner.

47. The Kamla Nagar Branch Office thereafter on 13.12.2013, issued a letter to the Circle Office, confirming that OSPL had executed all the necessary loan document on 11.12.2013 and informed that they will be releasing the limit to OSPL on the said day, after completion of documentation and pre-disbursement audit, as OSPL was in urgent need of funds to procure stock.

48. As per the terms and conditions of the sanction, the deviation was reported to the Board of Directors on 27.12.2013, and the same was accepted based on the justification provided therein. The minutes sanctioned by the ED-CAC was also placed before the Management Committee of the Board, which was received and duly noted by the Management Committee on 14.02.2014.

49. The petitioner's role is confined to having participated in the ED-CAC meeting held on 21.11.2013, where the proposal to sanction the loan to OSPL was approved. The prosecution has sought to invoke Section 13(1)(d) of the PC Act, which, prior to its amendment, provided as under:

“Section 13(1)(d) – A public servant is said to commit the offence of criminal misconduct if he—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or



(ii) by abuse of position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.”

50. However, with the enactment of the Prevention of Corruption (Amendment) Act, 2018, clause (iii) has been repealed. The offence, as it now stands, requires that the public servant intentionally enrich himself illicitly during the period of office. In the instant case, even under the unamended provision, none of the clauses are attracted in the absence of any allegation of corrupt means, abuse of position, or enrichment of any party with the petitioner’s involvement.

51. The prosecution relied on *Runu Ghosh v. CBI (supra)*, wherein it was held that for an offence under Section 13(1)(d) of the PC Act, *mens rea* is not required to be proved, but the conduct must demonstrate flouting of norms and disregard for public interest.

Paragraph relevant to the present case is extracted hereunder:

*“73. Having regard to the previous history of the statute, the amendments to the 1947 Act, its avowed objects and the distinctive structure which Parliament adopted consciously, under the 1988 Act, despite being aware of the pre-existing law, as well as the decisions of the Court—the conclusion which this Court draws is that mens rea is inessential to convict an accused for the offence under Section 13(1)(d)(iii). It would be sufficient if the prosecution proves that the public servant “obtains” by his act, pecuniary advantage or valuable thing, to another, without public interest. **The inclusion of public interest, in the opinion of the Court, tips the scale in favour of a construction which does not require proof of mens rea. There can be many acts of a public servant, which result in pecuniary advantage, or obtaining of a valuable thing to someone else; typically these may relate to payment of royalty, grant of license or concessions,***



issuance of permits, authorizations, etc. Yet, such grants, concessions, or other forms of advantages to third parties would not criminalize the public servant's actions, so long as they have an element of public interest. They (acts of the public servant) are outlawed, and become punishable, if they are “without public interest”.

XXX.

XXXX

XXXXXX

130. Now, the expression “abuse” of office by an accused is not new; it has been in the lexicon - in the context of corruption laws, for over six and a half decades. The best exposition of what action would be “abuse” is to be found in *Narayana Nambiar (supra)*:

“The juxtaposition of the work ‘otherwise’ with the words ‘corrupt or illegal means’, and the dishonest implicit in the word ‘abuse’ indicate the necessity for a dishonest intention on his part to bring him within the meaning of the clause. Whether he abused his position or not depends upon the facts of each case.

XXX.

XXXX

XXXXXX

161. This Appeal was received upon a reference to the Division Bench, as regards the true interpretation of Section 13(1)(d)(iii). We have indicated the test applicable, - i.e. when the decision or an act of a public servant, (which results in another obtaining pecuniary advantage or valuable thing) be without public interest, namely, **if that action of the public servant is the consequence of her or his manifest failure to observe those reasonable safeguards against detriment to the public interest, which having regard to all circumstances, it was his or her duty to have adopted.**”

(emphasis supplied)

52. As noted above in *Runu Ghosh v. CBI (supra)*, *mens rea* is not always necessary to attract charge under Section 13(1)(d) of the PC Act. A public servant’s act amounts to misconduct only if it results in pecuniary advantage by disregarding the safeguards that public interest required them to observe. However, that decision pertained to facts where there was a demonstrable nexus between the accused officer’s conduct and the pecuniary gain to a private party. Blank letterheads recovered from Ms. Runu Ghosh’s office established her



close nexus with the company, indicating that she acted as its link while misusing her position.

53. In the present case, on a careful perusal of the chargesheet, it is evident that there is no allegation that the petitioner derived any financial benefit or pecuniary advantage, nor is there any assertion that gratification of any kind was either offered or received. Even if the decision of the ED-CAC committee is assumed to have resulted in a pecuniary advantage to the borrower, there is nothing on record to suggest that the petitioner acted without public interest or that he manifestly failed to observe any safeguards which he was duty bound to adopt. On the contrary, the material demonstrates that the proposal had been processed at multiple levels, examined by different authorities, and finally approved collectively by the ED-CAC.

54. The ED-CAC further added more stringent conditions while sanctioning the proposal, including increased collateral coverage, physical verification of properties by the Circle Head, and mandatory reporting of deviations in valuation to the Board. These additional safeguards were not present in the earlier approvals by the NBAC or GM-CAC. The decision of the ED-CAC, in which the petitioner participated, thus imposed greater caution than prior committees. The fact that these safeguards were subsequently not adhered to at the implementation level when the funds were disbursed cannot be attributed to the petitioner, who had no role in the actual disbursement or post-sanction monitoring.



55. The petitioner, while discharging his role as a member, neither derived any pecuniary benefit nor acted in a manner that can be said to have disregarded the safeguards of public interest. The record only demonstrates that the petitioner discharged his role as a member of the Committee in the ordinary course of decision-making, without any element of personal gain or dishonest intent.

56. The Hon'ble Apex Court in subsequent decision in *C.K. Jaffer Sharief v. State (CBI)* (*supra*) clarified that dishonest intention or *mens rea* is the *sine qua non* of an offence under Section 13(1)(d) of the PC Act, and mere procedural irregularities or lapses in judgment, absent a corrupt intent, do not constitute criminal misconduct. It was observed that not only is the act of the accused supposed to be barred by law but he must also hold mala fide to attract the charge. It was held as under:

“17. It has already been noticed that the appellant besides working as the Minister of Railways was the head of the two public sector undertakings in question at the relevant time. It also appears from the materials on record that the four persons while in London had assisted the appellant in performing certain tasks connected with the discharge of duties as a Minister. It is difficult to visualise as to how in the light of the above facts, demonstrated by the materials revealed in the course of investigation, the appellant can be construed to have adopted corrupt or illegal means or to have abused his position as a public servant to obtain any valuable thing or pecuniary advantage either for himself or for any of the aforesaid four persons. If the statements of the witnesses examined under Section 161 CrPC show that the aforesaid four persons had performed certain tasks to assist the Minister in the discharge of his public duties, however insignificant such tasks may have been, no question of obtaining any pecuniary advantage by any corrupt or illegal means or by abuse of the position of the appellant as a public



servant can arise. As a Minister it was for the appellant to decide on the number and identity of the officials and supporting staff who should accompany him to London if it was anticipated that he would be required to perform his official duties while in London. If in the process, the rules or norms applicable were violated or the decision taken shows an extravagant display of redundance it is the conduct and action of the appellant which may have been improper or contrary to departmental norms. But to say that the same was actuated by a dishonest intention to obtain an undue pecuniary advantage will not be correct. That dishonest intention is the gist of the offence under Section 13(1)(d) is implicit in the words used i.e. corrupt or illegal means and abuse of position as a public servant. A similar view has also been expressed by this Court in M. Narayanan Nambiar v. State of Kerala [AIR 1963 SC 1116 : (1963) 2 Cri LJ 186 : 1963 Supp (2) SCR 724] while considering the provisions of Section 5 of the 1947 Act.

(emphasis supplied)

57. This Court in *Mahmood Asad Madani v. CBI : 2019 SCC OnLine Del 11809*, quashed the FIR and all related proceedings against the petitioner on the ground that the prosecution had failed to demonstrate any criminal conspiracy or dishonest intention on the part of the accused. Despite allegations of excess claims under the Companion Free Scheme, it was held that this resulted from inadvertence and not from any fraudulent intent. The Court reiterated the principle, drawing from the various decisions of the Hon'ble Apex Court, that dishonest intent is the essence of offence under Section 13(1)(d) of the PC Act and without such *mens rea*, mere procedural lapses or errors cannot sustain criminal prosecution. Therefore, due to lack of evidence establishing corrupt intent, the proceedings were quashed. It was noted as under:

“35. In case of *C.K. Jaffer Sharief v. State (CBI)*, (2013) 1 SCC 205 whereby held that “dishonest intention is the gist of the offence



*under section 13(1)(d) is implicit in the words used i.e. corrupt or illegal means and abuse of position as a public servant. **To make a person criminally accountable it must be proved that an act, which is forbidden by law, has been caused by his conduct, and that the conduct was accompanied by a legally blameworthy attitude of mind. Thus, there are two components of every crime, a physical element and a mental element, usually called actus reus and mens rea respectively.***

xxx.

xxxx

xxxxx

38. Accordingly, in view of above discussion and legal position mentioned, **I am of the view that in the present case, there is no conspiracy established by the petitioner, thus, has no criminality or mens rea in the present case.** Though access amount has been claimed but that is due to inadvertence on the part of P.A. of the petitioner, however, he has not claimed access amount at all with ill intention. Therefore, I hereby quash the FIR and emanating proceedings thereto against the petitioner.”

(emphasis supplied)

58. Applying this test to the present case, the admitted record shows that the petitioner had discharged the functions assigned to him. The petitioner was not the sanctioning authority acting in isolation; he was one among 9 members of the ED-CAC, and the proposal had previously passed through multiple levels of approval. The ED-CAC’s decision was taken collectively. Even thereafter, the Board of the Bank, which was duly informed of the deviations in policy, had the discretion to override the proposal but elected to proceed.

59. It is also relevant that the petitioner did not initiate or process the loan proposal, nor did he benefit from it in any manner. The alleged non-compliance of pre-disbursement safeguards occurred at the Circle and Branch levels, well after the petitioner’s involvement had ended. The minutes of the ED-CAC explicitly referred back the



task of property verification and risk mitigation to the field functionaries. No material has been produced to show that the petitioner either overruled internal guidelines or pressurized any subordinate to deviate from the procedure.

60. The petitioner has placed on record the statements of the members of the ED-CAC, which indicate that no rule or directive of the bank was violated while sanctioning the credit facilities to OSPL. The statements also do not attribute any violation *qua* the petitioner.

61. It is not in dispute that one day prior to the meeting, on 20.11.2013, the petitioner's secretary had flagged the proposal as moderate risk (projections), noting inadequate collateral and high market volatility, and had advised that the same be declined.

62. It is also not denied by the prosecution that in the meeting held on 21.11.2013, the 9 member ED-CAC sanctioned the loan with enhanced and stringent conditions, in order to protect the interest of the bank.

63. The petitioner's role as member of the ED-CAC, as emerging from the record, was confined to collective deliberation and sanction of the loan proposal subject to enhanced safeguards. There is no material to suggest that he acted beyond his institutional mandate, exercised undue influence, or otherwise exceeded the scope of his official duties. It was not within the petitioner's remit to ensure that each officer in the hierarchy complied with their respective responsibilities in regard to pre-disbursement or post-sanction monitoring. Further, there is no allegation on record of any dishonest



intention, participation in conspiracy, or of the petitioner having derived any pecuniary benefit or *quid pro quo*. His participation was in the nature of a collegial decision-making process and cannot, in the absence of specific incriminating material, be construed as constituting criminal misconduct.

64. Whilst it may be that the loan subsequently defaulted and the safeguards were not enforced adequately, criminal prosecution cannot be premised solely on hindsight of a failed decision. At best, the allegations, if assumed to be correct, may indicate a lapse or dereliction of duty, which by itself does not attract criminal liability under Section 13(1)(d) of the PC Act. [Ref: *C.K. Jaffer Sharief v. State (CBI) (supra)*]

65. The legal threshold under Section 13(1)(d) of the PC Act is not met merely because there was financial loss; it must be shown that the loss was caused by corrupt or dishonest conduct. In the absence of such a link, and without any evidence of *mens rea*, the invocation of criminal law is wholly unwarranted.

66. The material on record shows that the proposal of OSPL was placed before the ED-CAC only after it had been duly examined at multiple levels within the Bank. The petitioner did not unilaterally approve the sanction, rather, the decision was taken collectively and unanimously by a 9 member committee. It is further significant that though the sanction was the outcome of a collective decision, not all members of the ED-CAC have been arrayed as accused. Likewise, while the Bank had 22 Directors on its Board, only 3 have been



selectively implicated. Such a course of action, where the prosecution chooses to proceed against some while leaving out others who were equally part of the decision making process and played a similar role to that of the petitioner, is impermissible and has been deprecated by the Courts, including this Court in ***Ramesh Manglani v. Enforcement Directorate : 2023 SCC OnLine Del 3234.***

67. The Hon'ble Apex Court in ***State of M.P. v. Sheetla Sahai : (2009) 8 SCC 617***, held that although the decision was taken collectively by several authorities, only a few have been arrayed as accused persons for prosecution, while others similarly placed have been left out. It was noted that such selective arraignment undermines the fairness of the prosecution. It was held as under:

“34. We would proceed on the basis that two divergent opinions on the construction of the contract in the light of the stand taken by World Bank as also the earlier decision taken by the State were possible. That, however, would not mean that a fresh decision could not have been taken keeping in view the exigencies of the situation. A decision to that effect was not taken only by one officer or one authority. Each one of the authorities was ad idem in their view in the decision-making process. Even the Financial Adviser who was an independent person and who had nothing to do with the implementation of the Project made recommendations in favour of the contractors stating that if not in law but in equity they were entitled to the additional amount. From the materials available on record, it is crystal clear that the decision taken was a collective one. The decision was required to be taken in the exigency of the situation. It may be an error of judgment but then no material has been brought on record to show that they did so for causing any wrongful gain to themselves or to a third party or for causing wrongful loss to the State.

XXXXX

XXXX

XXXX

49. It is also interesting to notice that the prosecution had proceeded against the officials in a pick-and-choose manner. We may notice the following statements made in the counter-affidavit which had not been



denied or disputed to show that not only those accused who were in office for a very short time but also those who had retired long back before the file was moved for the purpose of obtaining clearance for payment of additional amount from the Government viz. M.N. Nadkarni who worked as Chief Engineer till 24-3-1987 and S.W. Mohogaonkar, Superintending Engineer who worked till 19-6-1989 have been made accused but, on the other hand, those who were one way or the other connected with the decision viz. Shri J.R. Malhotra and Mr R.D. Nanhoria have not been proceeded at all. We fail to understand on what basis such a discrimination was made.”

(emphasis supplied)

68. In the present case also, the principle of parity assumes significance. The material shows that the sanction in question was a collective decision of a 9 member ED-CAC, taken after the proposal had passed through several levels of scrutiny within the Bank. Not all members of the ED-CAC, nor all Directors of the Board, have been proceeded against. The prosecution has chosen to implicate only a few, while leaving out others who stood on an identical footing in the decision-making process. As observed by the Hon'ble Apex Court in ***Soma Chakravarty v. State of CBI : (2007) 5 SCC 403***, once an person who is similarly situated and has not been proceeded against, the Court must examine whether the accused before it is identically placed, and whether such selective arraignment can be sustained. Applying this principle, the petitioner, who was only one among several members collectively sanctioning the proposal, cannot be singled out along with few others and burdened with criminal liability.

69. The Hon'ble Apex court in ***Sunil Bharti Mittal v. CBI : (2015) 4 SCC 609***, held that criminal liability is personal in nature and cannot be imposed merely because a person holds a high office in a company



or institution. There must be material to show that such person had an active role along with *mens rea*.

70. Coming to the charge under Section 120B of the IPC which has been read with Section 420/467/468/471 of the IPC in the chargesheet. It is well settled that conspiracy cannot be presumed on the basis of vague or unsubstantiated allegations. For an offence of criminal conspiracy to stand, the prosecution must demonstrate a prior meeting of minds and a concerted design to commit the unlawful act. Mere knowledge, association, or presence, without clear evidence of agreement or participation in furtherance of such agreement, would not suffice to attract the ingredients of Section 120B of the IPC.

71. The petitioner placed reliance on the decision of the Hon'ble Apex Court in ***CBI v. K. Narayana Rao : (2012) 9 SCC 512***, wherein it was held that for criminal conspiracy, there must be cogent evidence of a prior meeting of minds and a concerted action to commit an unlawful act. Mere negligence or failure to exercise proper care while discharging official duties does not amount to criminal conspiracy or corruption unless accompanied by *mens rea* or evidence of dishonest intention. The Hon'ble Apex Court quashed the proceedings against the appellant, holding that the material on record did not disclose the essential ingredients of conspiracy or corruption.

72. As noted in ***Runu Ghosh v. CBI (supra)***, blank letterheads were recovered from the accused person's office which established her close nexus with the company and indicated that she acted as its link while misusing her position. In the present case however, it is not the



case of the prosecution that the petitioner has nexus with the principal accused company OSPL. There is nothing on record to suggest that the petitioner was ever in contact with its representatives or derived any pecuniary benefit from the transaction, in which the petitioner was merely discharging his role as a member of the ED-CAC in a collective decision making process. In the absence of any meeting of minds or concerted action with the main accused, the essential ingredients of conspiracy are not satisfied against the petitioner in the present case. Assuming that the ED-CAC arrived at a wrong conclusion, the same would only constitute an error of judgment and not a criminal misconduct.

73. Once it is held that the allegation of criminal conspiracy under Section 120B of the IPC is not made out, the foundation for invoking the connected offences under Sections 420, 468, 471 and 478 of the IPC also plummets. In the absence of any meeting of minds or concerted action attributable to the petitioner, the said provisions cannot independently be attracted against him, as no material has been placed on record to show his involvement in any act of cheating Section 420 of the IPC or forgery under Sections 467/468/471 of the IPC.

74. Accordingly, in view of the foregoing discussion, it is evident that the ingredients of Section 13(1)(d) of the PC Act are not *prima facie* attracted in the facts of the present case. As discussed above, the chargesheet fails to disclose the role played by the petitioner which would constitute the offences under Sections 120B/420/467/468/471



of the IPC. Merely being a member of the ED-CAC that approved the sanction, *sans* any other allegation, does not constitute an offence of cheating or forgery.

75. Therefore, this Court is of the view that no *prima facie* case is made out against the petitioner under any of the provisions invoked in the chargesheet. The allegations are vague, unsupported by material evidence, and based on conjectures arising out of collective institutional decision-making. Permitting the proceedings to continue against the petitioner, would serve no useful purpose and would subject the petitioner to unwarranted harassment, contrary to the constitutional guarantee of fair procedure.

76. In view of the above discussion, the present petition is allowed and the petitioner is discharged of the offence punishable under Section 13(1)(d) of the PC Act and Sections 120B/420/467/468/471 of the IPC in RC No. BD121016E0001.

77. Pending applications, if any, also stand disposed of.

AMIT MAHAJAN, J

AUGUST 14, 2025