

MHNG030023772002



RCC No. 3030147/2002

State -- Vs – Sunil & Ors

ORDER BELOW EXH.3666

This is an application made by accused No.3 for discharge under Section 239 of the Code of Criminal Procedure (for short '*the Cr.P.C.*').

2. The application is running into 24 pages. The sum and substance thereof is to the effect that, no case is made out against accused No.3 for framing of charge. The Investigating Officer has failed to understand the exact nature of several transactions between the accused and the Nagpur District Central Co-operative Bank (for short "*the NDCC Bank*"). The transactions between the NDCC Bank and M/s. Home Trade Limited (for short "*HTL*") are in the capacity of buyer and seller, respectively and not as a broker (agent). HTL has never derived any income from "broking" activity during the year 2000-2001.

3. It is further contended that, the contract notes between NDCC Bank and the HTL were executed on "Principal to Principal" basis, therefore, the question of physical allotment of Government of India Securities (for short '*GOI securities*') would not arise. Thus, the settlement of transactions between the NDCC Bank and the HTL were the relationship of "Debtor" and "Creditor". In short, according to accused No.3, the dispute between the NDCC Bank and the HTL is of

civil nature.

4. It is further contended that, the amount alleged to have been misappropriated by the accused persons was entrusted by the depositors and share holders of the NDCC Bank to the NDCC Bank and not the HTL. In short, according to accused No.3, there was no entrustment to the directors and office bearers of the HTL. The NDCC bank and the HTL have not been arraigned as accused in the present case. According to accused No.3, it was mandatory to arraign the NDCC bank and the HTL as accused.

5. It is further contended that, the Investigating Officer has not conducted investigation in respect of the complete holdings of Government Securities by the HTL as per the advice of the Reserve Bank of India. Thus, the conclusion arrived by the Investigating Officer is based upon incomplete facts. The contract notes issued by the HTL had an 'Arbitration Clause'. The NDCC Bank has refrained from initiating arbitration proceedings for inexplicable reasons. The dispute between the NDCC Bank and the HTL is not case of criminal breach of trust, but, predominantly it is the matter of breach of contract which is a civil wrong and thus, it ought to have been adjudicated before the Arbitrator of the National Stock Exchange.

6. It is further contended that, the act of signing contract notes, letters and cheques for and behalf of HTL while discharging official duty does not fall within the ambit of any offence under the Indian Penal Code (for short '**the IPC**'). In other words, according to accused No.3, the signing of contract notes, letters and cheques by

him on behalf of HTL would not amount to making false documents. Thus, according to accused No.3, the offences punishable under Section 467 and 471 of the IPC in respect of the alleged forgery would not be attracted against him. None of the prosecution witnesses working with the NDCC bank have deposed of having ever seen photocopies of the alleged forged documents referred by the investigating officer. Thus, investigation carried out by the Investigating officer was incomplete and thus, the conclusion based upon such investigation is unreliable. On these grounds, accused No.3 has prayed for allowing the application.

7. The Ld. Special APP has filed reply at Exh.3690. It is submitted that, the charge-sheet was filed in the year 2002 after carrying out a detailed investigation. The accused had received copy of charge-sheet. However, he did not choose file an application for discharge at the earliest. He has not raised any objection in respect of the investigation till the date of filing present application, i.e., from the year 2002 to the year 2023. One of the partner of the HTL has been convicted by this Court on the basis of same charge-sheet.

8. It is further submitted that, the accused can not seek discharge by relying upon the evidence recorded in the course of trial of other accused persons. The application has been made only in order to protract the trial. On these major grounds, the Special APP has prayed for rejection of the application.

9. Heard Shri P.A.Tamboli and Smt. Kamana Divya Sree, the Ld. Advocates for accused No.3. Heard Ld. Special APP for the State.

Accused No.3 has also filed written notes of arguments at Exh.3717. The oral submissions made by the Ld. Advocates for accused No.3 are nothing but repetition of submissions in the written notes of arguments. The said submissions would be referred at appropriate places hereinafter. In support of his submissions, accused No.3 has relied upon the following decisions.

- i) Delhi Race Club (1940) Ltd. & Ors. Vs. State of Uttar Pradesh & Anr 2024 INSC 626,*
- ii) Shikhar Chemicals Vs. State of Uttar Pradesh and Another 2025 SCC OnLine SC 1643*
- iii) Mohdmmmed Ibrahim and Others Vs. State of Bihar and Another (2009) 8 Supreme Court Cases 751*
- iv) Sunil Bharti Mittal Vs. Central Bureau of Investigation (2015) 4 Supreme Court Cases 609*
- v) GHCL Employees Stock Option Trust Vs. India Infoline Limited (2013) 4 Supreme Court Cases 505*

10. In the application under consideration, accused No.3 has referred following decisions. However, he has not produced copies of the said decisions.

- 1. State Vs. Tirath Das, AIR 1954 ALLAHBAD 583 (Vol 41, CN227)*
- 2. The State Vs. Jage Ram, AIR (38) 1951 PUNJAB 103*
- 3. Sharad Kumar Sanghi Vs. Sangita Rane (2015) 12 SCC 781 Para 9, 11 & 13.*
- 4. R.Kalyani Vs. Janak C. Mehta and Others (2009) 1 SCC 516 Para 41*
- 5. Sandeep Singh & Ors Vs. Nisar Ahmad Dar. in CRM(M) No.263/2020 decided on 21.05.2022 by the Hon'ble Jammu and Kashmir High Court.*
- 6. S.K.Alagh Vs. State of U.P & Others, (2008) 5 SCC 662.*

11. Following points arise for my consideration to which I

have recorded my findings with reasons thereunder.

S.NO.	POINTS	FINDINGS
1.	Whether the charge against accused No.3 is groundless ?	No
2.	What order ?	Application is rejected.

: REASONS :

As to Point No.1 :

12. The Ld. Advocate for accused No.3 submitted that, the contract notes do not mention that, the HTL is a broker. The balance sheets of HTL do not show any income from the alleged broking activity. In short, according to the Ld. Advocates, the transactions between the NDCC Bank and the HTL were on 'principal to principal' basis, thus, the HTL or accused No.3 can not be held to be broker or an agent as regard to application of Section 409 of the IPC.

13. The Ld. Advocate for accused No.3 further submitted that, the relationship between the NDCC Bank and the HTL is of buyer and seller, thus, the question of entrustment of property would no arise. In fine, according to the Ld. Advocate, the ingredients of Section 405 of the IPC are not made out against accused No.3. In support of said submissions, the Ld. Advocate has placed reliance upon the decisions in *Delhi Race Club(1940) Ltd. and Ors. (Supra)* and *Shikhar Chemicals (Supra)*.

14. The Ld. Advocate for accused No.3 further submitted

that, the dispute between the NDCC Bank and the HTL is purely of civil nature. It was further submitted that, the NDCC Bank was required to initiate Arbitration proceedings as per the Arbitration clause in the contract notes.

15. The Ld. Advocate for accused No.3 further submitted that, the letters issued on behalf of the HTL under signatures of accused No.3 can not be termed as false documents. It was further submitted that, even if the contents of said letters are assumed to be false, the said letters can not be termed as forged documents. In support of said submissions, the Ld. Advocate has placed reliance upon the decision in *Mohammed Ibrahim and Ors (Supra)*.

16. The Ld. Advocate for accused No.3 further submitted that, accused No.3 being director of the HTL can not be prosecuted unless the HTL is made an accused in the present case. It was submitted that, the transactions in question were between the NDCC Bank and the HTL, thus, accused No.3 can not be held vicariously liable. In support of said submissions the Ld. Advocate has relied upon the decisions in *Sunil Bharti Mittal (Supra)* and *GHCL Employees Stock Option Trust (Supra)*.

17. The Ld. Spl APP submitted that, accused No.4 who is director of the HTL has been convicted vide Judgment dated 22.12.2023 on the same set of facts. It was further submitted that, there is sufficient material on record for framing charge against accused No.3. It was lastly submitted that, the decisions cited on behalf of accused No.3 can not be made applicable to the case at

hand owing to non-identical facts and circumstances.

18. The charge-sheet has been filed for offences punishable under Section 406, 409, 468, 471, 120B r/w 34 of the IPC. After carrying out investigation, the Investigating Officer has arrived at the following conclusion in respect of accused No.3.

वरिल कालावधीत होम ट्रेड लिमि. कंपनीकडून कधीही मुळ शासकिय प्रतिभूति बँकेकडे पाठविण्यात आल्या नाही. नागपूर जिल्हा मध्यवर्ती सहकारी बँकेतर्फे मुळ शासकिय प्रतिभूति प्राप्त करणे बाबत काहीही प्रयत्न केले असल्याचे निष्पन्न झाले नाही.

होम ट्रेड लि.कंपनीने नागपूर जिल्हा मध्यवर्ती सहकारी बँकेला आणून दिलेल्या शासकिय प्रतिभूतिच्या छायांकित प्रति या आर.बी.आय मुंबई कडे तपासणीस व पुष्टीकरीता पाठविल्या असता छायांकित प्रति या बनावट तयार करण्यात आल्या असून छायांकित प्रतितील शासकिय प्रतिभूति या दुस-या कंपनीचे नावावर असून त्या कधीही होम ट्रेड कंपनीचे नावावर ट्रान्सफर झाल्या नसल्याचे आर.बी.आय.मुंबई ने लेखी कळविलेले आहे.

संजय अग्रवाल (आरोपी क्रमांक ३) हा होम ट्रेड लिमि.कंपनीचा कार्यकारी संचालक असून मुख्य कार्यपालन अधिकारी आहे. सदर आरोपी हा युरो डिस्कव्हर इंडिया लिमि. चा सुध्दा संचालक आहे. त्यांनी शासकिय प्रतिभूति विकत घेणेकामी नागपूर जिल्हा मध्यवर्ती सहकारी बँकेकडे लेखी करारपत्रे पाठविलीत. नागपूर जिल्हा मध्यवर्ती सहकारी बँकेकडून शासकिय प्रतिभूति खरेदी करीता सुमारे १८५.७० कोटी रूपये सन २००१ दरम्यान प्राप्त केलीत. सदर रक्कम होम ट्रेड लिमि. कंपनीचे महाराष्ट्र राज्य सहाकारी बँक मुंबई येथील खाते क्रमांक १७०३१ व जनता सहकारी बँक मुंबई येथील होम ट्रेडचे खाते क्रमांक २३६४, १३६४ येथे जमा करण्यात आले आहेत. वरिल तिनही खाते चालविणेकरीता आरोपी क्र. ३ हा प्राधिकृत आहे. सदर आरोपीने नागपूर जिल्हा मध्यवर्ती बँकेतून शासकिय प्रतिभूति करीता रकमा स्विकारल्यात परंतु कधीही शासकिय प्रतिभूति विकत घेतल्या नाहीत व शासकिय प्रतिभूतिच्या मुळ प्रति नागपूर जिल्हा मध्यवर्ती बँकेकडे पाठविल्या नाही. दिनांक ११/५/२००२ रोजी सदर आरोपी हुजूर कोर्टाचे समक्ष समर्पित झाला व त्यावेळेस दिलेल्या अर्जात त्याने मान्य केले आहे की, नागपूर जिल्हा मध्यवर्ती सहकारी बँकेला शासकिय प्रतिभूति त्यांनी पूरविलेल्या नाहीत. त्याचेकडे थकित आहेत.

होम ट्रेड लिमि.चे संचालक आरोपी संजय अग्रवाल (२) एन.एस.त्रीवेदी, (३) केतन शेठ, व (४) सुबोध भंडारी इत्यादींनी नागपूर

जिल्हा मध्यवर्ती सहकारी बँकेकडून प्राप्त केलेल्या रकमेतून कधीही नागपूर जिल्हा मध्यवर्ती सहकारी बँकेकरीता शासकिय प्रतिभूति विकत घेतल्या नाही. होम ट्रेड कंपनीचा शासकिय प्रतिभूतीचा खरेदी-विक्री व्यवहार आर.बी.आय. मुंबई, एच.डी.एफ.सी.बँक मुंबई, फेडरल बँक मुंबई, इन्डसिंड बँक मुंबई व जनता सहकारी बँक मुंबई मार्फत करण्यात येत होता असे तपासात निष्पन्न झालेले असून वरील बँकेने पुरविलेल्या माहितीवरून स्पष्ट झालेले आहे.

नागपूर जिल्हा मध्यवर्ती सहकारी बँकेकडून प्राप्त केलेल्या रकमेतून होम ट्रेड कंपनीचे संबंधीत आरोपीतांना तो पैसा कंपनीचे दैनंदिन व्यवहार व विकासाकरीता वापरल्याचे तपासात निष्पन्न झालेले आहे. अपहारीत रकमेतून होम ट्रेड कंपनीशी संबंधीत आरोपीतांनी तांत्रिक उपकरणे (कॉम्प्यूटर्स, लॅपटॉप, सन सिस्टीम, पामटॉप, मोबाईल फोन्स, टेलीफोन, एअर-कडीशनर्स, इत्यादी) खरेदी करणेकामी काही रक्कम वारलेली आहे. सदर आरोपीतांनी लॅपटॉप, पामटॉप व मोबाईल फोन हे कंपनीचे कामकाजाकरीता कंपनीचे कर्मचा-यांना पुरविली होती. त्यातील काही उपकरणे जप्त करण्यात आलेली आहे.

होम ट्रेड कंपनीचे संबंधीत आरोपीतांनी मुंबई आरोपीतांनी मुंबई स्थित विविध बँकात सुमारे १०५ बँक खाती उघडलेली होती व त्या खात्यातून कंपनीचा आर्थिक व्यवहार करण्यात येत होता. संबंधीत बँकाना कलम ९१ सीआरपीसी अन्वये मागणीपत्र तामील करून संबंधित खात्यावरील जमा/खर्चाचे विवरणपत्रे हस्तगत करण्यात आली. तसेच होम ट्रेड कंपनीचे अर्थिक व्यवहाराबाबत, कंपनीने कॉम्प्यूटर मध्ये रेकॉर्ड करून ठेवलेले डाटा डाउनलोड करून त्यांच्या प्रती तयार करून हस्तगत करण्यात आल्या. वरील दस्तऐवज शासनाने नियुक्त केलेले ऑडीटर मेसर्स वा.सी.दलाल असोसिएट्स, चार्टर्ड अकाउन्टंट, मुंबई यांचेकडे तपासण्यास सोपविण्यात आली. श्री. केतन चौकसे, चार्टर्ड अकाउन्टंट, मुंबई यांनी वरील दस्तऐवजाचे ऑडीट करून अहवाल दिला की, होम ट्रेड कंपनीचे संचालकांनी नागपूर जिल्हा सहकारी बँके कडून प्राप्त केलेल्या रकमेतून शासकीय प्रतिभूती खरेदी केलेल्या नसून ती रक्कम त्यांनी कंपनीचे दैनंदिन आर्थिक व्यवहार पार पाडण्याकरिता खर्च केलेली आहे.

होम ट्रेड कंपनीचे आरोपी संचालकांनी अपहारीत रकमेतून काही रक्कम त्यांचे कर्मचा-यांना कर्ज रूपात वाटप केलेली आहे. तसेच काही इतर कंपन्यांना इन्टर कारपोरेट डिपाझीट (कर्ज) दिलेले आहेत असे तपासात निष्पन्न झालेले असून सदर रक्कम संबंधितांकडून जप्त करणे सुरू आहे.

एकंदरीत तपासावरून आरोपी क्रमांक १ ते ११ यांनी गुन्हेगारी स्वरूपाचा कट रचून नागपूर जिल्हा मध्यवर्ती सहाकारी बँकेतील २४१.७३ कोटी रूपये शासकिय प्रतिभूति खरेदी-विक्रीचे व्यवहारात बेकायदेशिररित्या गुंतविल्याचे दर्शविले. त्यातील १२४.२१ कोटी रूपये नागपूर जिल्हा मध्यवर्ती सहाकारी बँकेकडे होम ट्रेड कंपनीकडून परत करण्यात आले असे

दाखविण्यात आले. उर्वरीत ११७.५१ कोटी रूपयाचा अपहार वरिल आरोपीतांनी केला असल्याचे तपसात निष्पन्न झालेले आहेत. सर्व आरोपी यांनी गुन्हेगारी स्वरूपाचा कट रचून व संगनमत करून केला असल्याचे उपलब्ध पुराव्यावरून स्पष्ट दिसून येत आहे. सर्व आरोपीतांविरुद्ध सबळ पुरावा उपलब्ध असल्याने दोषारोपत्र न्यायार्थ सादर आहे.

19. There are statements of several witnesses and voluminous documentary evidence *prima facie* in support of the aforesaid conclusion drawn by the Investigating Officer against accused No.3. Accused Nos.1, 2, 4, 7, 8 and 9 have been convicted for offences punishable under Section 406, 409, 471, 468 read with 120B of the IPC vide Judgment dated 22.12.2023. No doubt, the observations and findings in the judgment of conviction dated 22.12.2023 can not be used for convicting present accused. However, the observations and findings in para Nos.39, 42, 43, 57, 63, 74, 77, 138, 139, 141, 146 and 147 are relevant for the consideration of present application. The said observations and findings go to show the role of accused No.3 in the commission of alleged offences.

20. It is significant to note that, there are allegations of criminal conspiracy between all the accused persons for the purpose of committing the alleged illegal acts. Thus, even assuming that, the HTL was not either a broker or an agent, yet, due to the charge of criminal conspiracy, the offences punishable under Sections 406 and 409 of the IPC would be *prima facie* attracted against accused No.3.

21. As regard to the offence of forgery, there are allegations in respect of presentation of photocopies of GOI Securities which were found to be forged. Thus, it can not be said that, there is no

material for framing charge against accused No.3 for offences punishable under Section 468 and 471 of the IPC.

22. I have carefully gone through the decisions cited on behalf of accused No.3. In the cases of *Delhi Race Club (1940) Ltd. and Ors.* and *Shikhar Chemicals*, the transactions in questions were in respect of sale of goods and failure to make payment thereof. However, that is not the position in the case at hand. As discussed above, the allegations against accused No.3 are in respect of hatching of a criminal conspiracy for the purpose of misappropriation of public money and also forgery. As such, it can not be said that, the dispute between the NDCC Bank and accused No.3 or the HTL is purely civil in nature. Thus, the aforesaid decisions and the decisions referred by accused No.3 in para 'L (page No.10) can not be made squarely applicable to the case at hand owing to non identical facts and circumstances.

23. In the case of *Mohammed Ibrahim and Ors.*, it was held that, the sale deed executed by the first appellant can not be termed as a false document. In the present case, as discussed above, there are allegations in respect of preparing false GOI Securities and presenting photocopies thereof. Thus, it can not be said that, the charge of forgery against accused No.3 is groundless. At the cost of repetition, it is necessary to mention that, there are allegations of criminal conspiracy against accused No.3 as well. Thus, the aforesaid decision can not be made squarely applicable to the case at hand owing to non identical facts and circumstances.

24. In the case of ***Sunil Bharti Mittal (Supra)***, the principle of “alter ego” was applied in reverse scenario. In the said case, the company was an accused and the directors were made accused by applying the principle of alter ego. However, that is not the position in the case at hand. In the present case, there are allegations of criminal conspiracy against accused No.3 who is director of the HTL. Under the facts and circumstances of present case, it can not be said that, accused No.3 can not be prosecuted unless the HTL is made an accused in the present case. Thus, the decisions in ***Sunil Bharti Mittal (Supra)***, ***GHCL Employees Stock Option Trust (Supra)*** and the decisions referred by accused No.3 in para ‘Q’ (page No.14 & 15) can not be made squarely applicable to the case at hand owing to non identical facts and circumstances.

25. It is significant to note that, by order below Exh.1 dated 30.04.2024, my Ld. Predecessor has come to a conclusion that, there is sufficient material to frame charge against accused No.3 under Section 406, 409, 468, 471 read with Section 120B of the IPC in alternative read with Section 34 of the IPC. It was further observed that, accused No.3 along with other co-accused had *mens rea* to form a criminal conspiracy of withdrawing the money of the NDCC Bank by obtaining sanction by withdrawal of such amount by using illegal means obtained the same from the headquarter of the bank at Nagpur. It was lastly held that, this is a fit case for framing charge against accused No.3 and to proceed with trial. It is noteworthy that, accused No.3 has not challenged the said order. Instead, he has made the present application. Be that as it may. Suffice is to say that, there

is sufficient material on record in order to frame charge against accused No.3.

26. In view of the above, it can not be said that, the charge against accused No.3 is groundless. Hence, point No.1 is answered in the negative.

As to Point No.2.

27. In view of the negative finding on point No.1, the application is liable to be rejected. Hence, order.

ORDER

Application Exh.3666 is rejected.

Nagpur.

Date : 11.11.2025

(M.V. Phade)
2nd Addl Chief Judicial Magistrate
(Spl. Court for S.138 N.I. Act),
Nagpur.

CERTIFICATE

I affirm that the contents of this P.D.F file of order are same word to word as per original order.

Name of Stenographer : A.H.Ghosekar (Grade-II)