

**Neetu Chawla Vs. CBI
Cr. Rev. No. 19/2020**

The present matter has been taken up via CISCO Webex platform / video conferencing hosted by Sh. Narender Kumar, Reader of this Court in terms of orders of Hon'ble High Court bearing No. R-235/RG/DHC/2020 dtd. 16.05.2020, 16/DHC/2020 dtd. 13.06.2020, 22/DHC/2020 dtd. 29.06.2020 and 24/DHC/2020 dtd. 13.07.2020 in the presence (on screen) of Sh. Madhukar Pandey along with Ms. Rukmini, Ld. Counsel(s) for the petitioner / revisionist and Sh. V. K. Pathak, Ld. PP for CBI / respondent along with Sh. Avnish Kumar, Pairvi Officer for CBI.

20.07.2020 (At 12:00 PM)

Present : Sh. Madhukar Pandey along with Ms. Rukmini, Ld. Counsel(s) for the petitioner / revisionist.
Sh. V. K. Pathak, Ld. PP for CBI / respondent along with Sh. Avnish Kumar, Pairvi Officer for CBI.

The matter was proceeding at the stage of pronouncement of orders on the present revision petition.

Vide separate detailed order of even date, announced in the open court today through CISCO Webex Platform / Video Conferencing, the present revision petition has been allowed and the impugned order dated 15.02.2020 passed by Ld. ACMM-II, Rouse Avenue District Courts, New Delhi summoning the petitioner Ms. Neetu



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Chawla in CC No. CBI/09/2020 titled CBI Vs. M/s. Catmos Retail Pvt. Ltd & Ors., arising out of RC No. DAI/2018-A-0039, PS CBI/ACB, under Section 120 B/420/468/471 IPC has been set aside.

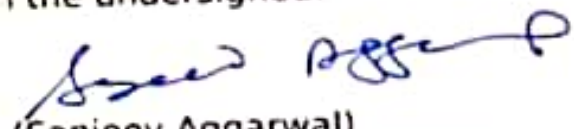
Copy of this order be sent to the Ld. Trial Court for information.

Revision file be consigned to record room.

The e-mail copy / signed scanned copy of this order be sent to the Computer Branch, RADC by the Reader for uploading on the official website.

This signed order sheet be retained on the record to be put on the judicial file as and when the normal court working stand resumed.

The present order has been dictated to Sh. Amit Makhija, Sr. PA attached with the undersigned.


(Sanjeev Aggarwal)
Special Judge (PC Act)(CBI)-02
Rouse Avenue District Court
New Delhi/20.07.2020

**IN THE COURT OF SH. SANJEEV AGGARWAL,
SPECIAL JUDGE : (CBI)-02 : (PC ACT)
ROUSE AVENUE DISTRICT COURTS, NEW DELHI**

**Neetu Chawla Vs. CBI
Cr. Rev. No. 19/2020**

ORDER

20.07.2020

1. Vide this order, I shall dispose off the present revision petition directed against the impugned order dated 15.02.2020 passed by Ld. ACMM-II, Rouse Avenue District Courts, New Delhi in CC No. CBI/09/2020 titled **CBI Vs. M/s. Catmos Retail Pvt. Ltd & Ors.**, arising out of RC No. DAI/2018-A-0039, PS CBI/ACB, under Section 120-B/420/468/471 IPC. (The parties are hereinafter being referred to by their respective status before the Ld. Trial Court).

2. Brief facts relevant for the disposal of the present revision petition can be culled out from the impugned order dated 15.02.2020, which are reproduced as under :

“15.02.2020

Pr: Sh. V.K. Ojha, Ld. Sr. PP for the CBI.

Accused no.1 is company.

**Accused no.2 Ashwani Kumar Chawla is produced from
JC.**



Ld. Counsel for the accused no. 1 & 2.

IO Insp. Sudeep Punia in person.

File perused. Heard.

Perusal of chargesheet reveals that the names of the other accused persons namely Reena Chawla, Asha Chawla and Neetu Chawla are mentioned in Col. no. 12, however, the particulars is mentioned as "accused persons charge-sheeted".

At this stage an application is filed on behalf of IO duly forwarded by Ld. Sr. PP stating that abovesaid fact is mentioned inadvertently in the present chargesheet and the other accused persons Reena Chawla, Neetu Chawla and Asha Chawla are not charge-sheeted in the present case.

Considering the submissions, prayer of the IO for correction is allowed and taken on record.

Brief facts of the case are that M/s Catmos Retail Pvt. Ltd. has approached Union Bank of India, Patel Nagar Branch, New Delhi for sanction of working capital loan of Rs.25 Crores vide letter dated 25.05.2011 and has furnished the documents in support thereof i.e. Company Profile, Memorandum of Article of Association, a list of directors; two year ITRs of the directors namely accused Ashwani Kumar Chawla, Reena Chawla, Asha Chawla, photocopy of PAN Cards and address proof of directors, shareholding pattern in accused company as on 31.03.2011, Audit Balance Sheet 2008-09, Audited Balance Sheet 2009-10, Audited Balance Sheet 2010-11, CMA Data, Sanctioned Letter from banks, CRISIL mandate for external rating.

The complainant bank has checked the said documents and reports furnished by the accused company and found them satisfactorily. Reputation of the directors was also inquired by



the bank from the persons in the market engaged in the same business and received positive opinion about the directors of the accused company. Accordingly, the proposal of the accused company was finally approved for CC Limit of Rs.10 Crores.

It is further alleged that the account of the accused company became irregular and was declared NPA on 31.03.2013 with an outstanding of Rs.10,92,78,584.27/-. As on 30.09.2018 the outstanding liability of the accused company was Rs.19,87,82,931.27/-. The allegations against the accused company are that its director in order to avail loan facility from the complainant bank has furnished forged and fabricated balance sheet with an intent to cheat and caused wrongful loss to the complainant bank.

The accused company has obtained loan on the basis of forged and fake Auditor's Report /Financial Documents for the year ending 31.03.2010 and 31.03.2011, which were purportedly shown to be issued by B.L. Gupta, CA, who has categorically denied the issuance of the said report as well as conducted the audit of the accused company for the year 2010-2011.

Investigation further reveals that a total sum of Rs.5,50,31,683/- has been diverted from the loan account of accused company maintained with the complainant bank in the four shell firms namely M/s Narula Enterprises, M/s Arora Associates, M/s Ashok Enterprises and M/s Ramesh Fashions. It is alleged that the abovesaid shell firms were opened by the accused Ashwani Kumar Chawla in the name of their employees, namely Deepak Ahuja, Rajender Arora, Ashok Ahuja & Ramesh Chander Jain and the funds were diverted from the loan account of accused company in the abovesaid shell firms, who were actually not having their own business, in



order to cheat the complainant bank.

It is pertinent to mention here that Deepak Ahuja, Rajender Arora, Ashok Ahuja & Ramesh Chander Jain were also named as accused in the present case. However, during the course of investigation, their confessional statement was recorded and were granted tender of pardon vide order dated 29.01.2020.

It is stated in the charge-sheet that the accused company through its director Ashwani Kumar Chawla in connivance of his employees had cheated the complainant bank by not paying the bank loan deliberately and caused huge loss to bank and government exchequer. The alleged forged documents which were submitted by the accused company for availing the loan from the complainant bank had shown the strong financial position of the accused company, so that their proposal for availing financial assistance could be easily approved by the complainant bank. Admittedly, the accused persons mentioned in column no. 12 of the charge-sheet namely Reena Chawla and Asha Chawla were the directors of the accused company at the relevant time of approaching of the accused company to the complainant bank for availing the financial assistance. The accused company has neither mentioned nor shown in any manner that the other directors namely accused Reena Chawla and Asha Chawla were the dormant directors/sleeping directors. The complainant bank has duly checked the CIBIL reports of the directors as well as the reputation of the directors prior to the sanction of the loan facility in favour of accused company. The Income Tax Returns furnished by the accused directors namely Reena Chawla and Asha Chawla also reveals that they were having sound income at the relevant point of



time of consideration of their loan facility proposal by the complainant bank. However, it is not the case that the accused directors namely Reena Chawla, Asha Chawla were having the alleged income from any other separate source of earning instead of earning from the accused company.

Further, the accused Neetu Chawla is the guarantor of the present loan in question and is also wife of the accused Ashwani Kumar Chawla. It is pertinent to mention here that she is also having 16.96% shareholding in the accused company as on 31.03.2011. The said shareholding of accused Neetu Chawla is higher than the shareholding of the accused directors Asha Rani (3.65%) and Reena Chawla (3.46%). The documents furnished in support of present loan of accused company on behalf of the accused Neetu Chawla have also been duly considered in the approval of the loan facility sanctioned in favour of accused company. The offence of criminal conspiracy is always hatched in dark and is executed in secrecy. It is well settled law that there may not always be possibility of collection of direct evidence in order to establish the offence of criminal conspiracy.

Therefore, considering the facts and circumstances of the present case, I took the cognizance of the offence u/s 120-B, 420, 468, 471 IPC and I am of the opinion that there is prima facie material on record to proceed against the accused persons in present case as per rule Accordingly, issue summon to all the accused persons namely Ashwani Kumar Chawla, Reena Chawla, Asha Chawla and Neetu Chawla for 29.02.2020.

Copy of chargesheet and documents annexed with the chargesheet supplied to the accused Ashwani Kumar Chawla under due acknowledgment. Accordingly, application on behalf



of the accused Ashwani Kumar Chawla seeking supply of chargesheet is disposed off.

Accused Ashwani Kumar Chawla is remanded to Judicial Custody till 29.02.2020. Rehnulal on 28.02.2020 for scrutiny of documents.”

3. It is the said order, the petitioner has challenged by way of present revision petition on the following main grounds :

That the said order has been passed without application of mind, petitioner has been summoned on the ground that she is a guarantor of the loan that had been taken from the complainant bank and she is the wife of Mr. Ashwani Kumar Chawla and had a shareholding of 16.96% in M/s. Catmos Retail Pvt. Ltd. Therefore, Ld. Counsel for the petitioner has challenged the impugned order qua the present petitioner on the ground that no evidence of conspiracy can be deemed to have been established on the basis of mere suspicion which is not supported by any cogent material on the record.

It is also stated that the court below has failed to appreciate that in the case of conspiracy, the prosecution must show that the accused had knowledge of the illegal acts, whereas there is no such material in this regard on the record in this case. It is also stated that no witness has stated that the petitioner was Director or was holding any official capacity in M/s. Catmos Retail Pvt. Ltd. or had any role in the functioning of the said company. Therefore, criminal liability cannot be fastened upon her on the basis of vicarious liability being a share holder in the said company.

It has also been argued by the Ld. Counsel for the petitioner that the present petitioner had been shown after thorough investigation by the CBI



in column no. 12, as the person being not chargesheeted. He has also argued that in the reply filed by the CBI to the grounds of the present revision petition, the CBI had specifically admitted that no sufficient material could be found against the present petitioner. In this regard he has relied upon para 5 of the reply dated 08.07.2020 submitted by the IO. Therefore, he prays that the impugned order dated 15.02.2020 is liable to be set aside and the present revision petition be allowed.

4. On the other hand, Ld. PP for CBI / respondent has argued that they have got nothing more to say other than the facts stated in the reply dated 08.07.2020 and those mentioned in the chargesheet and appropriate order may be passed by the Court.

5. I have gone through the rival contentions.

6. Ld. Counsel for the petitioner has challenged the impugned order primarily on the following three grounds :

- a) Firstly, merely because petitioner was the personal guarantor for seeking loan from the bank, does not make her accused in the absence of any other incriminating material collected during the investigations ;
- b) Secondly, that merely she being the wife of the main accused Mr. Ashwani Kumar Chawla does not lead to an inference of any criminal conspiracy between them ;
- c) Thirdly, the fact that she was having shareholding of 16.96% *ipso facto* does not make her criminally liable, as no evidence regarding her

criminality was found during the investigations.

7. IO in para 5 of his reply to the grounds of the present revision petition dated 08.07.2020 has stated as under :

"5. That during the investigation conducted by CBI, role of the revisionist / petitioner Neevu Chawla was not established and no sufficient evidence emerged against revisionist Neevu Chawla for launching successful prosecution. Chargesheet was filed u/s. 120B, 420, 468, 471 IPC and substantive offences thereof u/s. 420, 471 IPC against M/s. Catmoss Retail Pvt. Ltd. And Shri Ashwani Chawla. The charge sheet was not filed against revisionist / petitioner Neevu Chawla for want of sufficient evidence and her name was mentioned in column No. 12 of the charge sheet."

8. Even in the case of a company, only those natural persons are to be treated in law, as being the company for the purpose of acts done in the course of business, who are the directing mind and will of the company. However, some of the people in the company are mere servants and agents, who are nothing more than hands to do work and cannot be said to represent the mind and will of the company. Therefore, the company can only be vicariously held liable criminally for the acts of former, who are directing mind and will of the company, not the latter, who are just hands. Reliance can be placed in this regard on *Bolton (Engineering) Co. Ltd. Vs. Graham &*



9. In the present case, merely because the present petitioner was holding 16.96% shareholding in the accused company *ipso facto* shall not make her an accused, as many investors invest money in different companies, and have high shareholding / stake in those companies, yet they cannot be said to be directing mind and will of the company. If such an inference has to be drawn in every case, then it will be fraught with dangerous consequences.

10. Further, merely she was the guarantor of the loan in question, also does not make her criminally liable in the absence of any criminality or connivance with the main accused Ashwani Kumar Chawla, more so when nothing could be dug out against her after thorough investigations by the investigating agency, as per report filed by the IO, and the fact she had been shown in column no. 12 of the charge sheet after full fledged investigations, as also IO in his reply dated 08.07.2020 has completely absolved her.

11. Lastly, she being wife, does not make her vicariously liable for the alleged criminality of her husband Mr. Ashwani Kumar Chawla due to the same reasons afore discussed. The yardstick for summoning any accused in a criminal matter to answer the allegations against him is that there should be sufficient grounds to proceed against him, sufficient means adequate, ample, comfortable, decent etc. Can the grounds mentioned in the impugned order dated 15.02.2020 be said to be sufficient or adequate grounds to summon the present petitioner as an accused. The answer is in negative.



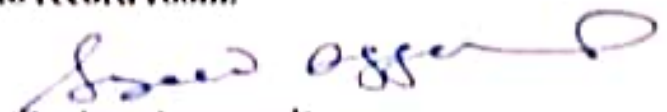
12. The net result of the above discussion is that, the impugned order dated 15.02.2020 summoning the petitioner Ms. Neetu Chawla cannot be legally sustained. Same is hereby set aside. The present revision petition stand allowed.

Nothing observed herein above shall have any bearing on the merits of the case.

Copy of this order be sent to the Ld. Trial Court for information.

Revision file be consigned to record room.

Announced in the Open Court
on this 20th day of July, 2020
through CISCO Webex Platform/
Video Conferencing.


(Sanjeev Aggarwal)
Special Judge (PC Act) (CBI)-02
Rouse Avenue District Courts
New Delhi