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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 158 OF 2017**

1 Tapas Basu
Indian resident
Age 59. R/o 13/1, Sarkhel Para
Lane, Bally, Howrah, 711201

2 Malay Sengupta
Indian resident
Aged 68 yrs, Indian Inhabitant,
residing At 'Tapovan', Block H,
Baishnavghata Patuli Township
Kolkata.

3 Utpal Sarkar
Age 59, r/o Indian resident
88, P.K. Dutta Sarani
-Bhadrakali, Hooghly 712232 ... Applicants
Versus

1 Inspector of Police
Anti Corruption Bureau, CBI,
Mumbai

2 The State of Maharashtra ... Respondents

Mr. Siddhant Choudhari i/b. Mr. Mandar M. Goswami for the
Applicants.

Mr. Amit Munde, Special Public Prosecutor with Ms. Jai Vohra for
CBI, ACB, Mumbai.

Ms. Shilpa G. Talhar, APP for Respondent – State.

CORAM : ABHAY J. MANTRI, J.

DATE : 17th JANUARY, 2026

ORAL JUDGMENT :-

1. The learned Advocate Mr. Siddhant Choudhari h/f Mr. Mandar M. Goswami submitted that Mr. Goswami is not available. Therefore, sought time to argue the matter. However, on perusal of the record, it appears that the impugned order was passed on 14th December, 2016, and the Application was filed on 7th March, 2017; since then, the same is pending. No stay order has been granted in favour of the Applicants. But the record indicates that the matter has been kept pending and adjourned on one or the other grounds. Therefore, I am not inclined to adjourn the old matter.

2. On the other hand, the learned Special Prosecutor for the CBI strongly opposes granting an adjournment as the matter is an old one and he has instructions to work out the old matters on a priority basis. He also submitted that the Applicants have not annexed the entire copy of the chargesheet/statement of witnesses along with the Application. It is to be noted that since 7th March, 2017, the matter has been pending, which itself indicates that the Applicants are not interested in prosecuting it on that ground alone; the Application has to be dismissed. Having considered the above facts, the request to adjourn the matter is refused.

3. Heard. **Rule.** Rule made returnable forthwith and heard finally by consent of the learned counsel for the respective parties.

4. The original Accused Nos. 8, 9, 10 are challenging the order dated 14th December, 2016, passed by the learned Special Judge, CBI, Mumbai (for short, '*the learned judge*'), in Special Case No.22 of 2013, whereby rejecting the Application filed by them for discharging them from the Special Case.

5. The learned Advocate for the Applicant vehemently contended that FIR does not disclose the names of the Applicants, nor is any iota of evidence found against them in the charge sheet to frame the charge against them. Hence, he urged that, on the said ground alone, the applicants are entitled to discharge themselves from the case. He further argued that Applicant No.1 Tapas Basu, who is Accused No.10, was exonerated from the departmental enquiry initiated by the concerned office. Therefore, the Applicant No.1 is entitled to discharge from the present case. During the argument, he has drawn my attention to the order dated 30th May, 2016, passed in enquiry No. Ref. No. P&T:07:030:14:186 conducted by the enquiry officer, i.e. the Chairman cum Managing Director & Disciplinary Authority. (Which is at page No. 145 of the Petition.)

6. To buttress his case, he relied upon the Judgment in *Ashoo Surendranath Tewawri Vs. Deputy Superintendent of Police, EOW, CBI, (2020) 9 SCC 636*, and points out Paragraph 13 of the said Judgment, and submitted that in view of the law laid down in the said Judgment, the Applicant No.1 is entitled to discharge, as the allegations made in the departmental enquiry and in the Criminal proceedings are the same. As such, he urged that the Application be allowed.

7. On the contrary, the learned Special Public Prosecutor strongly opposed the Application and contended that the order passed by the learned Special Judge is just and proper and no interference is required in it. He has drawn my attention to paragraphs 12 and 13 of the impugned Judgment, and submitted that the learned Judge has considered the statement of witnesses Mahendra Kumar Joshi and Jayesh Desai, and after considering the same, observed that *prima facie* material appears against the Applicants in the present case and therefore rejected the Application. He further canvassed that on the relevant time all Applicants were holding key posts, i.e. Applicant No.1 was General Manager, Applicant No. 2 was the Chairman and Managing Director, Applicant No.3 was the Deputy General Manager, Finance

and Audit along with other accused persons had made a conspiracy and caused loss to MSTC to the tune of Rs. 500 crore and thereby cheated the MSTC. The material collected on record *prima facie* indicates that they entered into a criminal conspiracy with other accused persons and committed fraud amounting to more than Rs. 500/- Crores. Therefore, he urged that no interference is required in the impugned order.

8. He further pointed out paragraph no.12 of the Judgment in *Ashoo Surendranath Tewawri* (supra) and submitted that ‘the findings against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution, and therefore even though assuming that Applicant No.1 was exonerated from the departmental enquiry, he is not entitled to seek discharge from the present proceedings, hence, he submitted that Application be rejected.

9. Having heard the learned Advocate for both the parties and having gone through the impugned order, and record it appears that the learned Special Judge dealt with the statements recorded by the witnesses, and after considering the material on record, has passed the detailed order. I would like to reproduce relevant paragraphs 12 and 13 of the said order :-

“12. *It is worth noting that the accused are allegedly involved in a conspiracy to dupe the MSTC. The secrecy is the hallmark of a conspiracy, & there can be hardly any direct evidence of conspiracy. Mainly, there is circumstantial evidence to prove the conspiracy. The circumstances against the present accused are that the fraud was indeed committed in a transaction in which the accused played an important role. The circumstance is that a person who was not registered with IRDA was appointed as an insurance consultant/broker. The accused persons are justifying that act by saying that he was already working as an insurance consultant of STC. However, if anything wrong is done by any person, it does not mean that the same wrong done by others is justifiable. Another circumstance is that one of the accused, namely Jayesh Desai, is the director of the exporter company, i.e. Joshi Bulions, and he also had connections with the buyer companies. PW-15, Mahendra Kumar Joshi, has stated that he was the owner of Joshi Bulions & has sold the goodwill to the accused, Jayesh Desai. PW-19 Rohit Pandya has stated that the accused Jayesh Desai is 100% shareholder of M/s. Superior General Trading FZE. This firm is shown as a buyer firm in the charge sheet. So also, the charge sheet reveals that the accused Jayesh Desai was also the owner of firms M/s. Leo Diamond, M/s. Himalaya Diamond, M/s. Golden Stock Electronics, which was the identified buyer. The question arises how the same person can be an exporter as well as an importer. If there was a business deal wherein the exporter himself acted as the importer, then the inference is that the MSTC only acted as a financier under the disguise of exporting the goods itself. It is further to be noted that, as per clause 11(d) of the MOU, it was the responsibility of the associate companies to ensure that the buyers pay the price & they were responsible for the loss, if any. This again shows whether the MSTC acted as a financier or exported the goods itself. It is further to be noted that witness Dayal Munda, who was DGM (Administration), MSTC, has stated that the business of jewellery export was new and he was reluctant to accept the proposal, but there was pressure from CMD and GM (F&A), and hence the action was started.*

13. *This is not the stage of evaluating the circumstances in detail. In my opinion, the prosecution should be given an opportunity to adduce the evidence & then only any decision as to the culpability of the accused is required to be made. Thus, considering the gravity of the offence, the aforesaid circumstances & the fact that the accused were an important chain in the transaction wherein the fraud of about Rs. 500*

crores was committed, in my opinion, the accused should be put to trial. Hence order.

ORDER

1. The discharge application Exh.54 is rejected.”

10. A bare perusal of the said order, it appears that the learned Judge has categorically held that the material on record *prima facie* indicates that the Applicants, along with other Accused persons, were involved in the present crime. Also, a chain of transactions wherein the fraud of about Rs. 500 Crores was committed, and therefore rejected the Application.

11. The learned APP during the course of argument also pointed out that the draft charge submitted by the investigating officer and pointed out paragraph/clause 12 of the said charge, which reads thus:-

“12 That investigation reveals that the accused directors of the aforesaid six associate firms entered into a criminal conspiracy with the accused public servant, namely Shri Malay Sengupta, the then Chairman and Managing Director of M/s. MSTC Ltd., Shri Tapas Basu, General Manager (F & A). M/s MSTC Ltd. and Shri Utpal Sarkar, Dy. General Manager (F&A) Operation of M/s MSTC Ltd. and other accused persons and in pursuance of the said criminal conspiracy purchased the jewellerys from various local sellers and made the export to the buyers at UAE identified and arranged by Shri Jayesh Desai and Mrs. Gul Raihna Omer on the understanding that they would accept the documents on 2% commission of the invoice value without having any genuine business. It is also revealed that the consignments of gold jewellery were received by the two consignees, namely M/S RKM General Trading of Jayesh Desai and M/S. Bin Karam of Dubai, who cleared the consignments from the UAE customs. In pursuance of the criminal conspiracy Shri Jayesh Desai and M/s Bin Karam disposed of the gold Jewellery in

the open market at UAE without supplying it to the buyers who accepted the documents and diverted the sale proceeds of the said consignments as per the directions of Shri Prem Kumar Sharma, Shri Shishir Dharkar and Mrs. Gul Raihana Omer and paid them 2% commission for abetting them in their endeavour to commit crime. The documents accepted by the approved buyers on the commission of 2% of the invoice value, and their signature, were identified by their bankers in the UAE, and were sent back through the buyers' bankers to the bankers of MSTC. After the receipt of the bill of acceptance, MSTC released 80% of the total export value to the above-said six associates. The total payments made to the six accused associates during the year 2008-09 are as under:

Name of the Associates	Payments made (RTGS) to Associates	Payments received from the foreign buyers	Remarks
Space Mercantile Co. Pvt. Ltd. (80% under ECGC mode)	1,372,486,000	88,187,433 (Only those bills were realised of Rs. 49324000/-)	Payment retained = Rs. 1,36,22,952/- Actual Expenses + Margin on fully realised Bills = Rs. 32,50,481/-
Space Mercantile Co. Pvt. Ltd. (80% under factoring mode)	159,012,000		
Total	2,031,510,000		

12. Perused the Judgment in *Ashoo Surendranath Tewawri* (supra) wherein facts were that “*the trial Court found that since no sanction was taken under the Prevention of Corruption Act, the offences under that Act cannot, therefore, be proceeded with and against the appellant therein, and therefore the Appellant therein was discharged.*” Similarly, in paragraph 13, it is observed that the allegations in the adjudication proceedings as well as the

proceedings for prosecution were identical, and the exoneration of the person concerned in the adjudication proceedings is on merits. It was also found on merit that *“there was no contravention of the provisions of the Act in the adjudication proceedings; therefore, it was observed that the trial of the person concerned would be an abuse of the process of the Court”*.

13. Similarly, in the said Judgment, the Hon’ble Apex Court, after referring to the various Judgments, in paragraph 12, has culled out the ratio of those decisions which were referred to in paragraph 38 of the Judgment in *Radheshyam Kejriwal Vs. State of W.B. (2011) 3 SCC 581*, which reads thus:-

12. *After referring to various judgments, this Court then culled out the ratio of those decisions in para 38 as follows: (Radheshyam Kejriwal case, SCC p. 598)*

"38. *The ratio that can be culled out from these decisions can broadly be stated as follows:*

(i) Adjudication proceedings and criminal prosecution can be launched simultaneously;

(ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution:

(iii) Adjudication proceedings and criminal proceedings are independent in nature to each other:

(iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution:

(v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceedings in favour of the person facing trial for an identical violation will depend upon the nature of the finding. If the

exoneration in adjudication proceedings is on a technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all, and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases."

14. In Clauses (iii) and (iv), it is categorically observed that adjudication proceedings and criminal proceedings are independent in nature to each other, and the finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecutions. Based on the said observations themselves, the Applicants are not entitled to claim discharge in the present proceedings.

15. It is pertinent to note that the learned Advocate for the Applicants, *prima facie*, failed to point out from the record how the allegations in the adjudication proceedings and criminal prosecution are identical.

16. He has also failed to produce a copy of the chargesheet along with the Application. Apart from that, the charge sheet in the criminal prosecution case was not available before the enquiry officer in the departmental enquiry; therefore, I do not find any substance in the contention of the learned Advocate for the Applicants that Applicant No.1 is exonerated in the departmental

enquiry. So, Applicants are entitled to discharge from the present Criminal proceedings.

17. Thus, having considered the facts in the present case and material on record as well as in view of the dictum laid down in paragraph 12 of the Judgment, I am not inclined to the submissions made by the learned Advocate for the Applicants that the Applicants be discharged from the criminal proceedings. Therefore, in my view, the law laid down in *Ashoo Surendranath Tewawri* (supra) is hardly of any assistance to the Applicants in support of their contention to seek discharge from the criminal trial.

18. On the contrary, it appears that from the record that the learned Judge, after considering the material on record, has rightly held that the material on record *prima facie* indicates that the Applicants, along with other Accused persons, were involved in the present crime and also a chain of transactions wherein the fraud of about Rs. 500 Crores was committed.

19. It also reveals from the findings of the Trial Court that allegations in the case in hand are grave and serious, wherein fraud of about Rs. 500 Crores has been committed, and material on record *prima facie* indicates the complicity of the Applicants along with other accused persons in the present crime. Therefore, non-

disclosure of the names of the Applicants in the FIR would not entitle them to claim discharge in the proceedings.

20. To sum up the above discussion, it emerges that the Applicants failed to point out that no material was collected against them by the prosecution to implicate them in the present crime. On the contrary, material on record *prima facie* denotes the complicity of the Applicants, along with other accused persons, in the present crime.

21. As a result, the Revision Application, being bereft of merits, stands dismissed. No order as to costs. Rule stands discharged. Inform the order to the learned Trial Court accordingly.

(ABHAY J. MANTRI, J.)