IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 107 OF 2014

Prakash Shinde,
S/o Shri Vishnu Shinde,
major of age, retired,
R/o Row House No.6, Sr. No.614,
Shankar Maharaj Society,
Near Ganga Dham, Vardhmanpura,
Kondhwa- Bibewadi Road,
Market Yard, Pune – 37. … Petitioner

Versus

1. The Police Inspector,
   Crime Branch, ACB (CBI),
   Bambolim Goa.

2. Public Prosecutor,
   High Court, Panaji Goa. … Respondents

Mr. S. M. Walwaikar, Advocate for the petitioner.

Mr. Joseph Vaz, Special Public Prosecutor for the respondents.

CORAM : K. L. WADANE, J

ORDER RESERVED ON : 29.04.2015

ORDER PRONOUNCED ON : 08.05.2015

O R D E R :

The original accused no.3 challenges the order passed by the Special Judge of Special Court for CBI, Mapusa, by which the learned Special Judge has ordered to frame charges against the accused nos. 1 to 3 for the offence punishable under Section

120-B read with Sections 420, 467, 468, 471 and 477-A of Indian Penal Code and Section 13(2) read with Section 13(1)(c) and (d) of Prevention of Corruption Act, 1988.

2. From the record, it is seen that on the basis of the complaint filed by one Pratap Mohanti, Asst. General Manager, the offence came to be registered against the present petitioner and others for the offence as referred to above. The accused no.1 was a Senior Manager in the Bank of Maharashtra and at the relevant time he was posted as Branch Manager of Mapusa Branch. The accused no.2 was a customer of the Bank of Maharashtra, Mapusa Branch, the accused no.3 i.e. the present petitioner was serving as Regional Manager of Bank of Maharashtra, Panaji and accused no.4 was a Deputy Regional Manager. It is alleged by the prosecution that the accused no.1 sanctioned Third Party loan against the deposits of Rs.50 lakhs against the cumulative deposit receipts of M/s. Samrudha Resources Ltd., without their knowledge or written consent. This amount was credited to the account of one of the customers namely Mrs. Maria Santan Fernandes, without her knowledge and consent. Likewise another amount of Rs.40 lakhs was similarly sanctioned against the deposits of Dattaram Gajanan Kauthankar against his term deposit without his knowledge and consent and was transferred to the account of Mrs. Maria S.

Fernandes. The accused no.1 then withdrawn the said amount of Rs.90 lakhs vide a withdrawal slip dated 13.04.2012. The Mapusa branch of Bank of Maharashtra did not have cash of Rs.90 lakhs, so the accused no.1 requested Shri Santosh Bhate, an officer of the Bank of Maharashtra at Panaji to send Rs.90 lakhs to their branch for disbursement to accused no.2. The Panaji branch of Bank of Maharashtra has withdrawn the said amount from Canara Bank through RTGS and sent it to Mapusa Branch, through the said accused no.2. The present petitioner who is accused no.3 was a Regional Manger has dictated terms to Shri A. J. Kulkarni, a certificate stating that accused no.2 Proprietor of Sidhant Developers, Kharepatan is holding a cash of Rs.90 lakhs withdrawn from the account of Mrs. Maria Fernandes to be deposited in the account of accused no.2. They handed over the said certificate to Suraj Raj, a Marketing Officer with instructions to hand over the same to accused no.1 for necessary action. They had done this in conspiracy with accused nos.1 and 2.

3. It is further alleged that the accused nos. 1, 3 and 4 have used their official positions, and conspired with accused no.2 to obtain a cash of Rs.90 lakhs for the benefit of accused no.2. These acts were committed without the consent of the customers, who were holding fixed deposits with the bank. Therefore, the

accused persons have committed offence as referred to above. The petition is opposed by the respondents.

4. I have heard the arguments of Mr. Walwaikar, learned counsel appearing for the petitioner and Mr. J. Vaz, learned Special Public Prosecutor appearing for the respondents. Also perused the statements of the witnesses namely Pratap Mohanty, Abhay Shahapurkar, Suraj Raj, Arun Kulkarni, Santosh Bhate and Dattaram Kauthankar. On perusal of these statements, it appears that the bank officials particularly accused no.1 has granted loan amount of Rs.90 lakhs to the accused no.2 Dinesh Jaitapkar by fabricating a false record and at the relevant time the present accused was a Regional Manager who dictated a certificate and it was handed over to the marketing officer Mr. Suraj Raj and this is very clear from the statement of Mr. Arun Kulkarni. Therefore, prima facie, it appears that the present petitioner has some role to prepare certain documents in the process of loan and in connection with the disbursement of loan. The prosecution has alleged the conspiracy between the accused persons who withdrawn the amount by fabricating false records. From the record, it is seen that a huge amount i.e. Rs.90 lakhs was withdrawn from the bank by making a false record and that too by way of a loan advanced against the fixed deposits of other account holders of the bank.

The allegations are serious in nature. Therefore, from the record, it appears that a prima facie case is made out against the petitioner and, therefore, the learned Trial Court has rightly framed the charge.

5. Mr. Walwaikar, learned counsel appearing for the petitioner has relied upon the observations in the case of ***State of U. P. V/s Dr. Sanjay Singh and another,*** reported in ***1994 Supp (2) SCC 707***, wherein it is observed that a mere suspicious of motive not a sufficient ground for framing charges. The learned counsel further relied upon the judgments in the case of ***State of Haryana and others V/s Bhajan Lal and others***, reported in ***1992 Supp (1) SCC 335*** and in the case of ***Automotive Tyre Manufactures Association Vs Designated Authority and others***, reported in ***(2011) 2 SCC 258.***

6. I have gone through the observations of the above cited authorities, however, the same are not applicable to the facts of the present case. Herein in the present case, the role of the present petitioner is clear. Therefore, there is prima facie some evidence against the petitioner.

7. As against this, Mr. J. Vaz, learned Special Public

Prosecutor appearing for the respondents has relied upon the observations in the case of ***State of Maharashtra V/s Ishwar Piraji Kalpatri and others,*** reported in **(*1996) 1 SCC 542*** in which it is observed that if on the basis of the allegations in the complaint a prima facie case is made out then the High Court has no jurisdiction to quash the proceedings. The observation of the above cited authority is perfectly applicable to the facts of the present case. In such circumstances, I am of the opinion that there is no substance in the present petition. The above observations are made prima facie looking to the stage of the proceedings and the learned Trial Court would not influence by any of the observations made herein above while deciding the case on merits. The Criminal Writ Petition is accordingly dismissed and disposed of.

K. L. WADANE, J

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