IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

REVISION APPLICATION NO.54 OF 2015

Jayesh M. Chauhan & Others .... Applicants
Vs.
Central Bureau of Investigation
& Another .... Respondents

WITH
REVISION APPLICATION NO.161 OF 2015

Ashok Kumar Aggarwal .... Applicant
Vs.
Central Bureau of Investigation
& Another .... Respondents

Mr. Prem Keshwani for the Applicants in Revision No.54/2015.
Mr. Dharmendra Rohra for the Applicant in Revision No.161/2015.
Mr. Sandeep K. Shinde with Mr. Y.M. Nakhwa for Respondent No.1-CBI in both Revisions.
Mr. A.S. Shitole, APP, for the Respondent-State.

CORAM: A.V. NIRGUDE, J.

DATED: DECEMBER 15, 2015

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1. As common questions arise in both these revision applications, they were heard together and are being disposed of by this common order.

2. Both these applications are filed by various accused persons challenging the order rejecting their discharge applications in Case No.135 of 2009, which is pending before the Court of Special Judge (CBI) for Greater Mumbai.

3. Facts leading to this litigation are as under:-

One M/s. Harish Fabrics and eight other firms filed refund claims before the Excise Officers. It was their case that they exported finished fabrics on which excise duty was already paid. If such fabric was exported, as per Rules, the entire excise duty paid was refundable. They along with their applications furnished, as required by procedure, various documents showing that excise duty was paid, goods were purchased and then the goods were actually exported. They placed reliance on various documents in support of their case. The most important documents on which they placed reliance were the Certificates issued by the Customs Officers certifying that the goods were actually exported. These Certificates are called “ARE-I Forms”. All such applications were first processed by the Range Offices which were manned by either Superintendent or Assistant

Commissioner of Excise. All these documents were cleared apparently believing them to be genuine. Claims were then sent to the Divisional Office where all the applicants work at various levels. Some of them are Excise Inspectors, some of them are Superintendents and one is a Deputy Commissioner. All of them examined the cases of the claimants and they passed the claims. Ultimately, orders of refund were passed by the applicant in Revision Application No.161 of 2015. Huge amount of over Rupees Three Crores thus was refunded to M/s. Harish Fabrics and the eight other firms.

4. The Central Bureau of Investigation (CBI) received sourced information that the refunds were fraudulently given. They registered an offence and started investigation, in the course whereof they found that important documents accompanying the applications for refund, namely, the ARE-I Forms were forged and that they were not issued by the Customs Officers at all. Utilizing such forged documents, the claims were made. The proprietors of M/s. Harish Fabrics and others were

eventually arrested.

5. It is the case of the prosecution that the applicants who were working at the level of the Divisional Office were hand-in-glove with the main accused, who made the claim and received refund. The question is, whether there is material on record to indicate that there was conspiracy between the main accused and the applicants? In other words, can it be said from the material available on record that the applicants purposely passed the claims knowing that the claims were false.

The submission at the bar on behalf of the applicants is obviously that they were not aware of the fraudulent nature of the claims. They, in their usual course of duty, examined the papers and since they found the claims in order, they passed favourable orders. The question therefore is, whether the forged documents filed in support of the claim applications were apparently noticeable as fraudulent and forged?

6. On a perusal of the copies of these documents, at first blush they appear quite similar to genuine ARE-I Forms. So,

I asked the learned counsel for the CBI as to why the applicants should not be made witnesses rather than accused. I pointed out that they too could be victims of the fraud and forgeries. The learned counsel for the CBI asserted that being officers of the Customs Department, the applicants were trained to detect/notice forgeries. Hence, they were expected to detect the discrepancies in the forged documents. He took me through the forged documents and indicated that there are some spelling mistakes in the rubber stamp impressions, etc.. According to him, the forgeries were quite noticeable to an experienced person and since the applicants "did not notice such discrepancies", it can be believed that they were part of the conspiracy.

I do not agree with this submission. If the forgeries are quite similar to the original, an officer during the course of his duty may commit honest error in not noticing minor discrepancies.

7. In addition to the circumstance that the applicants failed to notice the discrepancies in the documents submitted,

the prosecution must also bring on record, in support of their case, circumstances which would indicate independently that the applicants were in contact with the main accused during the relevant period. Such material has not come on record and therefore the prosecution's case has weakened considerably.

8. Besides, the applicants who are working at divisional level, there were two more accused whose applications seeking discharge was allowed. The learned Judge while discharging them upheld their contention that they were not party to the scrutiny of the documents, etc..

9. In view of the above, I am of the opinion that the applicants cannot be proceeded against. There is no ground for proceeding against them. They, therefore, deserve discharge. The applications are allowed. The applicants stand discharged. Both the revision applications accordingly stand disposed of.

(A.V. NIRGUDE, J.)

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