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IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 123 OF 2015

Mr. Gopal Singh Purohit … Applicant

Versus

Central Bureau of Investigation, EOW, Mumbai
and anr. … Respondents

Mr. Nitin Pradhan, Sr. counsel i/by Shubhada Khot for the applicant.

Mr. D.R. More, A.P.P. for the State.

None present for C.B.I.

CORAM : M.L. TAHALIYANI, J.
DATED : APRIL 21, 2015

P.C.

Admit. Heard finally.

2. Heard Mr. Nitin Pradhan, learned senior counsel for the applicant and learned A.P.P. for the State respondent no. 2. None for respondent no.1 Central Bureau of Investigation.

3. The applicant is accused No. 12 in Special Case No. 135/2009 pending in the court of Special Judge, Mumbai and is facing trial for the offence punishable under section 120B, 420, 468, 471 of I.P.C. and 13(2) read with 13(1)(d) of the Prevention of Corruption Act.

4. Admittedly the applicant was working as Deputy Commissioner of Central Excise at Surat. The applicant and other officers of the Central Excise along with some exporters are alleged to have entered into a conspiracy to claim refund of central excise duty under the scheme floated by the Government. There are in all 24 accused which include exporters and the officers of the Central Excise Department. It is the case of the C.B.I. before the learned Special Judge that the applicant while working as Deputy Commissioner of Central Excise had, in pursuance of conspiracy with other accused, sanctioned refund of central excise on the basis of forged documents. It is alleged that in fact there were no exports as claimed by the exporters and that as such false claims were sanctioned on the basis of forged documents.

5. Learned counsel appearing for the applicant Mr. Pradhan has submitted that the claims of the exporters for refund of central excise were to be examined by the Range Office and Divisional Office has nothing to do with the scrutiny of the claims of the exporters. It is brought to my notice that the Range Office has found the claims of the exporters to be genuine and that thereafter the Divisional Office has cleared the claims. In brief it is submitted that the Divisional Office has to rely on the report of the Range

Office and therefore, the job of the Divisional Office was limited to the extent of receipt of report from the Range Office and to pass the refund claims. It is brought to my notice that the Superintendent of Range Office has been exonerated and has been discharged by the learned Special Judge. According to Mr. Pradhan, in fact the officers of the Range Office are the main culprits and not the officers of the Divisional Office.

6. I have gone through the order passed by the learned Special Judge. I have also gone through the procedure adopted while submitting the ARE-I(i) (Application for Removal of Excisable Goods). Learned trial Judge has referred to chapter VIII of the Manual in which procedure has been laid down.

7. It can be seen that the Superintendents of Central Excise were responsible for verification of the particulars of assessment, correctness of the amount of duty paid or to be payable and its entry in the daily stock. It can also be seen that the scrutiny of claims as to whether the exports have been actually done or not was to be done in the Divisional office and not in the Range Office.

8. Mr. Pradhan, learned counsel for the applicant has invited my attention to Chapter 9 of the Manual which deals with the refunds. Chapter 9, clause 3.2. can be reproduced as under :

> "The Divisional Office will scrutinise the claim, in consultation with Range Officer, and check that the refund application is complete and is covered by all the requisite documents. This should be done, as far as possible, the moment refund claim is received and in case of any deficiency, the same should be pointed out to the applicant with a copy to the Range Officer within 15 days of receipt."

9. It is thus clear that the Divisional Office is not simply a rubber stamp to approve the claims received through Range Office. What is noted is that the claims are not scrutinized and passed on the basis of the documents received from the Range Office but from the documents directly received from the Customs Department or received from the exporter in tamper-proof cover which can be handed over to him by the Customs Department. It can be seen that the available documents received from the Customs department are handed over to Divisional Office by the Customs department or exporter himself in the tamper proof cover. I therefore, do not agree with the learned counsel for the applicant Mr. Pradhan that the Divisional Office has to rely upon the report of the Range Office. In fact the Divisional Office was supposed to independently scrutinize the claims and to scrutinize whether the export was actually done or not.

10. In the present case, no steps were taken to see that the exports were actually done or not. The claims appear to have been mechanically passed. Learned counsel has submitted that there is no material on record to

show that the applicant was part of conspiracy and that he had in any manner played any role in the forgery of documents or had committed any misconduct as defined under section 13(1)(d) of the Prevention of Corruption Act. As far as conspiracy is concerned, it need not be stated here that Central Bureau of Investigation could not have produced any direct evidence to prove the conspiracy. The evidence with regard to conspiracy can be gathered from other facts which can be unfolded during the course of the trial. It is impossible to give direct evidence on conspiracy. Most of the conspiracies are hatched in secrecy and therefore, prosecution has to rely upon the circumstantial evidence to decide as to whether there existed a conspiracy or not. This obviously can be done by the trial court and not by this court under section 482 of the Code of Criminal Procedure.

11. As far as offence punishable under section 13(2) of the Prevention of Corruption Act is concerned, what the court is required to see at this stage is as to whether there is prima facie case of misconduct as defined under section 13(1)(d) of the Act. Prima facie it appears that the applicant had by corrupt or illegal means or by abusing his position as public servant, had obtained pecuniary advantage for exporters and himself.

12. As such, briefly stated, there is prima facie case of conspiracy against the accused, forgery of documents in pursuance of the said conspiracy

and the offence of misconduct punishable under section 13(2) of the Prevention of Corruption Act. The application therefore, deserves to be dismissed and the same is accordingly dismissed.

(JUDGE)