IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
REVISION APPLICATION NO.175 OF 2014

R. Madhusudan .... Applicant
Vs.
The State of Maharashtra & Anr. .... Respondents

Mr. Niranjan Mundargi i/b Mr. Vikram R. Sutaria for the Applicant.
Mr. D.P. Adsule, APP, for the Respondent-State.
Mr. S.K. Shinde with Mr. Y.M. Nakhwa for Respondent No.2-CBI.

CORAM: A.V. NIRGUDE, J.

DATED: DECEMBER 03, 2015

P.C:

1. This revision challenges order dated 27-1-2014, refusing to discharge the applicant/original accused No.5 in CBI Special Case No.58 of 2011 which is pending before the Court of Special Judge for CBI at Greater Bombay. Offences punishable under Sections 409 and 420 r/w Section 120B of the IPC and Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 are alleged against the accused. Specific

allegations against the applicant can be narrated as under:-

2. The applicant, during the relevant time, was working as Deputy General Manager (Finance & Accounts) of Karnataka Rajya Kaigarika Sahakara Bank Niyamitha, Bangalore (for short, “Co-operative Bank”). The Co-operative Bank took a decision to purchase certain non-SLR Bonds from another Bank. It is alleged that it was the applicant who proposed such transaction to his Co-operative Bank. The transaction took place, Bonds were purchased and because of this the Co-operative Bank incurred certain loss in said transaction. The market value of the Bonds on the date of the purchase was less than the price paid by the applicant's Co-operative Bank.

3. The Reserve Bank of India (for short, “RBI”) took cognizance of this incident and initiated proceedings against the applicant's Co-operative Bank. The RBI alleged that the applicant's Co-operative Bank had committed breach of certain provisions of the Banking Regulation Act, 1949, while taking the

decision to purchase the Bonds. The RBI imposed a penalty of Rs.5,00,000/- on the applicant's Co-operative Bank. Thereafter, one of the officers of the RBI lodged this complaint alleging that offences are committed by certain persons. During investigation, the applicant was also implicated.

4. The first question for my consideration is, whether any offence is made out against the applicant? Secondly, whether the prosecution is justified in implicating the applicant alone from the Co-operative Bank in this case.

5. I allowed the learned counsel appearing for the CBI to show me as to what material is collected against the present applicant. I find that there is nothing on record to indicate that the applicant alone took the decision of entering into the transaction which caused loss to his Co-operative Bank. The decision was taken collectively by the Board of Directors of the Co-operative Bank. No doubt, the applicant strongly recommended the transaction. In view of these facts, which are

not in dispute, can it be said that the applicant committed any offence punishable under the IPC or under the provisions of the Prevention of Corruption Act? The answer is in the negative. The applicant is accused of committing criminal breach of trust by recommending the transaction. It cannot be said that when the applicant recommended the transaction, he was entrusted with any property of the Co-operative Bank and that he dishonestly used that property in violation of any of the provisions of law prescribed in the Code, in which such trust is to be discharged, etc.. By recommending such transaction, the applicant has not committed the offence of cheating, as defined under Section 415 of the IPC. The main ingredient of the offence of cheating is, dishonestly inducing the victim for parting with possession of certain property.

6. It is seen from the record that the employer (the Co-operative Bank) of the applicant purchased the Bonds following a collective decision taken by its Board of Directors. The Board of Directors probably were aware that loss would be caused to the Bank due to the purchase. But looking to the nature of the

Bonds, the Board of Directors may have felt that on sale of the Bonds, in future, it would lead to profit. In view of this, no offence under the IPC can be alleged against the applicant or for that matter any officer of the Co-operative Bank.

7. Now let me see, whether the applicant had prima facie committed offence punishable under Section 13 of the Prevention of Corruption Act. Section 13 defines the term “criminal misconduct” by a public servant. Assuming for the sake of argument that the applicant had intention to cause undue profit to a third party, the seller of the Bonds, and with that intention he recommended purchase of the Bonds. In the light of such assumption, one must further look into the case as to whether there is any material to indicate that the applicant received or accepted or agreed to accept any gratification other than legal remunerations. There is no such allegation made against the applicant. No evidence is collected to show that the applicant received some gratification from the seller of the Bonds. No offence, therefore, punishable under the Prevention of Corruption Act is leviable against the applicant. The applicant,

therefore, deserves to be discharged from the case.

8. In view of the foregoing discussion, the application is allowed. The impugned order dated 27-1-2014 passed by the Court of Special Judge for CBI at Greater Bombay in the Miscellaneous Application at Exhibit-19 in Special Case No.58 of 2011, rejecting the applicant's prayer for discharge, is quashed and set aside. The application accordingly stands disposed of.

(A.V. NIRGUDE, J.)