IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRI. WRIT PETITION NO. 3401 OF 2015

Shri Iqbal Mahammad Khan … Petitioner.

V/s.

The Central Bureau of Investigation
& Anr. … Respondents.

WITH

CRI. WRIT PETITION NO. 3402 OF 2015

Shri Rohinton Mistry … Petitioner.

V/s.

The Central Bureau of Investigation
& Anr. … Respondents.

Mr. Mahesh Jethmalani, Sr. Counsel a/w. Mr. Pranav Bhadekha i/by Mr. Prashant Bhikaji Pawar, Advocate for the Petitioner in both petitions.

Ms. Rebecca Gonsalvez for Respondent No.1.
Mr. A. S. Shitole, APP for the State.

CORAM : A.V. NIRGUDE, J.

DATE : 04th DECEMBER, 2015.

P.C. :

1 Both these petitions can be disposed of by this common order.

2 Petitioners are accused nos. 4 and 5 in a criminal case bearing CC No. 699/PW/2009, pending on the file of learned Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai. The petitioners/applicants moved an application before the trial court, seeking their discharge from the case. According to them there is no ground for proceeding against them. They also asserted that they deserved discharge. Their applications were rejected. This order of rejections of their discharge was even upheld by the learned Sessions Judge and, therefore, they are before this court.

3 The facts leading to the criminal case, in short, can be stated as under :

One M/s. Shalini Export Private Limited applied to VSNL in 1998, seeking two International Private Leased Connections (IPLC) lines for transmitting only digital data (& not for transmitting voice files). In those days, such IPLC lines were required for data and voice transmission from India to a foreign country. The tariff for use of such lines was quite high. If voice is transmitted, the tariff was still higher and was in crores. If the connections are used for transmitting data only (& not voice), it was relatively less. The accused nos. 1 and 3 had procured the IPLC lines for transmitting only data. But it is alleged that with the help of accused no.2 they set up a small telephone exchange. It was then used for making phone calls from India to USA and USA to India. This was in violation of the terms of the agreement. After about one year, fraudulent use of the lines was detected and an offence was registered initially against accused nos. 1 to 3. The accused nos.4 and 5 were impleaded only after it was found out that they too were actually involved in running and maintaining the telephone exchanges. It is said that the applicants were aware that their employer was not permitted to transmit the voice over the lines and yet they helped in maintaining the illegal exchange. It is alleged that they were aware of the clandestine nature of the activity and participated in it.

4 A question is asked to the learned counsel for the respondent - prosecution as to what is the material to support the prosecution. She points out to me, some statements of the witnesses, indicating that the petitioners were aware about the illegality of their activity. They were apparently party to the fraudulent act. I went through the the statements of those witnesses and found out that there is practically no material appearing in these statements even to indicate that the petitioner - Shri Iqbal Mohammad Khan in writ petition no. 3401/2015 was aware that what was done was illegal and amounted to an offence punishable under section 420 of the IPC and section 20 of the Indian Telegraph Act.

5 On the other hand there is one witness who stated that he was working as Software Developer in the Company of the Accused Nos. 1 and 3. He heard rumour that the IPLC lines were being misused for making the voice calls. In order to verify the correctness of this information, he asked about it to the petitioner Rohinton Mistry in writ petition no.3402/2015. Rohinton told him that lines are used only for data transfer and he could not worry. This statement indicates that the petitioner - Rohinton was aware that the telephone exchange, which he was maintaining was not authorized one and, that it was an illegal. Yet he remained part of it. It can, therefore, be said that this statement could indicate that petitioner -Rohinton was conspirator as well as abettor of commission of the offence, lodged against against accused nos. 1 and 3 etc.. The learned counsel for the petitioner requested me to consider that there is practically only one line appearing in the statements of the witnesses against the petitioner-Rohinton. He points out that the case was registered in the year 1999 and his client is waiting for the trial for the last 15 years. He also points out that his client was entitled to speedy trial which is his fundamental right. The learned counsel also asserted that eventually the evidence that is likely to be recorded in this case might not implicate the petitioner Rohinton. In other words, the chances of his conviction are bleak. This part of the argument is attractive but I am not inclined to accept it. I have to find out as to whether the

material appearing in the police papers, if goes un-rebutted, would lead to conviction. It indicates that the material is quite adverse to petitioner Rohinton. I am, therefore, not inclined to allow writ petition no.3402 of 2015 filed by Rohinton. However, I am inclined to allow writ petition no.3401 of 2015 filed by Mr. Iqbal Mahammad Khan.

6 Writ petition no. 3401 of 2015 filed by accused no. 5-Iqbal Mohammad Khan is allowed. Accused no.5 is discharged from the criminal case no. 699/PW/2009.

7 Writ petition no. 3402 of 2015 filed by Petitioner-Rohinton Mistry stands dismissed.

(A.V. NIRGUDE, J.)

.....@.....