IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.427 OF 2015

Anil B. Sharma … Applicant.

V/s.

Central Bureau of Investigation & Anr. … Respondents.

Mr.Niranjan Mundargi i/b Mr.Arunesh Sushil Mishra for the Applicant.

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

CORAM : A.V. NIRGUDE, J.

DATE : 26th November, 2015.

P.C. :

. This Criminal Revision Application challenges order dated 26th August, 2015 passed by the learned Special Judge, Central Bureau of Investigation, Greater Mumbai on Exh.120 in Case No.113 of 2010. Exhibit-120 was the Applicant's application seeking discharge from the case. The Applicant is accused No.5 in this case.

2. The allegations made against accused including the Applicant in short can be stated as under:

Accused No.1 is the main accused. It is alleged that he and accused No.2- Bank Manager created record to show that accused No.1 needed a loan of about Rs.203 Lakhs from the bank for aquiring 15 cars from a dealer. In order to facilitate this transaction, Accused No.1 established contact with accused No.3 who is Managing Director of one Autograph Cars India Private Limited. Applicant/ accused No.5 was working as Auto Consultant with accused No.3. On the direction of accused No.3, applicant issued four receipts showing that accused No.1 handed over cash of Rs.69 Lakhs to Autograph Cars India Private Limited as margin money for buying 15 cars. It is said that the applicant executed these receipts at the direction of his employer. These receipts were utilized to show the *bona fides* of accused No.1 who posed as the borrower. Accused No.2 then handed over a Pay Order of Rs.203 Lakhs to accused No.1. This Pay Order was payable to Autograph Cars India Private Limited. Accused No.1, instead of handing over this Pay Order to accused No.3, opened a new account in the name of Autograph Cars India Private Limited in a bank. He deposited the Pay Order in the said account and eventually siphoned of the funds. He did not buy the cars and thus accused No.1 & 2 defrauded the bank of the amount. It is the case of the prosecution that accused Nos.3 and 5 helped accused Nos.1 and 2 for committing this fraud. The question is, whether accused No.5 can be said to be a party to this fraud or conspiracy? On the face of it, the answer appears in the negative. The entire charge-sheet does not show any material which would create an impression that applicant/accused No.5 shared the common intention of accused Nos.1 & 2. It is alleged, as said above, that he executed the order of his employer-accused No.3. For the sake of the prosecution's case I am inclined to assume that accused No.3 was a party to the conspiracy and that he did not receive the amount in cash and yet he directed his employee to create false receipts. Yet, the employee cannot be attributed with *mens rea.* On the face of it, accused No.5 could, at the most, be a witness to this case. The applicant deserves to be discharged. The revision application is allowed. The impugned order is set-aside.

3. Applicant/accused No.5 stands discharged from Central Bureau of Investigation Case No.113 of 2010.

(A.V. NIRGUDE, J.)