IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1163 OF 2013

Deepa Kumar Aged 61 years, R/at Flat No.B-132, People's Co-operative Colony, Kankadbag, Patna -800 020.	))))	... Applicant.
V/s.		
State of Maharashtra (through CBI, ACB, Mumbai) (At the instance of CBI/ACV/Mumbai) R.C.No.09/(A) 2011,11-A, Tanna House, Nathalal Parikh Marg, Colaba, Mumbai.	)))))	… Respondent.

Mr. Anupam Lal Das i/by Ashok Singh, Advocate for the Applicant.
Mr. Rajesh Desai, Advocate for the CBI.

CORAM : M. L. TAHALIYANI, J.

Reserved on : 25th MARCH,2015
Pronounced on : 30th JULY, 2015

JUDGMENT :

1 This criminal application shall be converted in the Criminal Revision Application and be registered accordingly.

2 This criminal revision application impugns the order passed by the learned Special Judge for CBI, Greater

Bombay, below Exh. 18 in CBI Special Case No. 53 of 2012 pending on the file of Special Judge. The applicant – Deepa Kumar is accused no. 2 in the said criminal case filed by CBI.

3 Accused no.1-Mr.Lalit Kumar is the husband of the applicant. Mr. Lalit Kumar had joined Railway Protection Force as "Assistant Commandant" on 5th August, 1977 and he was later on working as "Inspector General-cum-Chief Security Commissioner" of Railway Protection Force, Western Railways, Church Gate, Mumbai. The FIR was registered against him for holding assets disproportionate to his known sources of income. After investigation, it was found that the assets disproportionate to known sources of his income were amounting to Rs. 90,90,536/- . The check period for the same was from 30th September, 2006 to 30th November, 2010. It is alleged that the accused no.1 by abusing his official position has acquired his disproportionate assets and has thereby committed an offence punishable under section 13(2) r/w. 13(1)(e) of the Prevention of Corruption Act, 1988.

4 As far as the present applicant is concerned, it is alleged that she had abetted the crime committed by the accused no.1. The allegations made against the applicant in the chargesheet are as under :

> (II) That Smt. Deepa Kumar w/o Shri Lalit Kumar, who is a house wife, having no any independent

> source of income has aided and abetted her husband Sh Lalit Kumar in amassing the asset by illegal means in her name and their family members to the tune of Rs.90,90,536/- which is disproportionate to the known and legal source of income of Sh Lalit Kumar, thereby committed the offence punishable U/s. 109 of IPC and Section 13(2) r/w 13(1)(e) of P.C.Act, 1988."

The learned counsel for the applicant has submitted that the list of assets held in the name of the applicant would clearly indicate that the present applicant was not party to the alleged crime committed by the accused no.1. It is submitted that the applicant had not abetted the alleged crime inasmuch as the only allegation against her is that there were few properties, negligible as compared to the total assets in the name of the applicant. My attention was invited to the allegation in respect of the purchase of flat in Gaurav Woods at village Navghar, Mira Road (E), Thane for Rs.27.8 lakhs from M/s. Ravi Development. It is alleged that in fact the said flat was purchased by accused no.1-Lilit Kumar in the name of Abishek Kumar. It is alleged that an amount of Rs. 2 lakh each was transferred from the account of accused no.1 to the accounts of son and wife. Additional amount of Rs. 22,000/- was paid by the applicant by transferring the said amount from the account of the applicant. Eight gunthas of land was purchased at village Kankradi in Dahanu taluka, Thane district in the name of the applicant from one Mohd. Husain Merchant. Statements of the broker and vendor were recorded under section 164 of the Cr. P.C.. It was stated by them that the payment was made by the accused no.1. Thereafter, the amount lying in the Saving Banks Accounts and fixed deposits in the name of the applicant was also taken into consideration.

5 It is submitted by the learned counsel for the applicant that the jewellery was belonging to the applicant and on their own showing, the CBI has stated that the locker was not operated between 4th December, 2008 to 30th November, 2010. The check period in question was 30th September, 2006 to 30th November, 2010. As such during the major portion of the check period the locker was not operated. There is no material on record to show that the jewellery was purchased from ill gotten money of the accused no.1.

6 The learned counsel for the applicant has further submitted that if the accused no.1 had purchased certain property in the name of the present applicant without her knowledge, the applicant cannot be held responsible for the same. It is his contention that to frame a charge under section 109 of the Indian Penal Code read with 13(2) r/w. 13(1)(e) of the P.C.Act, the respondent/prosecution was under obligation to prima facie demonstrate that the applicant had abetted the alleged crime committed by the accused no.1. My attention was invited to the definition of the abettment under section 107 of IPC, which runs as under :

> "107. Abetment of a thing .--- A person abets the doing of a thing, who –
>
> First.-- Instigates any person to do that thing; or
> Secondly.--Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
> Thirdly.-- Intentionally aids, by any act or illegal omission, the doing of that thing.
>
> Explanation 1.-- A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bond to dispose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."

7 The learned counsel has submitted that the allegations made in para (II) of the chargesheet does not in any manner indicate that the applicant had instigated the accused no.1 to indulge in the corrupt practice and to purchase properties in the name of the applicant. It is also not stated that it was within the knowledge of the applicant that the properties purchased in her name were from the ill gotten money. My attention was also invited to clause (III) to section 107 and it was submitted that there was no material to show that the applicant had intentionally aided by any act or the illegal omission, the commission of the offence punishable under section 13(2) r/w. 13(1)(e) of the P.C. Act.

8 The learned counsel for the applicant also invited my attention to the allegations made by the CBI that the money was transferred from the account of accused no.1 while purchasing the flat in question. As far as the FDR's and Saving Banks Accounts are concerned, it is submitted that unless it is shown that the FDR's and saving accounts were within the knowledge of the applicant, it cannot be said that she was also party to the alleged mis-deeds of her husband. As such in brief, it is submitted that if the accused no.1 has acquired some property in the name of the applicant that by itself may not be sufficient to frame a charge under section 109 of the Indian Penal Code r/w. 13(2) r/w.13(1)(e) of the P.C. Act. The prosecution was under obligation to show that prima facie their existed a strong suspicion that the applicant was party to the alleged transaction or she was present at the time of alleged transaction.

9 The allegations against the applicant have been reproduced hereinabove, which clearly indicate that the investigating officer himself could not collect any evidence in respect of the active participation of the applicant in the alleged crime which may amount to abetment. The investigating officer has also not stated as to what illegal omission was committed by the the applicant which amounted to abetment.

10 After having heard the learned counsel for the applicant and the learned counsel for the CBI and after having gone through the charge-sheet, I have come to the conclusion that though there is some property held in the name of the applicant, the charge-sheet is devoid of material to indicate that the applicant was abettor. In the circumstances, the application for discharge should have been granted by the trial Judge.

11 Hence, I pass the following order :

i. The order passed by the learned trial Judge below Exh.18 in CBI Spl Case No.53 of 2012, rejecting the discharge application, is set aside.

ii. The applicant stands discharged of the offence punishable under section 109 of the IPC read with 13(2) r/w. 13(1)(e) of the Prevention of Corruption Act.

iii. Her bail bond, if any, shall stand cancelled.

This Criminal Revision Application stands disposed of in the above terms.

(JUDGE)