

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**CRIMINAL MISC. APPLICATION NO. 262 OF 2014**

STATE

Through CBI, ACB,  
Goa.

.....

Applicant.

V e r s u s

1. Shri Siluvai Gnanenthira Roche,  
S/o Shri Siluvai  
Retired Sr. Vice President,  
GIC Housing Finance Ltd.,  
3<sup>rd</sup> Floor, Universal Insurance Building,  
P.M. Road, Fort, Mumbai,  
R/O 12GB II Tarangini,  
3<sup>rd</sup> Seaward Road, Valmiki Nagar,  
Thiruvannamiyur, Chennai 600 041,  
P/address same as above) (not arrested).
2. Shri Prasad Rawalgaonkar,  
S/o Shri Sharad Rawalgaonkar,  
The then Branch Manager  
GIC Housing Finance Ltd.,  
Panaji Service Centre,  
Panaji, Goa,  
Presently working with HDFC as  
Residence Manager, Nashik  
Maharashtra,  
r/o 7, Saptarshi Apartment  
Adwait Colony, Canada Corner,  
Sharanpur Road,  
Nashik Maharashtra,  
P/address (same as above)  
(not arrested).
3. Shri Savio Fernandes  
S/o late Shri Olympio Fernandes,  
Proprietor of M/s. Regency Builders,

Panaji, Goa.

(absconding since before registration of  
of this case.

..... Respondents

Mr. Joseph Vaz, Special Public Prosecutor for the Applicant.

Mr. Sanjay S. Parab with Ms. S. Rane and Patrick Fernandes, Advocates for  
the Respondent no.1.

Mr. S. Shet, Advocate for Respondents no.2 .

**CORAM: S. B. SHUKRE, J .**

**DATE: 12TH FEBRUARY, 2016.**

**ORAL ORDER:**

Heard learned Special Public Prosecutor for the applicant, the  
learned counsel for respondent no.1 and learned counsel for respondent no.2.  
Respondent no.3 has been stated to be discharged by the Trial Court in the  
year 2007. Heard finally.

2. The grievance in this application is that impugned order dated  
2/6/2010 acquitting respondents nos.1 and 2, who are the accused nos.1 and 2  
from the charge framed for an offence punishable under section 13(2) r/w  
section 13(1) (d) of the Prevention of Corruption Act, 1988 (hereinafter  
referred to as "the P.C. Act", for short) under section 232 of the Code of  
Criminal Procedure has been passed at a stage not permissible under the law.

3. Facts necessary to decide this application are:- Respondent No. 1 was the Senior Vice President, Respondent No. 2 was the Branch Manager and Respondent No. 3 was a Proprietor of M/s. Regency Builders, the borrower of GIC Housing Finance Ltd., (hereinafter called "GICHFL" for short) at the relevant time. Respondent No. 3 was granted construction finance of Rs.25,00,000/- by GICHFL on 28.06.1995 against mortgage of land as a security for repayment of the loan. It was alleged that Respondents No. 1 and 2 and other officers of the GICHFL knew that Respondent No. 3 was not the absolute owner of the land in question and yet accepted the execution of mortgage deed in favour of the GICHFL on 14.08.1995 and then entering into criminal conspiracy to cheat the GICHFL and cause wrongful loss to it, by abusing their position as public servants, recommended and allowed disbursement of construction loan to Respondent No. 3. The loan ultimately turned out to be a bad debt, with outstanding amount, as of 16.12.2004, soaring to Rs.50,57,500/-. The applicant – CBI, ACG, Goa investigated into these allegations and filed a charge-sheet against Respondents No. 1 to 3 for prosecuting them for offences punishable under Sections 120-B and 420 I.P.C. and also an offence punishable under Section 13(2) read with Section 13 (1) (d) of the PC Act. Respondent No. 1 filed an application under Section 227 of the Code of Criminal Procedure seeking his discharge, which was disposed of by the learned Special Judge holding that it was prematurely filed and the question as to whether or not the GICHFL was a Government

Company, could be decided only at the stage of trial. Accordingly, charge was framed against Respondents No. 1 and 2 on 18.01.2008 for offences punishable under Sections 120-B and 420 IPC and Section 13(2) read with Section 13(1)(d) of the PC Act and trial commenced. After evidence of some of the prosecution witnesses and not all, was over, the Respondent No. 1 filed an application under Section 232 Cr.P.C. for his acquittal on the ground that PW1 Sanjay Koppikar, of GICHFL, stated that GICHFL was not a Government Company. The application was allowed by learned Special Judge, Panaji by her order passed on 02.03.2010. The Respondent No. 1 as well as Respondent No. 2 who did not file any application but thought to be sailing in same boat, were acquitted for an offence punishable under Section 13(2) read with Section 13(1)(d) P.C. Act by this order. Intending to challenge it, this application to seek leave to appeal under Section 378(3) Cr.P.C. is filed.

4. It is the contention of the learned Special Public Prosecutor that the stage of invoking power under section 232 Cr.P.C. comes at a time when the prosecution evidence is over and the accused is also examined. He further submits that this power can be exercised any time after the prosecution evidence is over but before the accused is called upon to enter upon his evidence and it can never be exercised when the evidence of the prosecution is halfway through, as has been erroneously done in this case.

5. Learned counsel for the respondent no.1 submits that the learned Special Judge has exercised the power at an appropriate stage. Alternately, he submits that exercise of power at a stage not contemplated by law would not by itself make such an exercise of power illegal or result in miscarriage of justice. He submits that if exercise of power at a wrong stage leads to abuse of process of law or miscarriage of justice or prejudice to the prosecution or depriving any opportunity for the prosecution to prove its case properly then only such an order could be interfered with, which is not the case here.

6. Learned counsel for respondent no.2 is in agreement with what has been submitted on behalf of respondent no.1 by his learned counsel and, therefore, he adopts the same argument.

7. Perusal of the scheme of Chapter xviii of Cr.P.C, containing provisions from section 225 and ending with section 237, discloses that the legislature has intended that the trial of a sessions case must be conducted with all expedition at the command of the Court, and that is the reason why Chapter 18 contemplates various stages in which a sessions trial must proceed and also makes provisions at intermediate stages even for putting an end to the trial earlier, if the facts and circumstances of the case justify it. The stages envisaged by the scheme of Chapter 18 can be broadly divided into 8

parts and they are:

- i) Opening of case for prosecution by Public Prosecutor.
- ii) Considering of possibility of discharge of the accused.
- iii) Framing of charge
- iv) Considering possibility of conviction on plea of guilty.
- v) Prosecution evidence.
- vi) Considering possibility of acquittal of the accused.
- vii) Taking of defence evidence, if any.
- viii) Judgment of acquittal or conviction.

8.           These stages of trial of a sessions case occur one after another and the overall scheme of Chapter xviii is such that once a particular stage is crossed, there is no going back to the previous stage, and the trial has to be taken forward unless by the previous stage the trial itself is concluded. For example, if the Court considers that there are sufficient grounds for presuming that the accused has committed an offence, exclusively triable by the Sessions Court, and frames charge under section 228 Cr.P.C, a discharge application filed under section 227 after framing of the charge would not be maintainable. (See **Ratilal Bhanji Mithani Vs. State of Maharashtra**, AIR 1979 SC 94) or if the defence evidence is adduced under section 233, there would be no scope for reversing the direction of the trial and invoking power to record an order of acquittal on the ground of no evidence being available.

against the accused under section 232 and the Court would be obliged to hear the arguments of the prosecution and the defence under section 234 and deliver judgment of acquittal or conviction, as the case may be, under section 235.

9. The challenge to the order impugned in this case is mainly on the ground that the order of acquittal under section 232 could not have been passed by the learned Sessions Judge only upon completion of recording of part evidence, that is to say, evidence of just two prosecution witnesses and if at all it was to be passed, it should have been passed after taking the entire evidence for the prosecution, as contemplated under section 232 Cr.P.C.

10. Section 232 Cr.P.C has been inserted after the section providing for taking evidence for the prosecution (section 231) and before the section empowering the accused to tender evidence in his defence (section 233). After section 233, there are two sections, Sections 234 and 235 which provide for hearing of arguments of the prosecution and the defence and passing of judgment of acquittal or conviction, respectively. These sections have a bearing upon each other and, therefore, it would be appropriate to reproduce them here. They read thus:

**“231. Evidence for prosecution:** (1) On the date so fixed, the Judge shall proceed to take

all such evidence as may be produced in support of the prosecution. (2) The Judge may, in his discretion, permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

**232. Acquittal-** If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal.

**233. Entering upon defence-**(1) Where the accused is not acquitted under section 232 he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof. (2) If the accused puts in any written statement, the Judge shall file it with the record. (3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.

**234. Arguments.-** When the examination of the witnesses (if any) for the defence is complete, the prosecutor shall sum up his case and the accused or his pleader shall be entitled to reply. Provided that where any point of law is raised by the accused or his pleader, the prosecution may, with the permission of the Judge, make his submissions with regard to such point of law.

**235. Judgment of acquittal or conviction-**

(1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case. (2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360, hear the accused on the question of sentence, and then pass sentence on him according to law.”

11. A combined reading of sections 231 to 235 would show that section 232 and section 235 are distinct in their nature, scope and ambit and also the purpose for achieving of which they stand on the statute book. Section 232 confers power on the Court which is only of acquittal and not of conviction, upon consideration of prosecution evidence and statement of the accused, whereas, section 235 vests a power in the judge to render a judgment of acquittal or conviction upon consideration of entire evidence of prosecution and defence and other circumstances, and also pass a sentence

according to law, when the finding recorded is of conviction. While exercising power under section 232, it would not be permissible for the sessions court to say anything about guilt of the accused or his conviction. Such is not the case with the power under section 235 and therefore, that power is much wider than the power under section 232. Section 232 power can be exercised at a stage when prosecution evidence has been recorded and the accused has been examined by the Court, which would be obviously under section 313 Cr.P.C. If the judge, after taking evidence of the prosecution, examining the accused, hearing the prosecution and the defence, considers that there is no evidence that the accused committed the offence, the judge is required to pass an order of acquittal. For recording such an order of acquittal, the judge would have to state reasons, but if the judge considers that it is not a case of no evidence at all, it would be enough for the judge to pass a small order on the order sheet or the charge sheet, which is usually marked as Exhibit 1, indicating that it is not a case of no evidence whatsoever and proceed further according to the mandate of section 233 and onwards. The reason being that such an order would be subject to appeal under section 378 Cr.P.C. and a long order is likely to be criticized on the ground the judge has foreclosed the trial and sealed the fate of the accused. Even while recording an order of acquittal, it would not be permissible for the judge to consider sufficiency or otherwise of the prosecution evidence, as the sole criteria for passing an order under section 232 is of absence of evidence.

against the accused. This is not so for exercising the power to pass a judgment of acquittal or conviction under section 235. Its scope and ambit is wider inasmuch as this section appears after the stage when defence evidence is over. While passing a judgment of acquittal or conviction under section 235, the judge is required to hear the arguments and points of law, if any, and also consider the entire prosecution case from the view point of reliability and sufficiency of the evidence or otherwise.

12. Having understood the distinguishing features of sections 232 and 235 Cr.P.C., it would not be difficult now to discern the purpose for which these two provisions have been made by the Legislature. The purpose of section 232 is to enable the judge to put end to the trial at the earliest opportunity, if it is possible in the facts and circumstances of the case and thus avoid harassment of the accused which he would otherwise experience by going through the full length of the trial which in any case is going to end in acquittal. The purpose of section 235 is different. It's not to curtail the length of the trial. It is to allow the trial to go full length and reach its end, which could be of conviction or acquittal, and not just the acquittal and that too upon consideration of pros and cons of entire evidence available on record. Here question of reduction of time of trial is not so much involved as is the issue of affording of complete opportunity to the accused to defend himself, which is necessitated by the circumstances appearing in the

prosecution evidence against him. I am supported in this regard by the view taken by the Division Bench of this Court in the case of **Hanif Banomiya Shikalkar Vs. State of Maharashtra**, 1981 CRI.L.J 1622, wherein it is observed that the object of section 232 Cr.P.C. is to expedite the conclusion of the sessions trial and, at the same time, to avoid unnecessary harassment to the accused by calling upon him to adduce evidence.

13. So, it becomes clear that power under section 232 has been conferred upon a sessions judge for its being exercised at an intermediate stage with a view to curtail the length of the trial and enable the judge to do something there and then which even otherwise he would have to do at a later stage, if the trial of the case is stretched to further stages. In this way, the ordeal of the accused to go through the travail of the trial is avoided and judicial time, which is ultimately public time, is also saved. When it is seen that there is no evidence at all against the accused, any further trial of the accused would only be an exercise in futility and therefore, the legislature has provided for a stage where the judge would have to consider possibility of recording an order of acquittal, if he is satisfied that there is no evidence available against the accused. The only requirement is that the judge must consider the prosecution evidence and examine the accused and hear the prosecution as well as the defence on the need for acquitting the accused at that stage. Such an order can be passed even in respect of some of the

offences charged against the accused and for the remaining offences charged against the accused, further trial can be directed to take place.

14. It is the contention of the learned Special Public Prosecutor that although the order of acquittal under section 232 could be recorded in respect of only some of the offences and not all the offences charged against the accused, it cannot be recorded at a stage when the entire prosecution evidence is not recorded. The argument is opposed by the learned counsel for the respondents, who contend that such a prohibition cannot be read in section 232 because it is not expressly contained therein. I find myself in complete agreement with the said submission of the learned counsel for the respondents. Firstly, there is no express bar provided under section 232 stating that the order of acquittal cannot be recorded at a stage when only some of the prosecution witnesses are examined and secondly, if such a bar is to be read into section 232, it would only contribute to frustrating the very purpose for which section 232 power has been conferred upon the judge. If, whatever prosecution evidence available on record clearly establishes the fact that the accused has not committed all or some of the offences, and the prosecution does not seek to lead further evidence to unsettle such clear inference, waiting for the prosecution to lead remaining evidence on some other points would only be an exercise in futility. Of course, such a situation would be rare but as and when it arises, the Judge can always consider

exercise of section 232 power at an intermediate stage of completion of only some of the prosecution evidence. However, it must be exercised extremely carefully and sparingly, keeping in mind all the time that the power rests on the sole criterion of no evidence against the accused and it is not permissible to appreciate and analyse the evidence from the view point of ascertaining its sufficiency or reliability. The evidence can be sifted only for the limited purpose of finding out whether the case is such as discloses no evidence that the accused has committed the offence.

15. In the instant case, prosecution evidence showed that the Company, GICHF2, for whom respondents no.1 and 2 were working, as Senior Vice President and Branch Manager respectively at the relevant time, was not a Government company and these respondents were not performing any public duty in respect of the criminal acts alleged against them. It was also not the case of the prosecution that there was some other evidence available which the prosecution intended to tender before the Trial Court in order to prove the point that these respondents were public servants performing public duty at the relevant time. With such evidence being there on record and in these circumstances one has to say that so far as concerned the case of the prosecution that respondents no.1 and 2 were public servants who committed offence <sup>punishable</sup> permissible under sections 13(2) r/w 13 (I) (d) P.C. Act, waiting for the prosecution to examine all of its witnesses on some other

Correction  
carried out  
as per order  
dated 10/3/2016  
John

aspects would only be an exercise in futility. For the said offence, the case would be one of no evidence at all and any further trial in respect of it, would be no less than an abuse of process of law, and also a waste of judicial time. Therefore, I do not see anything amiss or illegal in exercise of the power under section 232 by the Sessions Court at an intermediate stage in this case. There is no reason for me to interfere with the impugned order. However, a slight modification in the order seems necessary. The learned Special Judge has, instead of sending the record of the case to the concerned Court, given liberty to the prosecution to proceed against the two accused, that is, respondents no.1 and 2 for the offences punishable under sections 420 and 120-B of I.P.C., and this would require correction.

16. In the circumstances, the application is dismissed. However, it is directed that record of Special Case No.4/2005 be sent to the Court of Chief Judicial Magistrate, North Goa, Panaji for proceeding against respondents no.1 and 2 for offences punishable under sections 420 and 120-B of I.P.C., in accordance with law. Respondents no.1 and 2 shall appear before the learned Chief Judicial Magistrate on 21/3/2016 at 10 a.m.

S. B. SHUKRE, J.

Ap/-