

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**CRIMINAL REVISION APPLICATION NO. 81 OF 2015**

1. Shri Parameshwaran Subramani,  
Aged 70 years, S/o Late L.P. Aiyar,  
Commissioner of Central Excise and  
Customs, (Retd), 7/1 Campbell Cross  
Road, Vivek Nagar, Bangalore -  
560 047.
  2. Shri Dharmendra Gautam, Aged 46  
years, S/o Shri Ram Pyare Singh,  
Inspector of Central Excise Goa, r/o  
GPD - 4/5, Government Quarters,  
Opp. Saldanha Colony, Alto-Porvorim,  
Goa - 403 521.
- Petitioners/  
.... Applicants

Versus

State, Through Central Bureau of  
Investigation, Anti Corruption Branch,  
having office at F-1, Type VI, G.M.C.  
Quarters, NH-17, Bambolim, Goa.

.... Respondent

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Mr. Girish Sardesai with Mr. A. Carvalho, Advocates for the  
Petitioners/Applicants.

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

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

**RESERVED ON:- 8<sup>th</sup> JANUARY, 2016**

**PRONOUNCED ON:- 2<sup>nd</sup> FEBRUARY, 2016**

**JUDGMENT:**

Heard. Admit. Heard finally by consent.

2. By this application, the applicants have challenged the correctness and legality of the order dated 06.08.2015 passed by the Special Judge, Panaji in Special Case No. 1/2013 thereby directing framing of charge for offences punishable under Section 120-B of I.P.C. and Section 12 of the Prevention of Corruption Act, 1988.

3. Applicant No. 1, is a Commissioner of Customs and Central Excise, Bangalore and applicant no. 2 is the Inspector of Central Excise, Goa. Applicant no. 1, was facing an enquiry on the allegation that he together with some other persons during the period of the year 1996-97, colluded with some of the firms and purchased 48 ready flats for Customs Department, Goa at an exorbitant cost of Rs.3,55,69,150/-, which amount was much higher than the actual market rate and thereby committed gross misconduct and caused loss of Rs.1,04,00,000/- to the Department. Because of pendency of this enquiry, applicant no. 1 faced some difficulty in securing promotion to a higher post without any delay and was desirous of some how or the other

getting it closed. He, therefore, sought help of applicant no. 2, who knew the enquiry officer, Shri R.A. Yadav, Police Inspector, C.B.I., Goa, for the said purpose.

4. On 24.09.2002, applicant no. 2 met Shri R.A. Yadav and told him that applicant no. 1 was desirous of closure of the enquiry against him and he wanted to meet him in Ruchi Restaurant on 25.09.2002 and give him money for showing favour to applicant no. 1 by closure of the enquiry. As Shri R.A. Yadav was unwilling to accept the money, he lodged a complaint on 25.09.2002 against both the applicants with the Superintendent of Police, C.B.I., Goa. It was decided to lay a trap on 25.09.2002 at Ruchi Restaurant and catch both the applicants red handed. There was a meeting between Shri R.A. Yadav, the complainant and the applicants on 25.09.2002 as planned at the said restaurant. There was, however, no money delivered to the complainant in that meeting and that only offer to pay amount of Rs.1,00,000/- was made by applicant no. 1 to the complainant. Applicant no. 1 told the complainant that he was not having then any money and was also going to Bangalore the next day. Applicant no. 1 then enquired from the complainant, if, the amount could be paid through applicant

no.2. Applicant no. 2 told the complainant then that he would explain the things later by calling him on telephone. With this, the meeting was over and its panchanama was drawn out. Thereafter, in the night of the same day, applicant no. 2 telephonically called up the complainant to inform him that he would come to complainant's residence next day morning of 26.09.2002, to which complainant agreed. Again trap preparations were made. Applicant no. 2, as decided, did visit residence of the complainant in the morning of 26.09.2002, but the money transaction did not take place. Applicant no. 2 informed the complainant that he would return with amount of Rs.50,000/- in the afternoon as the amount of Rs.50,000/- was being withdrawn by applicant no. 1 from his bank account and rest of the offer money would be arranged to be fetched from Bangalore.

5. Meanwhile, applicant no. 1 withdrew the amount of Rs.50,000/- from his savings bank account. As promised by applicant no. 2 to the complainant, the applicant no. 2 again visited residence of the complainant in the afternoon of 26.09.2002 and delivered to the complainant the amount of Rs.50,000/-. Members of the raiding party who were hiding and

lying in wait, rushed to the hall of the said residence and detained the applicant no. 2, who on enquiry, admitted to giving of the money to the complainant. Further action was taken. Second panchanama was prepared. Investigation was carried out.

6. After completion of investigation, a charge sheet dated 31.10.2003 came to be filed against both the applicants alleging that the applicants entered into a criminal conspiracy to offer bribe of Rs.1,00,000/- to the complainant for doing favour to applicant no. 1 by closing the enquiry that was being conducted by the complainant. The charge sheet was filed for offences punishable under Section 120-B of I.P.C. and Section 12 of the Prevention of Corruption Act, 1988 (hereinafter referred to as P.C. Act, for short). It was registered as a Special Case No. 5/2003.

7. All these facts forming the foundation of prosecution case against the applicants, were considered by the Court of Special Judge at the stage of taking cognizance of the charge sheet and it was noticed by the learned Judge that no sanction under Section 19 of the P.C. Act was obtained by the

prosecution before or at the time of filing of the charge sheet. The learned Judge, therefore, came to the conclusion that no cognizance of the offences could be taken and accordingly by order passed on 06.01.2006 discharged both the applicants.

8. The order dated 06.01.2006, when challenged before this Court by the respondent-State, was maintained by an order passed on 23.11.2006 in Criminal Revision Application No. 49/2006. The matter was carried to Hon'ble Apex Court, by preferring SLP (CRL.) No. 1735/2007. Hon'ble Apex Court, by order passed on 11.09.2009 in Criminal Appeal No. 1758/2009 arising out of said SLP held that for the purpose of taking cognizance of the offence punishable under Section 12 of the P.C. Act, sanction as contemplated under Section 19 of the P.C. Act was not required and accordingly quashed and set aside the orders discharging the applicants. Thereafter, the learned Special Judge considered the case from the view point of framing of charge. There was also previously filed application dated 21.03.2005 by applicant no. 1 requesting the Special Court to direct playing of alleged tape recorded conversation in open Court to enable the applicants to effectively rebut the prosecution submission that *prima facie* case had been

established, which was pending for consideration. It appears that this application was not decided and the Special Court went ahead in framing of the charge by passing an order in that regard on 07.06.2010. This was also challenged before the High Court on the ground that no hearing was granted to the applicants. This Court, by an order passed on 09.10.2012 in Criminal Revision Application No. 6/2012, set aside the order dated 07.06.2010 of the Special Judge, C.B.I. Court and directed the learned Special Judge to hear the applicants before passing the order regarding framing of the charge and also consider the application dated 21.03.2005 and pass an appropriate order.

9. It appears that the application dated 21.03.2005 was considered by the learned Special Judge after hearing both parties and by an order passed on 22.05.2015, he rejected the application. Thereafter, learned Special Judge heard the applicants on the question of framing of charge and by an order passed on 06.08.2015 directed framing of charge for offences punishable under Section 120-B of I.P.C. and Section 12 of the P.C. Act against both the applicants. Being aggrieved by the said order, the applicants are before this Court in this Criminal

Revision Application.

10. Mr. Girish Sardessai, learned Counsel for the applicants submits that the impugned order is illegal and perverse as it deals with *prima facie* aspect of the whole case, which is fundamental to making up of mind to frame charge for an offence alleged against an accused, in a very casual manner. He submits that the order is not only cryptic but also non reflective of application of mind to the facts of the case. He points out from some of the paragraphs of the impugned order as to how the learned Judge failed to apply his mind and simply relied upon the order dated 06.01.2006 passed previously by the same Court wherein the then Special Judge, expressed an opinion about existence of *prima facie* case establishing constitution of the offences alleged against the applicants. He submits that when this order as well as the order confirming it passed by the High Court were quashed and set aside by Hon'ble Supreme Court, the finding recorded about existence of *prima facie* case against the applicants also stood quashed. He further submits that even subsequent order dated 07.06.2010 regarding framing of charge against the applicants was quashed by the High Court by its order passed on 09.10.2012 in Criminal

Revision Application No. 6/2012 and a direction was issued for considering the entire matter afresh. With such facts present on record, learned Counsel for the applicants further submits, learned Special Judge, should not have referred to the order dated 06.01.2006, much less relied upon it. The fact that he relied on it only shows absence of consideration of factual aspects of the case and independent application of mind to the facts of this case, so submits the learned Counsel.

11. Learned Counsel further submits that no proper hearing was granted to the applicants before passing the impugned order, in particular, an opportunity for rebutting the assertion of the prosecution about existence of *prima facie* case for the alleged offences against the applicants, was not granted. He submits that if the alleged tape recorded conversation had been played in the open Court, truth would have been revealed. But, this was not done by the learned Judge. He also submits that no reliance could have been placed upon the statement of witnesses and particularly on the version of Shri R.A. Yadav, who is a complainant as well as an investigator. According to him, the whole case is concocted and fabricated and the applicants are unnecessarily being harassed. So, he submits,

the impugned order is illegal and deserves to be quashed and set aside.

12. Mr. Joseph Vaz, learned Special Public Prosecutor for the respondent, opposing the application, submits that the learned Special Judge has considered the entire material available on record and by applying his mind to all the relevant facts has rightly come to the conclusion that there are sufficient grounds for proceeding further in the matter and accordingly has passed the impugned order. He submits that by no means the impugned order can be termed as cryptic order. He further submits that reasons for passing the impugned order have been stated by the learned Special Judge in sufficient details in the impugned order. He also submits that although, the learned Special Judge may have referred to the order passed on 06.01.2006, the learned Special Judge does not seem to have placed reliance on the said order and this is evident from the observations made in paragraph 21 of the impugned order. He further submits that the reasons appearing in paragraph 21 and thereafter would show that there was complete application of mind and independent decision making process consciously carried out by the learned Special Judge. Learned Special Public

Prosecutor further submits that the alleged tape recorded conversation not being audible has not been considered by the learned Special Judge and the learned Special Judge is of the opinion, and rightly so, that even without the said conversation, there is enough material to disclose essential ingredients of offences alleged against both the applicants.

13. Learned Special Public Prosecutor further submits that it is well settled law that at the stage of framing of charge, the Court is not required to marshal the evidence, although the Court may sift the relevant evidence collected by the prosecution for the limited purpose of examining the possibility of proceeding further in the matter. He submits that this well settled principle of law has been properly applied by the learned Special Judge in passing the impugned order. He also submits that the argument relating to Shri R.A. Yadav being the complainant and investigator would have to be considered on the merits of the case after full evidence is available on record which would be possible only at the time of conclusion of trial. Thus, he submits that the application is devoid of any substance.

14. Learned Counsel for the applicants has placed reliance upon the following cases:-

(i) **Ramdeo and Another Vs. the State of Rajasthan**, 1993 WLN UC 76;

(ii) Unreported judgment of the High Court of Jharkhand at Ranchi, in the case of **Irfan Shekh @ Irfan and Others Vs. the State of Jharkhand**, passed on 15.12.2014 in Cr.Rev. No. 1131/2013;

(iii) Unreported judgment of the Karnataka High Court, in the case of **Harisha Vs. the State of Karnataka**, passed on 12.02.2015 in Criminal Revision Petition No. 911/2014 and

(iv) Unreported judgment of the High Court of Delhi, in the case of **Ashok Kumar Aggarwal Vs. Central Bureau of Investigation and Others**, dated 13.01.2016 passed in W.P. (CRL) No. 1401/2002, CRL.REV.P.338/2014, CRL.M.A.9095/2014 and CRL. M.A. 10597/2014.

15. Learned Special Public Prosecutor has relied upon the following cases:-

(i) **State of Maharashtra Vs. Ishwar Piraji Kalpatri and Others**, (1996) 1 SCC 542 and

(ii) **State of Madhya Pradesh Vs. S.B. Johari and Others**, 2000 CRI. L.J. 944.

16. Ratio of all the above referred cases, barring the case of **Ashok Kumar Aggarwal** (supra), is that at the time of framing of charge or closing of criminal proceeding at initial stage what is required to be done is to consider facts of the case taken at their face value, discuss the factual aspects and by applying it's mind to them, the Court should see as to whether or not the facts of the case disclose basic ingredients of the offences alleged against the accused while remembering all the time that in doing so it is not permissible for the Court to appreciate or marshal the evidence as if findings are being recorded on merits upon full trial of the case. The Court, however, may examine and sift the material for the limited purpose of ascertaining as to whether or not, the material is

sufficient for proceeding further in the case against the accused, but Court should not analyse and appreciate the material from the view point of it's credibility or otherwise. These principles of law would have to be borne in mind while considering legality, correctness or propriety of the impugned order.

17. If one goes through the complaint dated 25.09.2002, panchanama no. 1 dated 25.09.2002, panchanama no. 2 dated 26.09.2002, seizure memo dated 26.09.2002 showing seizure of original slip relating to withdrawal of Rs.50,000/- from account No. 01190029883 of applicant no. 1 maintained with State Bank of India and other relevant material available on record, copies of which are forming part of the paper book, one would at once find that there is enough material on record which, when taken at its face value and accepted as it is, would show that basic ingredients *prima facie* constituting offences under Section 120-B of I.P.C. and Section 12 of the P.C. Act are established. The contents of the complaint dated 25.09.2002 as well as the contents of both the panchanamas *prima facie* show that there was not only an offer made by both the applicants as a part of the criminal agreement to influence the complainant to obtain favorable result in the on going enquiry, but also delivery of

amount of Rs.50,000/- to the complainant in order to make him accept the said amount as a gratification other than legal remuneration and as a motive or a reward for making favour to applicant no. 1. It was a different matter that the said offer as well as the delivery of bribe money were not *prima facie* accepted by the complainant or otherwise, there would not have been any complaint lodged by him in the first place and the trap laid for ensnaring the applicants in the second place.

18. No doubt, Shri R.A. Yadav was himself the complainant as well as Inspector of the C.B.I. who was conducting the preliminary enquiry against the applicant no. 1 on the allegation of commission of misconduct by him in purchasing flats at exceedingly higher rates than the actual prevailing prices. But, as held in the case of **Ishwar Piraji Kalpatri** (supra), this is not the stage to consider this aspect of the matter as it is something which is required to be tested on merits which would be possible after detailed prosecution evidence is brought on record. For the purpose of examining legality or otherwise of the impugned order, suffice it to say that Shri R.A. Yadav himself was a *prima facie* victim of the criminal conspiracy hatched against him by the applicants and,

therefore, his filing of the complaint inspite of being an Enquiry Officer for the preliminary enquiry conducted against the applicant no. 1 is natural and should not raise eyebrows of anyone.

19. Much has been said about the tape recorded conversation not having been played in open Court thereby causing gross prejudice to the right of the applicants to rebut the prosecution case at the stage of framing of charge. The argument cannot be accepted for the reason that the learned Special Judge, as seen from the impugned order, has not relied upon the tape recorded conversation, it being not audible and there being enough other material *prima facie* showing commission of the alleged offences by the applicants.

20. Similarly, the argument that the learned Special Judge has not applied his mind to the facts of the case or that he has blindly followed the observations made by the then Special Judge in the order dated 06.01.2006 has to be found to be without substance as the learned Special Judge has indeed considered the entire material available on record independently to record his satisfaction about sufficiency of grounds to proceed

further against the applicants in this case. The learned Judge may not have given detailed reasons, but that is not the requirement of law at the stage of framing of charge. All that the Court has to do is to take an overall view about *prima facie* commission of the offence or otherwise by the accused. This has to be done by the Court by examining the *prima facie* worth of the relevant material taken at its face value and considering rival submissions, in terms of the spirit of Sections 227 and 228 Cr.P.C. No detailed enquiry by marshalling evidence is permissible. It is, therefore, obvious that an order passed under Section 227 or 228 Cr.P.C., usually would not contain detailed reasons. In any case, what matters in law is the weight of the order and not its length.

21. It is true that the learned Special Judge has found that his predecessor's observations made in the order dated 06.01.2006 about existence of *prima facie* case against the applicants were not challenged by the applicants and that this Court as well as Hon'ble Apex Court have not observed that same are not correct. Although, observing so was really not necessary, given the fact that the learned Judge was directed to consider the matter afresh, nevertheless, the observation has

not impacted the overall consideration of the material by him independently and *dehors* those remarks, which is seen from his observations made in paragraphs 21 and onwards of the impugned order. They constitute the learned Judge's reasons for the order and the order by no means could be said to be cryptic. A cryptic order being obscure in meaning is different from an order based on reasons which is characterised by clarity of thought and unambiguous explanation of what weighed with the maker of the order. The impugned order is a reasoned order, though not profusely reasoned. But as said earlier, in such matters giving of detailed reasons is not the criterion. It is rather better avoided for fear of transgressing into the field of appreciation of evidence. That is something forbidden under the law in such matters. What is more important is reflections in the order regarding consideration of the material at its *prima facie* worth and taking a conscious decision by applying mind to the relevant facts of the case. Following of these parameters is manifest in the impugned order. The argument of the learned Counsel for the applicants in this regard is, therefore, rejected.

22. Learned Counsel for the applicants has referred to me the case of **Ashok Kumar Aggarwal** (*supra*) to support his

contention that without there being sanction granted to prosecute a public servant for an offence punishable under Section 12 of the P.C. Act or under Section 120-B of I.P.C. as contemplated under Section 19 of the P.C. Act or under Section 197 Cr.P.C., the Court would have no jurisdiction to take cognizance of the case.

23. Sanction under Section 19 of the P.A. Act is required only when the alleged offences are punishable under Sections 7, 10, 11, 13 and 15 of the P.C. Act. Such a sanction is not necessary when the alleged offence is punishable under Section 12 of the P.C. Act. Section 12 offence is independent and does not depend for its being made out on commission of the offences punishable under Section 7 or other Sections referred to in Section 19 of the P.C. Act. The law in this regard is no longer *res integra*. In Criminal Appeal No. 1758/2009 arising from SLP (CRL.) No. 1735/2007, **State through C.B.I. Vs. Parmeshwaran Subramani and Another**, arising from this very case and decided on 11.09.2009, Hon'ble Apex Court has laid down that sanction under Section 19 of the P.C. Act is not required for the offence punishable under Section 12 of the said Act. As regards the requirement of Section 197 Cr.P.C. sanction

for the offence punishable under Section 120-B of I.P.C., learned Special Judge has found, by relying on the case of **Subramaniam Swamy Vs. Manmohan Singh and Another**, (2012) 3 SCC 64, that no such sanction is necessary as the act of entering into criminal conspiracy cannot be said to be done, *prima facie*, in discharge of official duty and rightly so.

24. In view of the above, I find no merit in this Criminal Revision Application. There is no illegality or perversity or impropriety seen in the impugned order. Revision Application deserves to be dismissed. Criminal Revision Application stands dismissed.

**S. B. SHUKRE, J.**

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