FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.170 OF 2000

Superintendent of Police,
CBI, Mumbai-400001. ...Applicant.
vs.
Shri. T.V.Ganesh nd anr. ...Respondents.

Ms. Rebecca Gonsalvez for the Applicant.
Mr. Rohan D'souza i/by Umesh Shetty & Co. for Respondent Nos. 5 and 6.
Mr. Santosh Dalvi for Respondent Nos. 3 and 7.
Mr. Deepak Thakare, APP. for the State.

CORAM : A.S.GADKARI, J.
DATE : 17th March, 2016

P.C.

Heard the learned counsel for the respective parties.

2) The present revision is directed against the Judgment and Order dated 12.5.1999 passed by the Special Judge for Greater Mumbai in Special Case No.5 of 1992 thereby discharging the respondents from all the charges levelled against them.

3) The record discloses that as the applicant could not serve respondent Nos. 1 and 2 herein who are the original accused Nos.2 and 3, the present revision application stood dismissed as against them, by an order dated 22.6.2009.

4) The respondent Nos.3 to 7 are the original accused Nos. 1 and 4 to 7 respectively in Special Case No.5/1992. The respondent Nos. 3 to 7 alleged to have been committed an offence under

Sections 120B read with Section 420 read with 34 of the Indian Penal Code and under Sections-5(1)(d) read with 5(2) and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

It appears from the record that the original accused Nos. 2 and 3 i.e. respondent Nos. 1 and 2 herein have paid the alleged misappropriated and/or defalcated amount to the respective banks and had obtained No Dues Certificate during the pendency of the said case. The respondent Nos. 3 to 7 thereafter moved discharge application on the ground that the alleged defalcated amount had been already paid by the firms of the original accused Nos. 2 and 3 i.e. respondent Nos. 1 and 2 herein and therefore, no offence of cheating could be attributed against all the accused persons. The respondents also relied on the decision of the Supreme Court reported in 1996 Cri. L.J. 3501 in the case of Central Bureau of Investigation, SPE, SIU, New Delhi Vs. Duncans Agro Industries Ltd.Calcutta**.** The learned Trial Court thereafter in the interest of the State issued sue moto summons to the bank officers and examined them on oath and after the said witnesses deposed that there are no dues from the respondents herein, allowed the discharge application and discharged all the original accused Nos. 1 to 7 from the said Special Case. In view of the discharge of all the accused persons, the learned Trial Court also ordered that the Special Case No.5/1992 also stood disposed off. The said Judgment and order dated 12.5.1999 is impugned herein.

5) The learned Special P.P. submitted that in an application for discharge under Section-227 of Cr. P .C. the learned Special Judge ought not have discharged the respondents for extraneous

reasons and without taking into consideration the evidence available on record. She further submitted that the learned Trial Court adopted novice method while allowing the discharge application of the respondents. She further submitted that the learned Trial Court did not take into consideration the say of the CBI opposing the discharge application preferred by the respondents. She submitted that the method adopted by the Trial Court is in contravention of the ratio laid down and the guidelines issued by the Constitution Bench of the Supreme Court in the case Gian Singh vs. State of Punjab and anr. reported in (2012) 10 SCC 303. She further submitted that even if the settlement is arrived at by and between creditor and the debtor the offence committed as such does not come to an end. In support of her contention, she relied on the Judgment of the Supreme Court in the case of Smt. Rumi Dhar vs. State of West Bengal and another reported in 2009(3) Supreme 261. She lastly prayed that the present revision may be allowed and the Special Case No.5/1992 may be restored on the file of the learned Trial Court.

6) The learned counsel appearing for the respondents vehemently opposed the present revision application. He submitted that the Trial Court after taking into consideration the ratio laid down by the Supreme Court in the case of CBI vs. Duncans Agro Industries Ltd. (supra) has discharged the accused persons i.e. respondents herein. He further submitted that the case is of the year 1992. The impugned order was passed in the year 1999 and the respondent Nos.5 and 6 who at the relevant time were bank officers are now in their late 70's. That, considering the said aspect, this

court should not interfere with the Judgment and order passed by the Trial Court and the present revision may be dismissed.

7) At the out set, it is to be noted here that in the case of Duncans Agro (supra) charge was under Sections 405 and 420 of the I.P.C. and the provisions of Prevention of Corruption Act were not applied to the said case. The Supreme Court in the said case held that even if an offence of cheating was prima facie constituted, such offence was a compoundable offence and compromise decrees passed in the suits instituted by the banks amounts to compounding of the offence of cheating. In the present case, the provisions of Prevention of Corruption Act, 1988 have been applied to the offence and in view of the facts of the present case the decision of Supreme Court in the case of Duncan's Agro (supra) is not applicable here. It is the allegation of the prosecuting agency that the respondents who were bank officers in connivance with other accused persons and by using their official position as public servants have indulged into the act of criminality which gave rise of filing of the complaint by the concerned which after investigation has culminated into the Special Case No.5/1992. Even if the original accused Nos. 2 and 3 who are not the public servants, have already paid the entire amount alleged to have been defalcated, to the bank, the offence alleged does not come to an end. In fact the offence alleged against the accused persons being an offence against the society and the allegations contained in the FIR have been investigated by the CBI, the bank could not have been entered into any settlement at all. The CBI did not file any application for withdrawal of the case. The CBI after investigation found sufficient material in the complaint and

therefore, filed charge-sheet against the respondents. The learned Trial Court instead of taking into consideration some extraneous reasons ought to have taken into consideration the material available on record in the form of statements of witnesses while considering the application for discharge preferred by the respondents and then ought to have proceeded to pass appropriate order under Section 227 of the Cr. P. C. In the case of Smt. Rumi Dhar (supra) the Supreme Court has held that a Judgment in a Civil Proceeding and that too rendered on the basis of settlement entered into by and between the parties, would not be of much relevance in a criminal proceeding. The Supreme Court has further held that complicity of the accused persons was required to be taken into consideration for the purpose of determining the application for discharge after considering the realistic view of the matter. The Constitution Beach of the Supreme Court in the case of Gian Singh (supra) in Para 58 has held that in respect of serious offences like murder, rape, dacoity etc. or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. In a recent decision of the Supreme Court in the case of CBI vs. Maninder Singh reported in AIR 2015 SC 3657, it is held that, merely on the ground that respondent accused has settled amount with bank, the criminal proceedings initiated against him cannot be quashed. It is further held that, to quash the proceedings merely on the ground that the accused has settled the amount with the bank would be a misplaced sympathy. If the prosecution against the economic offenders are not allowed to continue, the entire community is aggrieved.

8) In view of the above, I find that the judgment and order passed by the learned Trial Court is contrary to the settled principles of law and has been rendered on impermissible and extraneous material. The Trial Court has not taken into consideration the material i.e. the evidence of the witnesses and other relevant documents and has proceeded to pass the impugned judgment and order. In view of the above, the Judgment and order dated 12.5.1999 is hereby quashed and set aside. The Special Case No.5/1992 is restored on the file of the Special Judge for CBI, Greater Mumbai.

9) The learned counsel appearing for the respondents submitted that as the Special Case is of the year 1992, the Trial Court may be directed to expedite the hearing of the same. The learned Special Judge for CBI seized of the Special Case No.5/1992 is hereby directed to conclude the trial of Special Case No.5/1992 on or before 31.12.2016. The learned Special PP appearing for CBI on instructions submitted that the CBI will not take adjournments before the Trial Court and shall cooperate to conclude the trial within the stipulated period. The said statement is accepted.

10) Revision is allowed in the aforesaid terms.

(A.S. GADKARI, J.)