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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATIION NO. 620 OF 2014

K.V. Gururaj Aithal ..Applicant

Vs.

Union of India & Anr. ..Respondents

Mr. Kunal Dalal i/b Dimple Shah for Applicant.
Ms. Rebecca Gonsalvez for Respondent No.1.
Ms. P.P. Bhosale, APP for State.

CORAM: A.S. GADKARI, J.

DATE : 8th August 2016.

P.C.

1 The applicant, original accused No.9 in CBI/ACB/Mum FIR No.BA1/2006/A0014 of 2006 has preferred the present application under Section 482 of Cr. P.C. challenging the Order dated 16th October 2012 passed by the learned Special Judge, CBI.ACB, Greater Mumbai below Exh.61 in Special Case No.40 of 2007, rejecting the application filed by the applicant for discharge under Section 227 of Cr. P.C.

2 The record reveals that it is a specific case of CBI/ACB that the applicant in pursuance of conspiracy entered into by and amongst the other accused persons secured the loan of Rs.11,20,000/- for purchase of Flat No.101, Sagarika Society, Plot No.5, Juhu Tara Road, Mumbai-400049. The said flat was shown to have been purchased in the name of Smt. Renita Motwani. The loan is availed from the Syndicate Bank. The applicant stood as a guarantor to the said Smt. Renita Motwani. The Bank Officials found that the said flat No.101 at the aforesaid address is not in existence. According to the prosecution by submitting false documents, loan was availed from the bank and caused monetary loss to the bank.

3 The learned counsel for the applicant submitted that the applicant only stood as a guarantor to the said Smt. Renita Motwani and he was not aware of the other transaction and/or illegal pecuniary benefits received by the said Smt. Motwani. He submitted that the applicant being Chartered Accountant was knowing the said co-accused Smt. Renita Motwani, and therefore stood guarantor to her. It is to be noted here that the bank officials and the Investigating Agency during the course of investigation, found that the flat on which the loan was availed and the applicant stood as a guarantor itself is not in existence, however, loan was availed form the bank by showing fictitious property i.e. flat No.101, Sagarika Society.

4 At this stage it will be useful to to refer to the celebrated

Judgment of the Supreme Court in the case of **R.S.Nayak vs. A.R.Antulay and anr. reported in AIR 1986 SC 2045** wherein while dealing with the provisions of Sections 227, 239 and 245 of Cr.P.C., in unequivocable terms in Para 44 it has been held as under.

> *"The Code contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on police report are dealt with in Section 245. The three sections contain some what different provisions in regard to discharge of the accused. Under Section 227, the trial Judge is required to discharge the accused if he 'considers that there is no sufficient ground for proceeding against the accused.' Obligation to discharge the accused under Section 239 arises when "the Magistrate considers the charge against the accused to be groundless." The power to discharge is exercisable under Section 245(1) when "the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction...." It is a fact that Sections 227 and 239 provide for discharge being ordered before the recording of evidence and the consideration as to whether charge has*

to be framed or not is required to be made on the basis of the record of the case, including documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the two parties to be heard. The stage for discharge under Section 245, on the other hand, is reached only after the evidence referred to in Section 244 has been taken. Notwithstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of "prima facie" case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the trial Court is satisfied that a prima facie case is made out, charge has to be framed."

A further reference can also be made to the decision of the Supreme Court in the case of **State of Maharashtra Vs. Soma Nath Thapa reported in (1996) 4 SCC 659** wherein the Supreme Court has held that, if there is ground for framing charge against accused who has committed crime it can be said that the prima facie case has been made out against the accused. It has been further held that even if the Court finds that the accused might have committed an offence, it can frame charge. The Supreme court has further clarified in the said case that at the stage of framing of charge probative value of the statement cannot be gone into. The Supreme Court in the case of **Palvinder Singh vs. Balwinder Singh and others reported in (2008) 14 SCC 504** while dealing with the provisions of Section 227 of Cr. P.C., in para-13 has held that, the charges can also be framed on the basis of strong suspicion. That Marshalling and appreciation of evidence is not in the domain of the Court at that point of time. Thus, it is clear that the Supreme Court has held that while considering the discharge application, the Court has to take into consideration the prima facie as made out by the complainant.

5 In view of the aforestated legal position of law, and after taking into consideration the documents annexed to the present application and evidence on record, I am of the considered view that a strong prima facie case to frame charge against the applicant is made out. It is a specific and precise case of the prosecution that the applicant while entering into conspiracy with other accused persons caused financial loss to the Nationalised Bank in respect of property for which he stood as guarantor which in fact was not in existence. Therefore a safe inference can be drawn that the applicant by entering into illegal agreement with other accused persons, has committed the present offence under Section 120B, 420, 468 and 471 of Indian Penal Code read with Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. In my considered view a strong prima facie case is made out to frame charge and to proceed against the applicant.

6 In the result, the impugned Judgment and Order dated 16th October 2012 passed by the learned Trial Court does not suffer from any error either in law or in fact and requires no interference at the hands of this Court. I find no merits in the present application and the same is accordingly dismissed.

(A.S. GADKARI,J.)