IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.488 OF 2014

Shri Sudhakar Laxminarayana Gande ... Applicant

Vs.

Central Bureau of Investigation
B.S. & F.C., Mumbai & anr. ... Respondents

WITH
CRIMINAL WRIT PETITION NO.3442 OF 2013

Central Bureau of Investigation
B.S. & F.C., Mumbai & anr. … Petitioner

Vs.

Basudev Das Gupta & anr. ... Respondents

Mr.Subodh Desai for the Applicant in APL/488/2014

Mr.Sandeep K. Shinde, Spl. P.P., with Mr.Yogesh M. Nakhwa, Addl.P.P. For CBI

Mr.V.B. Konde-Deshmukh, APP, for State

Mr.Kapil P. Dave for Resp. No.1 in WP/3442/2013

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: DECEMBER 19, 2016

P.C. :

1. Criminal Application No.488 of 2014 is filed by the Applicant challenging the order dated 20th March 2014 passed by the learned Additional Sessions Judge Mumbai in Criminal Revision Application No.1491 of 2013 thereby confirming the order dated 13th November 2013 passed in CC No.667/CPW/2009 by the learned Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade. The CBI in Writ Petition No.3442 of 2013 has challenged the order passed by the learned Sessions Judge dt. 4 July 2013 in respect of the respondent Basudev Dasgupta thereby discharging the said respondent from the criminal complaint. The CBI prays that the said order is to be set aside as there is sufficient evidence against the respondent.

2. The Accused was working as a Managing Director of the erstwhile Global Trust Bank (GBT). Accused No.1 had approached the bank for cash credit facility of Rs.8 crores for the development of software and hardware of his company. The said cash credit proposal was submitted by the Accused No.1 i.e. Ashutosh Mayekar, who was the Managing Director of M/s.Unitel Software Ltd. for Rs.8 crores for development of software and

hardware. A proposal of cash credit was placed before the branch manager, Fort, Mumbai of the bank i.e. the original Accused No.4 who forwarded that proposal after a report to the present accused i.e. the original Accused, who sanctioned the proposal of Rs.8 crores and sent it before the members of the board, who confirmed the same. Though the conditions for sanctioning the cash credit facility of Rs.8 crores were not complied with, the said amount was disbursed. The accused No.1 after availing of the same, did not repay the money hence the complaint was lodged with the Central Bureau of Investigation, who registered the offence against the accused and the co-accused.

3. Mr.Desai has submitted that the applicant/accused is innocent. He has sanctioned the proposal only after the submission of the report of the credit department on the said proposal. The learned counsel relied on the said report and submitted that the branch manager is required to verify the documents and give the opinion. The said proposal is also routed through the credit department which gave departmental comment in respect of the proposal. The learned counsel argued that the sanction given by the applicant was not blanket but was

conditional. The two conditions, by way of primary security of hypothecation charge on the entire current asset of the company and collateral security in the form of shares were required to be fulfilled. Mr.Desai has argued that the Applicant is innocent and did not disburse the amount. These facts ought to have been taken into account by the learned Additional Sessions Judge while rejecting the application for discharge.

4. Learned Special Public Prosecutor and learned APP have opposed the application. The learned Special Public Prosecutor has relied on the report given by the cash credit department. He further relied on the affidavit filed by C. V. Poojari, Police Inspector, CBI, BS&FC, Mumbai. He submitted that the cash credit facility of Rs.8 crores was sanctioned and was availed of by giving go-by to all the usual procedure and rules. This accused i.e. the original accused No.3 was holding a key position in the bank i.e. the Managing Director of Global Trust Bank. It was his duty to verify whether the company i.e. M/s. Unitel Software Ltd owned by Ashutosh Mayekar, Accused No.1, has credit in the market and whether the company has disclosed all its assets. He submitted that the information furnished by the company as to the assets

was not actually existing. The details of the balance sheet was also not furnished by the company and this report was submitted by the branch manager (accused No.4) to the present applicant. He relied on the statement of one Sanjay Agarwal, Senior Manager of Standard Chartered Bank. He further relied on the statement of one M Ramaswami, Manager of erstwhile Global Trust Bank (now Oriental Bank of Commerce), Mumbai. Mr.Ramaswami has stated that by way of collateral security against the cash credit facility to the accused M/s. Unitel Software Ltd, shares of M/s. Manscon Global Ltd and M/s. Rashel Agrotech Ltd. Were taken as collateral security. However, the shares of Rashel Agrotech Ltd. were not in the approved list of the bank and therefore could not be taken as collateral security. He submitted that the defence of the accused cannot be taken into account at the stage of charge as there is sufficient material against the accused to frame the charge.

5. It was the duty of Shri B.Dasgupta, accused No.4, who was the branch manager, not to release the funds till the compliance of the conditions. However, the learned Counsel further argued that the said branch manager i.e., the accused No.4, is discharged by

the Sessions Court and the application of this accused, who is innocent, is rejected. He relied on the contents in the proposal submitted by the branch. It was tabled before the Executive Credit Committee (ECC) and after approval of the ECC the amount was disbursed and below the proposal, the members, the President in-charge of the credit, the top officers of the credit department have signed.

6. Perused the relevant documents, which are produced before me. The report dated 26.10.2002 filed by the Credit Department discloses that the specifications of the clients handled by the company and the details of its business were not furnished by the accused company to the bank. In the report, it is highlighted that the detailed working of each item of profit and loss, cash flow and balance sheet were not available for perusal. The information was given orally. However, the details are not furnished. The credit department has pointed out the deficiencies in accepting the proposal and has commented that in view of lack of full information as detailed by the branch, department is unable to add its view and, therefore, it was submitted to ECC for taking a view on the proposal. Under such circumstances, it appears that the

applicant/accused ought not to have forwarded the proposal. The ECC had ratified the action of the Managing Director i.e., the present applicant.

7. Insofar as the case of Basudev Dasgupta i.e., accused No.3 is concerned, he was the Manager, who disbursed the loan after it was proved by the higher authorities. However, while sending the proposal to the higher authorities, he has highlighted nearly 17 irregularities in the proposal.

8. The learned Sessions Judge has dealt with this aspect with a reasoned order and, therefore, the view taken by the learned Sessions Judge cannot be said illegal and hence, I am not inclined to disturb the order of the learned Sessions Judge and maintain the same. Hence, the Writ Petition is dismissed.

9. The crux of the offence is two fold. Firstly, the sanctioning of the loan by ignoring financial credibility of accused No.1 and secondly, disbursing the amount without the compliance of the conditions which are mentioned in the sanction. After going through the statements of the two witnesses as pointed out by the learned Counsel for the CBI, it appears that there is material for

framing of charge against the present accused. Assuming the order of discharge of accused No.3 is wrong, yet, that cannot be a ground to discharge the accused against whom some material is available on record. Thus, no ground is made out to set aside the order and hence, the orders passed by the learned Magistrate and learned Sessions Judge are hereby confirmed.

10. Thus, the Criminal Application is also dismissed.

(MRIDULA BHATKAR, J.)