

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL REVISION APPLICATION NO.65/2013

Prakashkumar S/o Murlidhar Bhisikar,
 aged about 70 Yrs., Occu. Retired,
 R/o Plot No.260, "Parmanand",
 West High Court Road, Nagpur.

..Applicant.

..Versus..

State of Maharashtra,
 through Deputy Supdt. of Police,
 Anti Corruption, Buldhana.

..Non-applicant.

AND
CRIMINAL REVISION APPLICATION NO.153/2013

Ramesh S/o Krushnarao Deshpande,
 aged about 70 Yrs., Occu. Retired,
 R/o Amravati, Tq and Distt. Amravati.

..Applicant.

..Versus..

State of Maharashtra,
 through Deputy Supdt. of Police,
 Anti Corruption, Buldhana.

..Non-applicant.

 Shri S.S. Voditel, advocate for the applicant - accused.

...(in both applications)

Shri S.S. Doifode, A.P.P. for the non-applicant - State of Maharashtra.

...(in both applications)

CORAM : Z.A. HAQ, J.

DATE OF RESRVING THE JUDGMENT : 4.3.2016

DATE OF PRONOUNCING THE JUDGMENT : 16.3.2016

JUDGMENT

1. Heard Shri S.S. Voditel, advocate for the applicant - accused and Shri S.S. Doifode, A.P.P. for the non-applicant - State of Maharashtra.

2. **Rule.** Rule made returnable forthwith.

These two revision applications can be disposed of by the common judgment as the impugned order in both the revision applications is common and the proceedings initiated against the applicants are pursuant to the F.I.R. in respect of the acts of the applicants in the revision applications, in respect of the same subject matter.

3. The applicant in Criminal Revision Application No.65/2013 (hereinafter referred to as "Prakashkumar") had been the Collector, Buldhana at the relevant time and applicant in Criminal Revision Application No.153/2013 (hereinafter referred to as "Ramesh") had been the Resident Deputy Collector, Buldhana at the relevant time.

The allegations against the applicant - Prakashkumar are that while working as Collector, Buldhana he granted permission in three cases for conversion of agricultural land for non-agricultural purposes though earlier the Additional Collector, Buldhana had rejected the request for conversion. It is alleged that Prakashkumar wilfully and deliberately ignored the provisions of the Maharashtra Land Revenue Code, Non-Agricultural Land Assessment Rules and the instructions issued by the Government of Maharashtra on the subject. It is alleged that the applicant - Prakashkumar abused his official position and his action is unfaithful and reflected improper discharge of his duties.

The F.I.R. was filed against the applicant, Ramesh (applicant in Criminal Revision Application No.153/2013) and three persons (owners of land in respect of which the permission was granted for conversion). The charge-sheet came to be filed against the applicant and other accused persons. The applicant - Prakashkumar filed an application (Exh. No.155) under Section 227 of the Code of Criminal Procedure praying that he be discharged from the prosecution initiated for commission of offences punishable under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and Sections 217, 120-B and 109 of the Indian Penal Code. The learned Special Judge, by the impugned order, rejected the application (Exh. No.155).

4. The allegations against the applicant - Ramesh are that while working as Resident Deputy Collector, Buldhana he had put up papers in respect of three lands before the applicant - Prakashkumar deliberately suppressing the relevant facts and facilitated the grant of permission illegally for conversion of user of land from agricultural purposes to non-agricultural purposes. The applicant - Ramesh filed application (Exh. No.156) under Section 227 of the Code of Criminal Procedure praying for discharge from the prosecution for offences punishable under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and Sections 217, 120-B and 109 of the Indian Penal Code. The learned Special Judge rejected the application (Exh. No.156) by the impugned order.

The applicants being aggrieved by the order passed by the learned Special Judge, have filed these revision applications.

5. Shri S.S. Doifode, learned A.P.P. has raised preliminary objection to the maintainability of revision applications on the ground that charges have been framed against the applicants by the Special Court on 10th December, 2012 and the present revision applications were filed on 25th March, 2013 and 18th June, 2013 respectively. It is pointed out that the Criminal Revision Application No.65/2013 was initially filed under Section 482 of the Code of Criminal Procedure, however, subsequently, it is amended and converted into criminal revision application under Section 397 read with Section 401 of the Code of Criminal Procedure. The learned A.P.P. has submitted that the charges having been framed against the applicants, the challenge to the order passed by the Special Court rejecting the applications filed by the applicants praying for discharge, does not survive. In support of his submissions, reliance is placed on the judgment given in the case of *Bharat Parikh V/s. Central Bureau of Investigation and another* reported in **2009(1) Mh.L.J. (Cri.) 251**.

The learned A.P.P. has submitted that the Special Court, after considering the evidence produced on the record has framed the charges against the applicants and it is premature for this Court to quash the charges on the ground that the material placed before the Special Court is insufficient for framing the charges against the applicants.

To support this contention, the learned A.P.P. has relied on the judgment given in the case of *Munna Devi V/s. State of Rajashtan and another* reported in **AIR 2002 SC 107**.

6. Shri Voditel, advocate for the applicants pointed out the departmental proceedings conducted against the applicant - Prakashkumar for various charges, including the charge for which the prosecution is initiated against him. It is pointed out that the Enquiry Officer concluded that the charge that applicant - Prakashkumar abused his official position and misconducted himself while granting permission for conversion of user of land, has not been proved. It is submitted that apart from the conclusions of the Enquiry Officer exonerating Prakashkumar of the same charge, the charge as levelled against the applicant - Prakashkumar cannot be said to be an offence. It is submitted that while considering the applications seeking permission to convert the user of land from agricultural purposes to non-agricultural purposes, the applicant - Prakashkumar discharged his *quasi-judicial* function and if at all there is some error in his decision while discharging the *quasi-judicial* function, it cannot be considered as an act, the commission of which constitutes an offence. It is submitted that the order passed by the applicant - Prakashkumar granting permission to convert the user of land could have been challenged by the aggrieved party, or the State Government could have exercised the revisional jurisdiction *suo motu* to set aside the order, however, it is not done. The learned advocate for the applicants has submitted

that the allegations levelled against the applicant - Prakashkumar, even if considered to be true, on their face value they do not fulfill the ingredients necessary to prosecute the applicant - Prakashkumar for the offence punishable under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and Sections 120-B, 217 and 109 of the Indian Penal Code. It is argued that the gist of the offence under Section 13(1)(d) of the Prevention of Corruption Act, 1988 is dishonest intention and abuse of position to obtain for himself or any other person any valuable, or pecuniary advantage. It is submitted that the necessary averments/allegations are not found in the present case and, therefore, the prosecution of applicant - Prakashkumar is unsustainable. In support of the submissions, reliance is placed on the following judgments:

- (i) Judgment given in the case of State of *Madhya Pradesh V/s. Sheetla Sahai and others* reported in **(2009) 8 SCC 617** and
- (ii) Judgment given in the case of *C.K. Jaffer Sharief V/s. State (though CBI)* reported in **(2013) 1 SCC 205**.

It is submitted that the application (Exh. No.155) praying for discharge was filed on 8th March, 2011 and the charges against the applicant - Prakashkumar are framed after the rejection of application (Exh. No.155) by the impugned order on 25th September, 2012 and the charges are framed on 10th December, 2012. It is submitted that the jurisdiction of this Court to examine the legality of the impugned order is not taken away, only because the charges are framed by the Special Court. It is submitted

that this Court can exercise the jurisdiction under Section 397 and Section 401 of the Code of Criminal Procedure even now to examine the legality of the impugned order and to quash the charges framed against the applicant. In support of the submissions, reliance is placed on the judgment given in the case of *State of West Bengal V/s. Raj Kumar Agarwalla* reported in **(1976) 2 SCC 204**.

It is prayed that the impugned order be set aside and the prosecution initiated against the applicant - Prakashkumar be quashed.

7. The arguments on behalf of the State of Maharashtra and applicant - Ramesh are same in Criminal Revision Application No.153/2013.

8. With the assistance of the learned advocate for the applicants and the learned A.P.P., I have examined the documents placed on the record of the revision applications.

The allegations against the applicant - Prakashkumar are that he had misused his position and illegally granted permission for conversion of user of land from agricultural to non-agricultural purposes. It is further alleged that the provisions of Section 89 of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (for short "Act of 1958") were also overlooked and without verifying as to whether the purchasers had obtained the requisite permission under Section 89 of the Act of

1958, the applications filed by them for conversion of user of land were entertained and allowed. It is alleged that the applicant - Prakashkumar should have exercised powers under Section 122A of the Act of 1958 *suo motu* and should have directed forfeiture of the lands. It is alleged that the permission to change the user of land was granted overlooking that earlier the request was rejected by the Additional Collector. The allegations are that because of misconduct of the applicant - Prakashkumar, pecuniary loss is caused to the State Government as the land which should have been forfeited by exercising powers under Section 122A of the Act of 1958, *suo motu*, is not forfeited in favour of the State Government.

9. In the departmental proceedings, the Statement of Articles of Charges was issued to the applicant - Prakashkumar on 4th June, 1998, of which Article no.1 reads as follows:

"Article No.1 :

That Shri P.M. Bhishikar worked as Collector, Buldhana for the period from 10.5.93 to 24.1.95. During his tenure as Collector, Buldana, Shri P.M. Bhishikar has granted non-agricultural permission in three cases which were rejected by the Additional Collector, Buldana, wilfully and deliberately ignoring the provisions of the Maharashtra Land Revenue Code (Non-Agricultural Assessment) Rules and instructions issued by the Government on the subject. Thus Shri P.M. Bhishikar has abused his official position. This action on the part of Shri P.M. Bhishikar is unfaithful and reflects improper discharge of his duties cast on him. By the impugned action of total disregard for provisions, rules and instructions issued by the Government, Shri P.M. Bhishikar has

violated the provisions of rule 3(1) and (2) of All India Services (Conduct) Rules, 1968.”

Considering the nature of allegations and the proposition laid down in the judgments given in the case *Madhya Pradesh V/s. Sheetla Sahai and others* (cited supra) and *C.K. Jaffer Sharief V/s. State (through CBI) (cited supra)* and in view of the conclusions of the Enquiry Officer in the department proceedings, in my view, the prosecution of the applicant - Prakashkumar for the charge for commission of offence under Section 13(1)(d) and Section 13(2) of the Prevention of Corruption Act, 1988 and under Sections 120-B, 217 and 109 of the Indian Penal Code is not sustainable. The learned Special Judge has not adverted to the relevant aspects and without examining as to whether the allegations made against the applicant - Prakashkumar fulfil the ingredients of the offence for which the applicant - Prakashkumar is being prosecuted, has rejected the application (Exh. No.155). In my view, the allegations made against Prakashkumar do not make out the offence for which he is being prosecuted and this is also supported by the conclusions of the Departmental Enquiry. The failure on the part of the learned Special Judge to consider the relevant aspects and to deal with the relevant issues, vitiates the order passed by him.

10. The objection raised by the learned A.P.P. to the maintainability of revision applications is misdirected. The application (Exh. No.155) was filed on 8th March, 2011,

which was dismissed by the impugned order on 25th September, 2012 and the charges are framed against the applicant - Prakashkumar on 10th December, 2012. Though the revision application is filed subsequent to the framing of charges, it cannot be said that this Court cannot exercise the jurisdiction under Section 397 and Section 401 of the Code of Criminal Procedure to examine the correctness and legality of the impugned order.

The order rejecting the application (Exh. No.156) filed by the applicant - Ramesh is also required to be set aside for the same reasons.

11. In view of the above, the following order is passed:

- (I) The impugned order is set aside.
- (ii) The application (Exh. No.155) filed by the applicant - Prakashkumar and the application (Exh. No.156) filed by the applicant - Ramesh are allowed.
- (iii) The applicant - Prakashkumar and the applicant - Ramesh are discharged from the Criminal Case No.1/2003 pending before the Special Judge, (Corruption Cases), Buldhana.
- (iv) The Criminal Revision Applications are allowed in the above terms.
- (v) In the circumstances, the parties to bear their own costs.

JUDGE

Tambaskar.