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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.48 OF 2017
in
CRIMINAL APPEAL NO.22 OF 2017

Vishnu Bhaskar Mantri .. Applicant
(Orig.Accd no.1)

vs

Union of India
(through CBI B.S.& F.C.Mumbai) .. Respondent

with

CRIMINAL APPLICATION NO.44 OF 2017
(for bail)
in
CRIMINAL APPEAL NO.20 OF 2017
in
CBI SPECIAL CASE NO.74 OF 2004

Anil Laxmichand Menda .. Appellant
(Orig.Accd no.8)

vs

1.State of Maharashtra
2. CBI/ACB Mumbai (RC 8(E)/2002/BS&FC) Mumbai
.. Respondents

with

CRIMINAL APPLICATION NO.45 OF 2017
(for suspension of sentence)
in
CRIMINAL APPEAL NO.20 OF 2017
in
CBI SPECIAL CASE NO.74 OF 2004

Anil Laxmichand Menda .. Appellant
(Orig.Accd no.8)

vs

1.State of Maharashtra
2. CBI/ACB Mumbai (RC 8(E)/2002/BS&FC) Mumbai
.. Respondents

with

CRIMINAL APPLICATION NO.89 OF 2017
in
CRIMINAL APPEAL NO. 52 OF 2017

Anthony @ Soni S.Abraham .. Applicant

vs

1.CBI
2. State of Maharashtra .. Respondent

with

CRIMINAL APPLICATION NO.90 OF 2017

in

CRIMINAL APPEAL NO.53 OF 2017

Philip Simon .. Applicant
vs
CBI .. Respondents

with

CRIMINAL APPLICATION NO.91 OF 2017

in

CRIMINAL APPEAL NO.54 OF 2017

Sajji Philip Abraham .. Applicant
vs
1. Central Bureau of Investigation
2. State of Maharashtra .. Respondents

with

CRIMINAL APPLICATION NO.92 OF 2017

in

CRIMINAL APPEAL NO.55 OF 2017

M.P.Abraham .. Applicant
vs
1.Central Bureau of Investigation
2.State of Maharashtra .. Respondents

...

Mr.Prakash Shetty a/w Mr.S.R.Page,Mr.Shrikant Sontawade for Applicant in Cri.Application No.48/2017

Mr.T.Ashwin a/w Mr.Vijay Desai for Applicant

in Cri.Application no.44/2017

Mr.Sandesh Patil for Respondent no.1-CBI

Ms.A.A.Takalkar APP for State

Mr.Sujit Shelar for Applicant in Cri.Application

Nos.89/2017,90/2017,91/2017 and 92/2017

Mr.Hiten Venegaonkar for Respondent no.1 (CBI)

Mr.S.V.Gavand APP for State

..

CORAM: A.M.BADAR, J

DATE : <u>14 FEBRUARY 2017</u>

P.C.

1. These are applications by original accused no.1-Vishnu Bhaskar Mantri, Accused no.8-Anil Laxmichand Mendha and original accused nos.2,4,5 and 7 namely M.P.Abraham, Sajji Philip Abraham,Anthony @ Soni S.Abraham and Philip Simon for suspension of their sentence and releasing them on bail during pendency of the Appeal filed by them before this Court.The learned Special Judge (CBI) Additional Sessions Judge, Greater Bombay (Mumbai) in CBI Special Case No.74 of 2004 decided on 3 January 2017 was pleased to convict all of them for the offences punishable under section 120B read with 409, 420,465, 467,468,471 of the Indian Penal Code and under section 13 (2) of Prevention of Corruption Act 1988. On this count, they are sentenced to suffer RI for five years each. Excluding accused nos. 2 and 4. Other accused persons are further sentenced to pay fine of Rs.10,000/-each. Apart from this, accused nos.2,4 to 8 are further convicted for offence punishable under section 420 read with 120B of Indian Penal Code and they are sentenced to suffer for three years. Apart from this, accused nos. 5 to 8 are directed to pay fine of Rs.10,000/- each. In addition, accused nos.1,2 and 4 to 8 are further sentenced to suffer

RI for one year for the offence punishable under section 465 read with section 120B of Indian Penal Code.Accused nos.1 and 5 to 8 are directed to pay fine of Rs.1000/- each on this count. Accused nos.1,2 and 4 to 8 are also convicted for the offence punishable under section 467 read with section 120B of the Indian Penal Code and on this count they are sentenced to suffer RI for five years each. In addition, accused no.1 and 5 to 8 are directed to pay fine of Rs.5000/- each on this count. Accused no.1 2 and 4 to 8 are further convicted for the offence punishable under section 468 read with section 120B of the Indian Penal Code and on this count and sentenced to suffer RI for five years. In addition, accused no.1 and 5 to 8 are directed to pay fine of Rs.1000/- each on conviction for the offence punishable under section 471 read with 120B of the Indian Penal Code. Accused nos.1 2 and 4 to 8 are sentenced to suffer RI for one year and accused no.1 accused no.5 to 8 are directed to pay fine of Rs.1000/- on this count. Accused no.1 is convicted for the offence punishable under section 409 read with 120B of the Indian Penal Code and he is directed to suffer RI for five years apart from payment of fine of Rs.10000/- on this count. This accused is further convicted for the offence punishable under section 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act 1988 and he is directed and sentenced to suffer RI for five years apart from payment of fine of Rs.10,000/-. Accused nos.2 and 4 are severally directed to pay total compensation of Rs. 10 crores.

2. I have heard learned Advocate appearing for the Appellants/Accused at sufficient length. The learned Advocate appearing for accused no.1-Vishnu Bhaskar Mantri argued that there is no sufficient evidence to prosecute this accused as per provisions of section 197 of the Criminal Procedure Code, 1973. It is argued that though allegations against this accused is that he has extended cash credit facility to the companies owned by other accused persons, nobody from the zonal office who sanctioned these facilities is either made as an accused before the trial Court or examined as a witness. Learned Advocate appearing for accused no.1 drew my attention to paragraphs 85,89,95,64 and 101 of the impugned Judgment and order. He has argued that though allegations against accused no.1-Vishnu Bhaskar Mantri has been to the effect that he kept or retained all the cheques issued by the companies of other accused persons, the Officers of the bank who cleared those cheques are not examined and there is no evidence on record to show as to when those cheques were received by the Bank. No Inward Register was produced and proved. It is further argued that evidence of the first informant

goes to show that he has no personal knowledge about the alleged offences. The Officers of Mulund Branch of State Bank of India who are supposed to know about the transactions constituting the offences are not examined by the prosecution in support of the charges. The learned Advocate appearing for accused no.1-Vishnu Bhaskar Mantri so also learned the Advocate appearing for other Applicants/accused before the Court vehemently argued that the impugned Judgment is totally perverse and not based on the evidence on record. According to the learned Advocate for accused no.1-Vishnu Bhaskar Mantri, he is old and an infirm person aged about 70 years and suffers from various ailments. He has developed diabetic foot and in support of this contention, documents annexed with the applications are pressed into service.

3. The learned Advocate appearing for accused no.8-Anil Laxmichand Menda vehemently argued that this accused is not a public servant and therefore, his conviction under the provisions of Prevention of Corruption Act 1988 is illegal. By drawing my attention to paragraph nos.57 and 58 of the impugned Judgment, the learned Advocate argues that even the learned trial Judge could not link accused no.8- Anil Laxmichand Menda with the main accused i.e. accused no.2-M.P.Abraham.The learned Advocate argues that Accused no.2 is the proprietor of Mayank Petro and he

does not know the concerned transactions of two of the companies of co-accused. Even the learned trial Judge has not made any reference to this accused while considering the inter se relations between the co-accused. By placing reliance on the deposition of PW 13 i.e. Deputy Commissioner of Sales Tax as well as PW 35-Officer of Cosmos Co-operative Bank Ltd it is argued that both these witnesses as seen from their cross-examination are not having any personal information and therefore, their evidence is of no assistance to convict the accused persons. The business by the so called fictitious firm or companies is not proved by the prosecution.

4. By relying on the judgment of the Apex Court in the matter of ***MD.IBRAHIM & ors VS STATE OF BIHAR & anr reported in 2009 (7) SCC 751*** the learned Advocate submitted that no case of preparation of false documents and consequently forgery is made out against accused no.8-M.P. Abraham.

5. The learned Advocate appearing for accused nos.2 and 4 as well as accused nos.5 and 7 argued that though the prosecution has examined PW 37 Mr.Jacobeapen, his mother is not examined by the prosecution. This witness is stated to be relative of accused no.2-M.P. Abraham but, there is no evidence to demonstrate that the firms which are alleged to be fictitious never existed factually. The sample hand writing of accused no.2 was

never collected in order to prove that he had issued the bills in question. It is argued that the witnesses are not referring to accused no.2 and accused no.4 and mere inter se relations between the accused persons cannot be a factor to hold them guilty of the alleged offences. The prosecution has not established that all accused persons are benefitted. It is further argued that nothing was recovered from accused nos.5 and 7. Accused nos. 2 and Accused no.4 never signed any documents.

6. It is common contention of the Advocates that all the Applicants during pendency of the Appeal were on bail and considering the short sentences imposed they deserves to be released.

7. I have also heard learned Public Prosecutors appearing for the Respondent-Union of India. It is argued on behalf of the Respondents that the prosecution has proved all the offences by adducing clear and cogent evidence. Reliance is placed on the impugned Judgment and order and particularly to paragraph nos.69 and 120 of the impugned Judgment and order in order to demonstrate that conviction for offences is in consonance with the evidence on record. It is further argued that the nature of the offences alleged against the Applicants and held to be proved by the trial Court is required to be considered.

8. Both the learned Public Prosecutors took me through the impugned Judgment apart from deposition of witnesses in support of the impugned Judgment and order.

9. I have carefully considered the rival submissions and also perused the deposition of witnesses so also the impugned Judgment and order of conviction and sentence passed by the learned Special Judge (CBI) Greater Bombay (Mumbai).

10. For considering Applications at hand, it is necessary to dwell upon the prosecution case against accused persons including present Applicants. Accused no.2-M.P.Abraham was the Director of a company named as “Trinity Petro-Film Pvt.Ltd ('TPPL' for the sake of brevity) and M/s Sunitha Petrochemicals Pvt.Ltd ('SPPL' for the sake of brevity). Another Director i.e. accused no.3-Smt Anama M.Abraham died during the pendency of the Appeal. According to the prosecution, accused no.1-Vishnu Bhaskar Mantri Branch Manager of State Bank of India in connivance with other accused persons cheated State Bank of India to the tune of Rs.9.24 crores by indulging in forgery and causing wrongful loss to the bank and wrongful gain to accused persons. It is averred by the prosecution that accused no.1 Vishnu Bhaskar Mantri sanctioned cash credit limits to companies of accused persons. Forged documents were used for creation of second charge over assets mortgaged with

Maharashtra State Financial Corporation. All assets of those companies were in fact mortgaged with Maharashtra State Financial Corporation. For this purpose, forged documents were pressed into service. 17 inland bills documents aggregating to Rs.36.69 lacs drawn by M/s TPPL were used for enhancing cash credit limit. According to the prosecution case, manipulated and distorted balance sheet of M/s TPPL were used for availing cash credit limits. Without examining genuineness acting in league with co-accused, accused no.1-Vishnu Bhaskar Mantri without insisting for genuine documents accepted fabricated documents for enhancing sanctioned cash credit limit. It is further alleged that 85 cheques amounting to Rs.93.11 lacs issued by M/s TPPL in favour of the Indian Oil Corporation were purchased by State Bank of India Gujrat Refininery (Bajwa Branch,Baroda) as DDS were received by the Mulund Branch of the State Bank of India where accused no.1 Vishnu Bhaskar Mantri was serving as a Branch Manager. According to the prosecution case, these cheques purchased by the State Bank of India were retained for a undue long period without processing the same because the account of M/s TPPL was not having sufficient balance to honour those cheques. In this way, wrongful loss was caused to State Bank of India by accused persons. It is further alleged that accused no.1-

Vishnu Bhaskar Mantri allowed borrowers to open a new current account at Mulund (W) Branch in the name of M/s Trinity Petrochemicals Pvt.Ltd when C.C.account of M/s TPPL was irregular with SBI Ghatkopar (W) Branch and thereby allowed M/s TPPL to withdraw Rs.1.00 crores against the deposit of Rs.1.00 crores from the account in a most irregular and illegal manner. According to the prosecution case, complete satisfaction of charge was unauthorizedly filed by accused no.10-Vishnu Bhaskar Mantri by filing Form 17 when actually the loan account was merely transferred to Ghatkopar (W) Branch. In fact, the loan was not fully liquidated and this irregularity caused a loss of Rs.655 lacs apart from unapplied interest thereon. Fictitious companies were formed to siphon of public funds.

11. In support of the charges levelled against the accused persons, the prosecution has examined in all 38 witnesses and findings arrived at by the learned trial Court can be summarized thus by reproduction of Points for determination and findings given by the trial Court. It reads thus:

	POINTS	FINDINGS
1.	Whether prosecution proves that during the period since 1997 till about 2001 at the relevant place and time accused agreed to or caused to be	Proved against accused nos.1,2,4 to 8.

	done an illegal act with dishonest and fradulent intention and in prosecution of the same applied for getting facilities with informant bank by using forged balance sheets, documents of tile creating second charge over the mortgage properties, other documents form and on behalf of fictitious firms and companies showing trade/transactions without there being such trade or transactions or underlying business. Further accused no.1 in prosecution of conspiracy with other accused acted dishonestly and took favourable decisions to accused connected with recommendation as well as further recommendation of enhancement of facilities bill discounting and cheque discounting, realizing charge etc. Aforesaid overt-acts ultimately resulted into wrongful loss to the informant bank and wrongful gain to the accused ?	
2.	Whether prosecution further proves that during aforesaid period time and place the accused in prosecution of conspiracy hatched, cheated informant bank by dishonestly inducing it for extending facilities under reference to them?	Proved against accused nos.1,2,4 to 8.
3.	Whether prosecution further proves that during aforesaid period, time and place, the accused in prosecution of conspiracy hatched, forged Exh	Proved against accused nos.1,2 4 to

	74 Memorandum of deposit of title deed, invoices, bills which are valuable security?	8.
4.	Whether prosecution further proves that during aforesaid period, time and place the accused in prosecution of conspiracy hatched pressed in service false and forged balance sheets Exhs 247, letter Exh 248 and bills and invoices as well as balance statements Exhs 291,Exh 354 intending that it shall be used for purpose of cheating ?	Proved against accused nos.1,2 4 to 8.
5.	Whether prosecution further proves that during relevant period, time and place the accused in prosecution of conspiracy hatched, fradulently or dishonestly used as genuine Exh.74 memorandum of deposit of title deeds, balance sheet Exh 247, letter Exh 248 bills and invoices etc which they knew at the time when used it to be forged documents?	Proved against accused nos.1,2,4
6.	Whether prosecution further proves that during relevant period, time and place accused no.1 in prosecution of conspiracy hatched, entrusted with public fund in his capacity as a public servant and committed criminal breach of trust in respect of such fund so entrusted?	Proved
7.	Whether prosecution further proves that during relevant period, time and place accused no.1 public servant being member of the conspiracy and did aforesaid overt acts, committed criminal	Proved

	misconduct?	
8.	What order ?	As per final order

12. I have carefully perused the impugned Judgment and order vis-a-vis evidence on record. This is not the stage to marshal and appreciate the evidence adduced by the prosecution. However, ***prima facie*** it cannot be said that the impugned Judgement and order is perse illegal or perverse.

13. While considering whether a an accused is entitled for bail or not the nature and seriousness of the offence is always a relevant factor. In the case in hand, the offence alleged and ultimately proved during trial at least by one Court below is an economic offence. In the matter of NIMMAGADDA PRASAD VS CENTRAL BUREAU OF INVESTIGATION reported in (2013) 7 SUPREME COURT CASES 466 and particularly in paragraph nos. 23 to 25 of the said Judgment, the Hon'ble Apex Court has observed thus:

> "23. Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes which has affected the fibre of the country's economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole.In State of Gujrat vs Mohanlal Jitamalji Porwal this Court while considering a request of the prosecution for adducing additional evidence inter alia observed as under :(SCC p.371,para 5).
>
> "5... The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence in the community. A disregard for the interest of the community can

> be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with an permissible eye unmindful of the damage done to the national economy and national interest."
>
> 24....
>
> 25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."

14. Considering the nature and seriousness of the offences which is held to be proved before the learned trial Court and on a perusal of the evidence adduced by the prosecution, it does not appear to me that conviction recorded is an outcome of the perverse finding. I do not find cases of Applicants to be a fit case for grant of the relief as prayed. Ultimately, there is huge loss to the public fund by acts of omission and commission by the accused persons which are held to be proved by the trial Court and the offences held to be proved are economic offences affecting the society.

15. Whether accused No.8-Anil Laxmichand Menda had indulged in forgery or not and whether his Company had received the benefit because of transactions of co-accused has also been

dealt with by the learned trial Court. At this juncture, it is apposite to quote paragraph nos. 69 and 120 of the impugned Judgment which reads thus.

> "69.PW-33. Mr.Sampat Jagganath Pawar was serving as Manager, SBI,.Ghatkopar (W) Branch Mumbai during 1999 to 2002. While under examination he has proved invoices and bills showing transactions in between M/s TPPL and aforesaid fictitious firms/companies. In this respect, he has proved invoices, bills of exchange connected with transaction between M/s TPPL and aforesaid fictitious firms/companies vide Exhs 274 to 281 as well as other bills Exhs 282 to 285, 286 colly, 287 colly, 288 colly, 307, 363,364,365 and 366.
>
> "120. Now coming towards ascertaining as to which offence actually committed and who have committed the same. In this respect, evidence forthcoming and discussed as well as analyzed and examined in forgoing paragraphs discloses that accused nos.1,2,4 to 8 had acted under the conspiracy and cheated informant bank by committing offences, more particularly described and explained in foregoing paragraphs. At this stage, it is necessary to mention that if for the sake of defence we have decided to ignore copies of documents on record which prosecution alleged as forged documents still on the basis of other documents in original form i.e (1) Exh 71 letter purported to have been issued by MSFC to the informant bank (2)Exh 248 letter purported to have addressed by PW 26 to informant bank regarding status of capital and balance sheets proved by PW 26 and (3) enclosures alongwith stock statements submitted by M/s TPPL to the informant bank. It can be observed that the accused in prosecution of the conspiracy forged the documents.
>
> So far as Exh 74 memorandum of creation of second charge over mortgage property, I have observed above that I would like to deal with the same at an appropriate stage. In my mind, now this is fit stage to deal with document exh 74. In this respect mere denial to execution production of the same by accused nos.1 and 2 makes no any difference. I cannot be overlooked that Exh 74 is actually proved before Debt Recovery Tribunal (DRT) which is a quasi civil jurisdiction. As such it can be observed that otherwise also Exh 74 has been proved before competent court. In such circumstances in my mind certified copy of the same ie. Exh 74 as available on record and duly proved by the prosecution from concerned witnesses, it can be considered as a

> forged/false document. While reading Exh 74 again it is necessary to speak that provision of section 47 of the Indian Evidence as discussed earlier is applicable so far as relevancy of the same is concerned. As such, cumulative effect of all these position compels me to read document Exh 74 in evidence."

16. Accused no.1 is reported to be old and in fact the present Applicant is suffering from Diabetes. However, that by itself cannot be a ground for releasing him on bail as the nature of offences committed by him and held to be proved by the learned trial Court is an important factor while deciding such application. Similarly, the quantum of sentence is not relevant in an economic offence held to be proved by the learned trial Court. Care can be taken of these aspects by expediting the hearing of Appeals. Hence the following order :

O R D E R

(i) All Applications are rejected.

(ii) Hearing of all Appeals are expedited.

(iii) The learned Public Prosecutor is permitted to file private Paper Book if they so desire.

(A.M.BADAR, J)