IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.59 OF 2013

Mrs. Anjali Vinay Bambole)...Applicant

V/s.
CBI, ACB, Mumbai & Anr.)...Respondents

Mr. Vimal Gupta, Senior Advocate with A. Gupta i/by Mr. Ashish Gabhale, Advocates for the Applicant.

Ms. Rebecca Gonsalves, Advocate for R.No.1.

Ms. V.S.Mhaispurkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 24th JANUARY 2017.

P.C. :

By this revision application, the Revision Applicant/Original Accused No.2 is challenging the order dated 19.1.2013 passed by the learned Special Judge for CBI for Greater Bombay, Mumbai below Application Exhibit 21 thereby rejecting application for discharge of the Revision Applicant from Sessions Case No.6 of 2012 initiated by the prosecuting agency i.e. the Respondent No.1- CBI, ACB, Mumbai.

2 Heard the learned Senior Counsel appearing for the Revision Applicant/Original accused no.2-Anjali Bambole, Assistant Commissioner of Income-tax. The learned Senior Counsel argued that even as per the prosecution case on 24.3.2010 a survey was conducted in the premises of the complainant and on that day an amount of Rs.1.5 Crores towards the tax was paid by the complainant by three cheques. The learned Senior Counsel then pointed out that it is the case of the prosecution that on 25.3.2010, the complainant had been to accused no.1-Sumitra Banerji and paid Rs.10 Lakhs to her. Then as per averments of the prosecuting agency on 29.3.2010, second installment of Rs.10 Lakhs was paid to Revision Applicant-Anjali Bambole on instructions of accused no.1-Sumitra Banerji for the purpose of distribution of the said amount amongst staff members. The learned Senior Counsel then argued that the FIR was lodged by informant Mohan Shinde, partner of Ram Developers on 15.4.2010 which ultimately resulted in laying a trap and resultant arrest of accused no.3-Subrato Banerji with the amount of bribe. The learned Senior Counsel submitted that on 7.5.2010, the FIR

was sent to the Court at Thane and this has been done because the survey was done at New Bombay falling within the territorial jurisdiction of the Sessions Court at Thane. The learned Senior Counsel further pointed out that accused no.1-Sumitra Banerji had moved an application for transfer of the Special case registered on the basis of the charge-sheet filed by the Respondent No.1-CBI, ACB from the file of learned Special Judge, CBI, Sessions Court, Mumbai to the file of Special Judge, CBI, Sessions Court at Thane on the ground that offence allegedly took place within the territorial jurisdiction of Special Court Sessions Court at Thane. By drawing my attention to paragraph 4 of the order passed by this Court in Criminal Application No.1279 of 2012 on 23.11.2012, the learned Senior Counsel argued that this Court while deciding the said application has held that no offence was committed prior to registration of the FIR i.e. on 15.4.2010. The learned Senior Counsel argued that now prosecuting agency cannot take a u turn for contending that the offence took place even prior to registration of the FIR. In submission of the learned Senior Counsel, paragraph 4 of the order passed by this Court in Criminal

Application No.1279 of 2012 shows that no offence was committed prior to registration of the FIR and, therefore, the charge against the Revision Applicant-Original Accused No.2 cannot be sustained. This order dated 23.11.2012, in submission of the learned Senior Counsel has attained finality because it is confirmed by the Hon'ble Apex Court by dismissing the SLP challenging the said order. With this, it is submitted that the learned trial Court committed error of law by rejecting application for discharge moved by the revision applicant by perverse finding reflected in paragraph 20 of the said order. My attention is also drawn to the paragraph 8 of the order passed by the learned Special Court, Mumbai at the time of hearing on the charge.

3 The learned advocate appearing for the prosecuting agency, i.e. respondent no.1-CBI opposed the revision petition by contending that the complaint lodged by Mohan Shinde, which is registered as an FIR against accused persons clearly demonstrates acts of criminal conspiracy as well as demand and acceptance of illegal gratification so also commission of the criminal misconduct by the public servant. The learned advocate for the CBI further

argued that the order dated 23.11.2012 is restricted in its scope as while deciding the said application, this Court was concerned with the territorial jurisdiction for trial of the alleged offence.

4 I have carefully considered the rival submissions and also perused the entire material placed on record including the charge-sheet. Revision Applicant-Anjali Bambole at the relevant time was undisputedly working as Assistant Commissioner of the Income-tax whereas accused no.1 Sumitra Banerji at the relevant time was working as Additional Commissioner of the Income-tax. Accused no.3-Subrato Banerji is husband of accused no.1-Sumitra Banerji and the charge against him seems to be that of offence punishable under Section 12 of the Prevention of Corruption Act, 1988 apart from the charge for other offences.

5 The learned Senior Counsel has restricted his arguments on the point that for want of territorial jurisdiction, the Special Court at Mumbai cannot try alleged offence so far as Revision Applicant-Accused No.2-Anjali Bambole is concerned and, therefore, she deserves discharge. Other points are not pressed into service.

6 The law regarding discharge as well as framing of charge is settled by the Hon'ble Supreme Court in the matter of **State of Tamil Nadu v. N. Suresh Rajan & Ors AIR 1982 SC (SUPP) 1982** and the relevant portion of the said judgment reads thus:

> *"We have bestowed our consideration to the rival submissions and the submissions made by Mr.Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouth piece of the prosecution or act as a post-office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the*

court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage. Reference in this connection can be made to a recent decision of this Court in the case of Sheoraj Singh Ahlawat and Ors. v. State of Uttar Pradesh and Anr., AIR 2013 SC 52 : (2012 AIR SCW 6171), in which, after analyzing various decisions on the point, this Court endorsed the following view taken in Onkar Nath Mishra v. State (NCT of Delhi) (2008) 2 SCC 561 : (AIR 2008 SC (Supp) 204 : 2008 AIR SCW 96):

"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At

that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

In the case in hand, it is the case of the prosecution that complainant/informant-Mohan Shinde is a partner of Ram Developers and its office is situated at Thane. Premises of M/s. Ram Developers were surveyed on 24.3.2010 by a team of officers of the Income-Tax Department including revision applicant-accused no.2 Anjali Bambole, Assistant Commissioner of the Income-tax. This action seems to be the root cause of lodging the FIR by Mohan Shinde partner of M/s. Ram Developers. He lodged the written complaint on 12.4.2010 and it is not in dispute that in pursuant to this complaint, the FIR came to be registered by the

Respondent No.1-CBI on 15.4.2010. Pursuant to that FIR bearing RC/BA/1/2010/A0016 for the offence punishable under Section 120B of the IPC and under Section 7 of the Prevention of Corruption Act, 1988, a trap was laid with the assistance of panch witnesses on 16.4.2010. It is the case of the prosecution that accused no.3-Subrato Banerji was apprehended red handed while accepting the illegal gratification, which he allegedly received on behalf of his wife-accused no.1-Sumitra Banerji.

7 At the stage of framing of the charge or discharge of the accused, the Court is required to evaluate material and documents on record with a view to find out if acts emerging therefrom taken at their face value disclose the existence of all ingredients of alleged offence. Evidence can be sifted for this limited purpose at this stage. This has to be done in order to ascertain whether there is prima-facie case and grounds to frame charge. In this context, it is apposite to quote paragraphs 3, 5 and 6 of the complaint dated 12.4.2010 lodged by complainant/informant Mohan Shinde with CBI, which reads thus:

"3 On 24.3.2010 at about 1300 hrs Smt. Anjali V. Bambole, Asst. Commissioner of Income-tax, Circle 3 along with 10 to 12 other officials of Income-tax, Thane visited our above mentioned office and conducted survey. Immediately after reaching our office Smt. Anjali Bambole, met me and ask me to produce the books of accounts, property papers purchased by us. Accordingly, I made available the said documents to Mrs. Anjali Bambole. After going through the said documents, Smt. Anjali Bambole informed me that there is a difference between the market rate and purchase amount. I informed him that as per the Govt. Rate we paid the stamp duty and registration fees. During the survey, Smt. Anajli V. Bombale, ask me to call our CA Shri Giridhar Patel, Accordingly, I called Shri Giridhar Patel, CA at our office. Meanwhile at about 1430 hrs. Mrs. Sumitra Banerjee, Addl.commissioner of Income Tax 3 came to our office and discussed with Mrs. Anjali Bambole. Thereafter, Mrs. Sumitra Banerjee, Addl. Commissioner of Income Tax, informed me that, the tax liability of our firm would be 25 crore and threatened me that she will convert this survey in to search and she will carry out the searches at the residence of all partners. Thereafter the negotiation with our CA Shri Giridhar Patel, the Tax liability was reduce to Rs.6 Crores. Upon this Mrs. Sumitra Banerjee demanded bribe amount of Rs.4 Crores and asked me to pay Rs.2 Crores as tax. Upon this I showed my inability

to pay that amount as we do not have that much amount. Thereafter Smt. Sumitra Banerjee ask me to go out side the cabin. Accordingly I came out from the cabin. After some time Smt. Sumitra Banerjee called me inside the cabin demanded a bribe amount of Rs.2 crore and further threatened that if we did not pay the said amount as bribe she will convert this survey in to search and also threatened that she will conduct the search at the residence of all the partners. She further informed that she will reduce our tax liability from 25 Crores to 1.05 Crore if the demanded bribe amount paid to her. I was under the duress and therefore agree for the same at that movement. Thereafter Smt. Sumitra Banerjee discussed with Smt. Anjali Bambole and left from our office. Thereafter Smt. Anjali Bambole ask me to bring two blank new diaries in which Mrs. Anjali V. Bambole compelled our CA to write some code indicating the black money transactions. As myself and our CA Shri Giridhar Patel were under duress our CA Shri Giridhar Patel wrote the said code as per the directions Mrs. Anjali V. Bambole.

5 Before leaving our office Smt. Sumitra Banerjee asked me to meet in her office along with our CA Shri Girdhar patel on 25.3.2010 for delivery of the demanded bribe amount. Accordingly on 25.3.2010 myself and Shri Girdhar Patel went and met Smt. Sumitra Banerjee in her cabin at about 1030 hrs. in the morning. During the *said meeting Smt. Sumitra Banerjee demanded Rs.10 Lakhs and stated that it should be paid before evening as the same is to be given to her CIT. She insisted that it should be paid to her without fail as it is to be delivered to her CIT. She instructed me that the amount of Rs.10 Lakhs to be delivered in a folder and the denomination of the said amount should be Rs.1000 so that it looks like an office file for concealment.*

6 Accordingly, I arranged such type of folders and on 25.3.2010, I went and delivered Rs.10 lakhs to Smt. Sumitra Banerjee in the evening at 1700 hrs. in her cabin. After receiving the amount Smt. Sumitra Banerjee further demanded Rs.10 Lakhs and instructed me to deliver the said amount of Rs.10 Lakhs on 29.3.2010 for paying it to her staff working under her. Accordingly, on 29.3.2010, I went to her office and informed her about the bringing of bribe amount of Rs.10 Lakhs. On this she directed me to deliver the said amount of Rs.10 lakhs to Smt. Anjali Bambole, Asst. Commissioner of Income-tax. On that day ie. On 29.3.2010 she further threatened me and said that if I failed to pay the said amount of Rs.1.80 Crores she will open the all assessments for the previous years of our firm. Accordingly I went to the cabin of Mrs. Anjali Bambole and delivered the said amount of Rs.10 lakhs to her on 29.3.2010. The above said amount of Rs.20 lakhs was paid by me under duress. At the time of delivery of Rs.10 lakhs, Smt. Sumitra Banerjee demanded

Rs.1.80 Crores in three installments of Rs.60 Lakhs each".

Undisputedly, the survey was conducted at the premises of M/s. Ram Developers situated at Thane. This action of surveying the premises took place within the territorial jurisdiction of the Special Court for the CBI at Thane. Incidents dated 25.3.2010 and 29.3.2010 reflected from the complaint/FIR lodged by informant Mohan Shinde with the CBI took place within the territorial jurisdiction of the Special Court at Thane. It is not in dispute that the office of the Income-Tax Department where complainant/informant Mohan Shinde allegedly met accused no.1- Sumitra Banerjee and Revision Petitioner/Accused No.2-Anjali Bambole is situated at Navi Mumbai i.e. within the territorial jurisdiction of the Special Court for the CBI at Thane. However, thereafter as seen from the charge-sheet placed on record, balance amount of illegal gratification was demanded by accused no.1-Sumitra Banerjee from the first informant-complainant and accordingly, by laying a trap, her husband i.e. accused no.3-Subrato Banerjee was caught red handed while accepting balance amount of alleged demand of illegal gratification. According to the case of the prosecution this happened at Vikroli, falling within the territorial jurisdiction of the Special Court for CBI at Mumbai. It is not in dispute that the CBI Special Case No.6 of 2012 arising out of charge-sheet in respect of this offence is pending on the file of the learned Special Court for the CBI at Mumbai.

8 The question is whether the Revision Applicant-Original Accused No.2 can be made to face the trial of this special case in the Court at Mumbai or whether she deserves discharge because place of the alleged offence for which she is being tried is situated outside the local jurisdiction of the Special Court for CBI at Bombay.

9 On this aspect, heavy reliance is placed by the learned Senior Counsel on the order dated 23.11.2012 passed by this Court in Criminal Application No.1279 of 2012 moved by accused no.1-Sumitra Banerjee for seeking transfer of the Special Case No.6 of 2012 from Mumbai to Thane. After hearing parties, it is seen from that order dated 23.11.2012 that this Court has rejected request of transfer of the said case from Mumbai to Thane. Paragraph 4 of the order dated 23.11.2012, which is relied by the learned Senior Counsel reads thus:

> *"4 The canvass projected of receiving initial amount of Rs.10 lakhs on two occasions may be correct, however, it is dated 25.3.2010 and 29.3.2010 when there was no FIR lodged against the accused applicants. The complaint by the complainant to the Superintendent of Police, CBI, ACB, Mumbai, at Colaba, Mumbai was dated 15.4.2010. Naturally, no offence was registered prior thereto against the accused applicants to accept contention that there was already a demand and offence*

was committed.

Bare perusal of the observations made by this Court in transfer application goes to show that this Court has observed that complaint by Mohan Shinde was dated 15.4.2010 and naturally, no offence was registered prior to 15.4.2010 against accused persons. One cannot dispute the fact that prior to 15.4.2010, no offence was registered regarding alleged demand or acceptance of illegal gratification and commission of the criminal misconduct of public servants or abetment by another accused person.

10 Section 460 in Chapter XXXV of the Code of Criminal Procedure, 1973 deals with irregular proceedings. Section 460 of the Cr.P.C. deals with irregularities which do not vitiate proceedings. Section 461 deals with irregularities which vitiate proceedings. Whereas Section 462 of the Cr.P.C. deals with proceedings in wrong place. It is apposite to quote provisions of Section 462 of the Cr.P.C. which reads thus:

> "*462. **Proceedings in wrong place**- No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it*

> *was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice."*

Bare perusal of provisions of Section 462 goes to show that merely because an accused is prosecuted and proceeded at wrong place that by itself doesnot vitiate proceedings. Even as per provisions of Section 460 of Cr.P.C. taking of cognizance of an offence by a Magistrate not empowered by law to do so, does not vitiate the proceedings.

11 Chapter XIII of the Cr.P.C. deals with jurisdiction of Criminal Courts in enquiries and trials. Section 177 found in that Chapter provides that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. Section 178 of the Cr.P.C. is relevant for our purpose and it reads thus:

> "*178. **Place of inquiry or trial**-(a) When it is uncertain in which of several local areas an offence was committed, or*
>
> *(b) where an offence is committed partly in one local area and partly in another, or*
>
> *(c) where an offence is a continuing one, and continues to committed in more local areas than one, or*

> *(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas."*

Perusal of provisions of this section as such makes it clear that when offence is committed partly in one local area and partly in another local area, it can be enquired into and tried by Court having jurisdiction over any of such local areas.

12 For our purpose, it is also apposite to quote provisions of Sections 7, 13(1)(d) as well as 13(2) of the Prevention of Corruption Act, 1988, which are mainly invoked against the revision applicant and co-accused. Those reads thus:

> *"7. **Public servant taking gratification other than legal remuneration in respect of an official act**- Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State*

Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine."

13. ***Criminal misconduct by a public servant****-(1) A public servant is said to commit the offence of criminal misconduct,-*

(d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

13(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine."

13 Thus, if a public servant by corrupt or illegal means, obtains for himself or for any other person any pecuniary advantage then he can be stated to have committed offence punishable under Section 13(2) of the Prevention of Corruption Act, 1988.

14 If viewed from this context, allegations against the Revision Applicant-Original Accused No.2 Anjali Bambole are to the effect that she was part of a conspiracy for extracting illegal gratification from the first informant and she had accepted an amount of Rs.10 Lakhs from the complainant on 29.3.2010, no doubt within the territorial jurisdiction of the Special Court for CBI at Thane, but subsequent part of the transaction then took place after lodging of the FIR, at Vikroli where out of total demand of illegal gratification, balance amount of Rs.1.50 Crores is stated to have been accepted by accused no.3-Subrato Banerji/husband of accused no.1-Sumitra Banerji. As per case of prosecution this happened at Vikroli, which is falling within the territorial jurisdiction of the Special Court for CBI at Mumbai. In this situation, the offence alleged is committed partly within the territorial jurisdiction of the Special Court at Thane and partly within the territorial jurisdiction of the Special Court at Mumbai. Therefore, in view of provisions of Section 178 of Cr.P.C. any of these two Courts are competent to try the alleged offence. Even otherwise prosecuting an accused at wrong place does not confer any right in him to seek discharge from the offence itself.

15 The order dated 23.11.2012 relied by the learned Senior Counsel was passed on an application moved by the accused no.1-Sumitra Banerji for transfer of the proceedings. Whether there is prima-facie case or sufficient ground to proceed against accused persons was not the question , which was considered by this Court in that application under Section 407 of Cr.P.C. Ther observations of this Court found in paragraph 4 of the said order are required to be viewed from this context.

16 In the light of forgoing discussion, the revision petition is devoid of merits as it is not seen from the impugned order that there is manifest error on the point of law or glaring defect of procedure committed by the learned trial Court while passing the impugned order. The revision is, therefore, dismissed.

(A. M. BADAR, J.)