IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 914 OF 2017

Harish K. Deshpande] Petitioner

Vs.

Central Bureau of Investigation & Ors.] Respondents

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Mr. Satyavrat Joshi, for the petitioner.
Mrs. N.S. Jain, APP for State.
Mr. H.S. Venegaonkar, for C.B.I.

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CORAM: RAVINDRA V. GHUGE, J.

DATE : 24TH MARCH, 2017.

P.C.

1. The petitioner is aggrieved by the order dated 13th February, 2017 passed by the Special Judge CBI-ACB, Pune vide which application Exhibit 623 filed by the petitioner in Special Case No. 38 of 2004 seeking issuance of summons to Mr. Raj Kiran Raig, former General Manager of Central Bank of India, has been rejected.

2. I have heard learned Counsel Mr. Satyavrat Joshi for the petitioner, Mrs. N.S. Jain for the State and Mr. H.S. Venegaonkar on behalf of the respondent No.2 Central Bureau of Investigation. With their assistance, I have gone through the petition paper book and the reports cited.

3. The petitioner is facing trial in connection with the offence committed under the Prevention of Corruption Act. He is an accused in Special Case No. 38 of 2004 which is pending before the learned Special Judge. The prosecution has examined their witnesses and they have closed their evidence.

4. Grievance of the petitioner is that though the charge-sheet indicates the name of Mr. Aneel D. Sortur, Manager Central Bank of India as having misused his official position and similar are the charges against the petitioner, yet the Sanctioning Authority did not accord sanction for prosecution of Mr. Sortur. The petitioner who was the Assistant General Manager was subjected to disciplinary proceedings and has been dismissed from the service.

5. Charge-sheet placed before the Special Judge indicates that the petitioner is said to have been involved in violation of norms and procedure while considering the loan application dated 25th September, 1999. Same was processed by Shri K.K. Srinivasan, then Senior Manager, Mr. P.V. Shastri, then Manager and Shri Sortur. The petitioner is said to be a part of the criminal conspiracy in the disbursement of the term loan for an amount of Rs. 337.57 lakhs. The petitioner was Assistant General Manager at the time of his dismissal from the service by way of punishment for proved mis-conducts.

6. The petitioner filed a pursis (sort of an application) dated 13th February, 2017 before the Special Court, keeping in view that an application was filed on 6th February, 2017 seeking issuance of summons to Shri Raj Kiran Raig as a defence witness. The said application has been rejected by the impugned order though the petitioner had placed reliance upon Section 243(2) of the Cr. P.C for seeking issuance of such summons. Grievance is that the Special Court or for that reason any trial Court could not

have ordinarily rejected the application keeping in view the object and ambit of Section 243 (2).

7. Section 243 (2) of the Cr. P.C reads as under:

> “243. Evidence for defence.- (1)..........
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> (2)If the accused, after he had entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing;
>
> (3)..........

8. The application filed by the petitioner seeking issuance of summons contains the following justification in paragraph No.2 reproduced below:-

> “In the said application, at Sr. No. 4 Accused has prayed for Summons to sanctioning authority of Central Bank of India, who refused/denied sanction to prosecute Mr. Aneel D. Sortue. The said witness is required to bring alongwith him the Order passed alongwith all the material in terms of documents, Statement, Office Memorandum correspondence, by

> either the CBI or any other person, if any, relied upon while passing the said order and alongwith a copy thereof duly certified as per provisions of Banker's Books Evidence Act".

9. Reason assigned by the petitioner for examining the sanctioning authority is that the said authority had refused sanction for prosecuting Mr. Sortur. The said authority should, therefore, produce the order passed by him, the material considered by him and any office memorandum, correspondence which he might have considered while passing the impugned order of refusing sanction.

10. The petitioner has relied on the judgment of the Apex Court in the matter of **Kalyani Baskar (Mrs.) Vs. M.S. Sampoornam (Mrs.) (2007) 2 Supreme Court Cases 258**. Specific reliance is placed upon paragraph 12 of the said judgment which reads as under:-

> 12. "Section 243 (2) is clear that a Magistrate holding an inquiry under CrPC in respect of an offence triable by him does not exceed his powers under Section 243 (2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a handwriting expert because even in adopting this

course, the purpose is to enable the Magistrate to compare the disputed signature or writing the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut the case of the respondent and if the document viz. the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the handwriting expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial."Fair Trial' includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and the courts should be jealous in seeing that there is no breach of them. We have not been able to appreciate the view of the learned Judge of the High Court that the petitioner has filed application under Section 243 CrPC without naming any person as witness or anything to be summoned, which are to be sent for handwriting expert for examination. As noticed above, Section 243 (2) CrPC refers to a stage when the prosecution closes its evidence after examining the witnesses and the accused has entered upon his defence. The appellant in this case requests for sending the cheque in question, for the opinion of the handwriting expert after the respondent has closed her evidence, the Magistrate should have granted such a request unless he thinks that the object of the appellant is vexation or delaying the criminal proceedings. In the circumstances, the order of the

> High Court impugned in this appeal upholding the order of the Magistrate is erroneous and not sustainable.

11. The petitioner has also relied upon the judgment delivered by this Court in the matter of **Narayan Rajaram Wani v/s The State of Maharashtra (1978) 80 BOMLR 356**. Specific reliance is placed on paragraph 9 and 10 which read as under:-

> "9. That proviso does not apply to the facts of our case. Therefore under Sub-section (2) of Section 243, the Magistrate has every power to issue a process to a witness at the instance of the accused for cross-examination by the accused and the only ground on which such request of the accused could be turned down is that the request is made for the purpose of vexation or delay or for defeating the ends of justice. It is nobody's case that in the instant case the accused had made the application either for the purpose of vexation or delay or for defeating the ends of justice. We might mention here that identical provision could be found in Section 257 of the Code of Criminal Procedure, 1898. In Ram Dayal's case the Supreme Court after examining the provisions of Section 13 of the Prevention of Food Adulteration Act, has observed that nothing contained in those sub-sections relating to certificate of the Director of the Central Food Laboratory in any way limits the rights of the accuced under Section 257 of the Code of Criminal Procedure to require the public analyst to be produced. The Supreme Court further observed that the Court may reject the prayer for good and sufficient reasons such as for instance where it is made for the purpose of vexation or delay or for defeating the ends of justice. Having regard to this authoritative pronouncement of the law by

> the Supreme Court and the fact that the provisions of Section 257 of the Code of Criminal Procedure, 1898 are identical with the provisions of Sub-section (2) of Section 243 of the Code of Criminal Procedure, 1973, it would appear that in a given case the Court has every discretion to grant such an application.
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> 10.In the instant case as I have pointed out having regard to the fact that the food inspector was unable to enlighten the Court on certain material points the defence was perfectly justified in making a request to the Court to better summon the public analyst, Poona, to submit himself to cross-examination. Evidently it was assumed by the learned Public Prosecutor and the Court below that such a request cannot be granted either under the provisions of the Prevention of Food Adulteration Act or under the Code of Criminal Procedure. As I have pointed out, Sub-section (2) of Section 243 of the Code of Criminal Procedure, 1973, is the requisite provision which could be invoked by the accused in this case. As there is no reason to refuse the request, it would follow that the orders of the learned Magistrate must be quashed and the application should be granted. I order accordingly. Rule is made absolute."

12. It is, therefore, sought to be canvassed by the petitioner on the basis of the facts as well as reports cited that when the petitioner has prayed for issuance of summons to examine the witness, denial of such summons would not amount to a fair trial. If sufficient and reasonable opportunity is not granted to the petitioner, he would be losing a right in defence.

13. Learned Counsel appearing on behalf of the C.B.I submits that the sanctioning authority which refused sanction for prosecuting Mr. Sortur is a different authority which is not the same authority which could have granted sanction for prosecuting the petitioner. Had the petitioner been in service, a different sanctioning authority would have applied its mind to the record and would have passed an order either granting or refusing sanction to prosecute the petitioner. On this count, since the authorities are distinct and different, examining the said authority would be purposeless.

14. He then further submits that, in any case, refusal of sanction to prosecute Mr. Sortur would not ipso facto result in the acquittal of the petitioner. The said aspect would not be germane to the trial. Refusal by the sanctioning authority to accord sanction in itself pre-supposes that it has applied its mind while refusing sanction. Per contra, the petitioner who is an officer and higher in rank than Mr. Sortur was already dismissed from service through departmental proceedings. Issue as regards whether sanction

should be granted or not would not, therefore, survive in this case. On this count, as well, the purpose of examining the sanctioning authority with regard to Mr. Sortur is without any cause.

15. I find from the application filed by the petitioner that the reason to examine the sanctioning authority is only to find out as to why sanction was not granted to prosecute Mr. Sortur. Even if it is assumed that there was no justifiable reason for refusing sanction, it would not ipso facto result in the acquittal of the petitioner. Mr. Sortur has already been examined in the trial as a defence witness by a co-accused. Since the petitioner was never the subject matter of grant of sanction for prosecution, whether Mr. Sortur was validly refused sanction for prosecution would not be germane to the trial.

16. Since there are specific allegations against the petitioner which will have to be proved, it does not appear that the testimony of the sanctioning authority in relation to Mr. Sortur would have any nexus with the charges against the petitioner.

Needless to state, it would always be open to the petitioner to canvass that Mr. Sortur was not prosecuted since the charges may not be as serious as is being sought to be canvassed.

17. The Special Court while dealing with the said application Exhibit No. 623 has concluded that the issue before the Special Court was not with regard to whether refusal of sanction to prosecute Mr. Sortur was justified or not. The charges against the petitioner are with regard to the misdeeds committed while exercising his authority. The petitioner himself was the loan sanctioning authority and Mr. Sortur was merely a processing officer who had no power to accord any sanction to any loan proposal.

18. In the light of the above, I do not find that the impugned order could be termed as being perverse and erroneous in the light of the law laid down by the Apex Court in the matters of **Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil,(2010) 8 Supreme Court Cases 329, Sayed Yakoob v/s**

K.S. Radhakrishnan and others, AIR 1964 Supreme Court 477 and Surya Dev Rai Vs. Ram Chander Rai and others (2003) 6 SCC 675. This petition being devoid of merits is, therefore, dismissed.

[RAVINDRA V. GHUGE, J.]