IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1519 OF 2013

Mohinder Pal Singh Sahni .....Petitioner

V/s.

The State of Maharashtra and anr. .....Respondents

* * * * * *

Mr. Manoj Mohite a/w. Mr. V. Chettiar i/by. Mr. Kevin A. Chettiar, Advocate for the petitioner.

Ms. Anamika Malhotra, APP for respondent no.1, State.

Ms. Usha K. Srivastava, Advocate for respondent no.2.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 16TH JANUARY, 2017.

P.C. :-

1 This is a second attempt on the part of the petitioner in extricating himself from Case No. 178 of 2001 pending in the Metropolitan Magistrate's Court, 8th Court, Esplanade, Mumbai for the offences punishable under Sections 420, 467 and 471 Indian Penal Code. The complainant is respondent no.2, Bank of Bahrain, Kuwait Bombay Branch.

2 The first attempt by the petitioner was Criminal Writ Petition No. 693 of 2002 for quashing of the proceedings which was dismissed by the order dated 13th August, 2002. After considering the entire material on record, this Court has observed in the order that, *prima-facie* case is made out against the petitioner for the offences of cheating, forgery and use of forged documents. Thereafter charge-sheet has been filed. The other accused in the proceedings is an employee of respondent no.2, Bank who has since retired. The charges against him are already framed and his plea recorded.

3 The second attempt is by resort to Section 239 of Code of Criminal Procedure i.e. an application for discharge. The petitioner and his co-accused had filed applications for discharge being Exhibit-2 and Exhibit-7 before the trial Court. By its order dated 18th September, 2010, the trial Court dismissed the applications after considering in detail, the material on record and the contentions of both the sides. The claim of the petitioner for discharge was based on the ground that the civil litigation between him and respondent no.2 has finally culminated in his favour with the highest Court at Bahrain awarding 4 million US$ to him and the order having been complied with by respondent no.2. Therefore, no case can be proceeded against him for having cheated the bank. He claims that, he has not committed any forgery and there was no misappropriation of public money. While rejecting his application for discharge, the trial Court has observed that the allegations made against both the accused in the criminal proceedings are very

serious. Huge amount has been involved in these offences. Though the civil proceedings have culminated in favour of the petitioner, there is no relation between the civil litigation and the present proceedings. Therefore, the present proceedings must be decided on its own merits. It has thereafter observed that, there is sufficient material before the Court for proceeding against the accused. There are sufficient and well founded grounds to frame charges against both the accused.

4 Being aggrieved by the order of dismissal of the application for discharge, the petitioner had approached the Sessions Court with Civil Revision Application No. 1318 of 2010 which has been dismissed by the reasoned order dated 23rd February, 2013.

5 According to the prosecution in April, 1990 the petitioner had taken loan of US$ 20,00,000 which was transferred from Bahrain Bank to Mumbai Branch by Inward Remittance through Normal Banking channel on 16th April, 1990. On the next day i.e. on 17th April, 1990 the Bank issued Term Deposit Receipt No. 1798 to the transfer. The TDR receipt was sent to the Bank at Kuwait for safe custody and was pledged with the Bank for the loan taken by the petitioner from the Bank. When the fixed-deposit matured, it was sent to Mumbai Bank in the year 1992 for renewal. After renewing the fixed-deposit, the fresh fixed-deposit receipt was sent to Bahrain by the Mumbai Branch and the previous original fixed-deposit receipt was kept in the custody of accused no.2. According to the petitioner, he had come to India on 21st March,

1990 carrying cash of US$ 20,00,000. After landing in Delhi, he had travelled to Jalandhar and left the money with his uncle there. Then, accused no.2 travelled from Delhi to Jalandhar on 12th April, 1990 to collect the amount from Jalandhar. He deposited the amount on the same day in the Bank. Thus, according to the petitioner, the amount was not transferred from Kuwait to India but it was brought by him in cash and deposited in the Account. The petitioner, however, is unable to produce any documents in support of this claim. There is no dispute that while bringing the foreign currency in cash in India, he is required to declare the same with the Customs authorities in the prescribed format. Though, the petitioner claims to have made such a declaration, he is unable to produce a copy of the same before the Court. It is his contention that, he had handed over copy of the declaration to the Bank at the time of deposit of the amount. But strangely has not maintained it's copy. According to the Bank, there is no entry in it's account of any deposit by the petitioner.

6 Mr. Mohite, the learned Advocate for the petitioner, has taken the Court through various documents in order to point out that the claim of the prosecution is false. This defence however needs to be established at the time of the trial. The main ground claimed for discharge of the petitioner is the decision in his favour by the Supreme Court of Kuwait. This has been rightly held to be irrelevant by the trial court. The Sessions Court also, after considering the above material has confirmed the order of the trial Court stating that, the material on record, *prima-facie* goes to show

the commission of the alleged offences.

7 Perusal of the record shows that, it cannot be said that there is no material whatsoever on record against the petitioner. The very explanation put forth by the petitioner in respect of deposit of the cash of US$ 20,00,000 in the Branch of respondent no.2 in India by bringing it from Baharin is hard to believe. In any case, considering the nature of the allegations against the petitioner and the gravity thereof, it is clear that this is not a case for discharge. Hence, there is no infirmity in the orders of the Courts below. The petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)