IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.274 OF 2016

JAIJEET BHUPENDRAJIT AHLUWALIA)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.Girish Kulkarni a/w. Mr.Aditya Mithe i/b. Maitreya G. Shukla, Advocate for the Applicant.

Ms.Rebecca Gonsalvez, Advocate for Respondent No.2 / CBI.

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

CORAM : A. M. BADAR, J.

DATE : 6th APRIL 2017

P.C. :

1 The revision petitioner / accused no.6 in CBI Special Case No.79 of 2011, by this revision petition, is challenging the order dated 15th March 2015 passed by the learned Special Judge in the said CBI Special Case No.79 of 2011, thereby rejecting the

application at Exhibit 119 filed by the revision petitioner / accused no.6 claiming discharge. The revision petitioner / accused no.6 was working as Deputy General Manager (Business Development) with M/s.Global Trade Finance Limited, at the relevant time and the prosecuting agency has filed the charge-sheet against him as well as co-accused for offences punishable under Sections 120B read with 420, 467, 468, 471 of the IPC as well as Sections 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

2 Heard the learned advocate appearing for the revision petitioner at sufficient length. He urged that the revision petitioner / accused no.6 Jaijeet Ahluwalia was serving with M/s.Global Trade Finance Limited even prior to its acquisition by the State Bank of India, when offences alleged by the prosecuting party i.e. CBI were committed. Even if case of the prosecution is accepted, then also, it cannot be said that the revision petitioner was a public servant liable for prosecution under the Prevention of Corruption Act. The learned advocate for the revision petitioner

further argued that it is case of the prosecution that accused persons acting in league, forged 29 invoices and thereby caused wrongful loss to the public sector company to the tune of more than Rs.26 Crores. In submission of the learned advocate for the revision petitioner, the revision petitioner who was working as a Deputy General Manager (Business Development) had no role to play in submission and sanction for payment of 29 vouchers which are alleged to be forged by the prosecuting agency. The revision petitioner had not processed, sanctioned or paid any of those 29 invoices which are alleged to be forged nor was it the job responsibility of the revision petitioner to deal with those 29 invoices. It is further argued that the statement of co-accused Anirudha Thakur cannot be read in evidence as it does not constitute legally admissible evidence. My attention was drawn to statements of Mrutyunjay Jha - Assistant Vice President, Bijendra Dangwal – employee of M/s.Global Trade Finance Limited, Dattaram Fatarpenkar – Head (Operations) of the M/s.Global Trade Finance Limited, so also that of Arvind Sonmale - Managing Director of the said company in order to demonstrate that the revision petitioner had no role to play in sanctioning the invoices submitted by the customer named M/s.Sudarshan Overseas Limited. It was urged that statements of these witnesses are not implicating the revision petitioner in the crime in question but those are showing that co-accused Ritesh Goel was in-charge of processing the vouchers and passing them for payment. Even job of scrutiny of those vouchers was not entrusted to the revision petitioner as he is totally unconcerned with such a transaction in the course of discharge of his official duty. My attention is drawn to the impugned order dated 15th March 2016 rejecting the claim for discharge by the learned Special Judge in order to point out that the learned Special Judge has not considered the matter from right perspective and it has recorded a perverse finding to the effect that it was duty of the revision petitioner / accused no.6 to verify authenticity of the letter and documents before releasing the amount or giving orders to his subordinates.

3 Per contra, the learned advocate appearing for the prosecuting agency i.e. CBI had drawn my attention to statement

of Amita Josh, Company Secretary, to demonstrate that M/s.Global Trade Finance Limited came to be acquired by the State Bank of India – a public sector bank on 29th March 2008 and the transaction constituting the offence took place after April 2008. For this purpose, my attention is drawn to the statement of Kailashkumar Varodia, Assistant Vice President of the then M/s.Global Trade Finance Limited. Statement of Santosh Sawant, Manager of the said company, is also relied by the learned advocate appearing for the CBI. To demonstrate that all vouchers, 29 in number, were forged, reliance is placed on statement of Bharti Panjvani, Manager of Pepsico India Holdings Pvt. Ltd., as well as statements of transporters – Sarjeet Grover and Pawan Kumar. To show complicity of the revision petitioner / accused no.6 in the crime in question, reliance is placed on statement of Mrutyunjay Jha, who at the relevant time was working as Assistant Manager with M/s.Global Trade Finance Limited.

4 I have carefully perused the recorded statements and also examined the impugned order rejecting the application for

discharge. I have also carefully gone through the material placed on record forming the charge-sheet.

5 As accused no.6 Jaijeet Ahluwalia is claiming discharge from the special case pertaining to several offences under the IPC as well as under the Prevention of Corruption Act, at the outset it is apposite to place on record the position of law in the matter of discharge set at rest by the judgment of the Hon'ble Apex Court in the matter of **State of Tamil Nadu vs. N. Suresh Rajan & Ors.**[1]. The relevant paragraph from this ruling 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

1 (2014) 11 Supreme Court Cases 709

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." " .

It is, thus, clear from the ratio of this ruling that at the stage of framing the charge or discharge of the accused, the court is required to examine whether it is demonstrated that the charges are groundless or whether there is prima facie material against the accused for proceeding against him. Deep scrutiny of probative value of material placed on record is not warranted and strong suspicion supported by some material is sufficient to frame charge against an accused.

6 Keeping in mind the law on the aspect of framing of charge and discharge of the accused, let us examine the case in hand. M/s.Global Trade Finance Limited – a private company, is seen to have been acquired by the State Bank of India – a nationalised public sector bank on 29th March 2008 by acquiring 92.85 % equity share capital of the said company. Statement of the Company Secretary, namely, Amita Joshi, is vouching this fact and as such, at this stage, one will have to accept the fact that from 29th March 2008, M/s.Global Trade Finance Limited became a subsidy of a nationalised bank named State Bank of India. It is not in dispute that Sudarshan Overseas Limited was client of M/s.Global Trade Finance Limited having availed various facilities for enhancing its trade from the M/s.Global Trade Finance

Limited. One of the facilities availed was reverse factoring also known as purchase bill discounting. Under this facility, Sudarshan Overseas Limited was to submit bills / invoices of goods supplied / received by them from their domestic suppliers. After submission of such bills raised on them by their suppliers, M/s.Global Trade Finance Limited used to make payment of those bills to the suppliers on behalf of Sudarshan Overseas Limited. Within the agreed credit period, borrower named M/s.Sudarshan Overseas Limited was to repay the money paid by the M/s.Global Trade Finance Limited to suppliers of M/s.Sudarshan Overseas Limited. Under such scheme cheques and demand drafts in the name of suppliers were to be handed over to M/s.Sudarshan Overseas Limited. In domestic factoring, the facility was to discount the domestic bills. M/s.Global Trade Finance Limited was to pay to M/s.Sudarshan Overseas Limited the amount of bills for the goods supplied by M/s. Sudarshan Overseas Limited to their domestic buyers. It is case of the prosecution that by June 2007, M/s. Sudarshan Overseas Limited had availed this factoring facility and other credit facilities to the tune of Rs.15 Crore and it was then enhanced to Rs.29 Crore by April / May 2008 i.e. after acquisition of M/s.Global Trade Finance Limited by the State Bank of India.

7 In the Special CBI case, accused no.1 is M/s.Sudarshan Overseas Limited. Accused no.2 is Sanjeev Malhotra, accused no.3 is Dr.Joy Banerjee and accused no.4 is Neeraj Mehta. They are said to be directors of M/s. Sudarshan Overseas Limited. Accused no.5 is Ms.Bhumika Wadhwa – authorised signatory of Sudarshan Overseas Limited. The revision petitioner, as already stated, is accused no.6. It is the case of prosecution that all accused persons entered into conspiracy with an intention to cheat M/s.Global Trade Finance Limited. This was done by use of false and forged domestic and reverse factoring invoices, lorry receipts, purchase orders, bank letters, power of attorney, affidavits etc. and thereby they caused wrongful loss of more than Rs.26 Crore to M/s.Global Trade Finance Limited. The prosecution is claiming that in all 29 forged invoices were pressed in service for siphoning this amount of more than 26 Crores from M/s.Global Trade Finance Limited.

8 From the documents placed on record, it is clear that seven invoices of M/s.S.M.Crop Science and 22 invoices of Pepsico India Holdings Ltd. were pressed in service for getting payment from M/s.Global Trade Finance Limited. Accused no.2 Sanjeev Malhotra is the proprietor in M/s.S.M.Crop Science. Statement of Bharti Panjvani reveals that letter of intent alleged issued to Sudarshan Overseas Limited, letter dated 10th May 2008 allegedly sent by Sudarshan Overseas Limited and letter dated 3rd November 2008 allegedly sent by Sudarshan Overseas Limited addressed to M/s.Pepsico India Holdings Ltd., regarding payment into account of M/s.Karur Vyasya Bank Ltd. are all forged documents. Similar is the position in respect of vouchers. This witness has also stated that lorry receipts are not received by her company nor is her company having any bottling plant at Honono (Punjab), Tirupati and Lote though vouchers in respect of those plants were used for getting payment. Statements of Sarjeet Grover and Pawan Kumar – both transporters, goes to show that all lorry receipts were forged and fabricated. This material is sufficient to come to the conclusion that there is *prima facie*

material pointing out the conspiracy for use of forged documents including invoices for getting payments released from M/s.Global Trade Finance Limited.

9 The question which falls for consideration so far as the present revision petitioner / accused no.6 is concerned is, whether there is some material to proceed against him or whether the charge sought to be leveled against him by the prosecuting agency is totally groundless. Mrutyunjay Jha - one of the witnesses examined by prosecuting agency has stated that in August 2005 he had joined M/s.Global Trade Finance Limited. He was Assistant Manager (Business Development) at Delhi Branch of this company and in the year 2007 he became Senior Manager (Business Development). At that time, as per version of this witness, the revision petitioner was Head (Business Development) of the said Company. This witness has stated role of the revision petitioner in these words in his statement :

> "Whenever, I used to call Mr.Sanjeev Malhotra for discussion he used to avoid me and further used to inform that he had spoken to Mr.Jay Ahluwalia in

Mumbai. Whenever, Mr.Jay Aluwalia used to visit Delhi branch, Mr.Sanjeev Malhotra used to attend our office. Apart from this they also used to meet outside of our office.

In May 2008 I was on long leave as my father was sick. When I joined my duty Mr.Ritesh Goel appraised me that – Pepsico India Holdings Ltd. was approved / added as new debtor to M/s. Sudarshan Overseas Ltd. As per sanctioned terms M/s. Sudarshan Overseas Limited was to open an Escrow Account with AXIS Bank for depositing the money from approved debtor. Sudarshan Overseas Limited was to submit letter in this regard to M/s.Global Trade Finance Limited obtained from their bank. Mr. J.P.Banergee came with such letter which was issued by ICICI Bank, Punjabi Bagh (west) Branch, Delhi. As this letter was not in prescribed format Mr.Ritesh Goel denied to accept letter. After two days Mr. J.P.Banerjee brought same letter with additional paragraph was inserted in it as per requirement. Mr.Ritesh Goel denied to accept this letter as inserted paragraph was different in ink, font and alignment from first paragraph. Mr.Banergee informed him that this paragraph is inserted by ICICI bank as per requirement. Next day Mr. Ritesh Goel received call from Mr. Jay Ahulwalia, Head (Business Development) asking him why he is am accepting

ICICI letter furnished by Mr.J.P.Banerjee. Mr.Ritesh Goel explained him about discrepancies in this letter. As per instructions of Mr.Jai Ahluwalia, Mr.Ritesh Goel send scanned copy of this letter to him and Mr.Anirudh Thakur, Head (Legal) and Company Secretary. Then after Mr.Jay Ahluwalia telephonically informed that he has discussed with Mr.Anirudh Thakur abut this letter and further he informed Mr.Ritesh Goel to send this letter to Mumbai Office. Accordingly Mr.Ritesh Goel has sent this letter to Mumbai Office."

10 This witness Mrutyunjay Jha had referred to the letter issued by ICICI bank, Punjab Bagh (west) Branch, Delhi, and has claimed that the revision petitioner called co-accused Ritesh Goel for asking as to why he has not accepted the letter of ICICI bank furnished by the co-accused i.e. accused no.3 Joy Banerjee – director of M/s.Sudarshan Overseas Limited. The prosecution has also examined Harjeetsingh – Regional Risk Manager of ICICI bank. Statement of this witness shows that the said letter allegedly used by ICICI bank was a forged one.

11 With this evidence on record, at this stage, it cannot be said that the charge against the revision petitioner is groundless or that there is no sufficient ground to proceed against him in respect of offences alleged against him.

Therefore, the revision petition is devoid of merit and the same is dismissed.

(A. M. BADAR, J.)