IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO.317 OF 2016

Vasudeo Mhapsekar & Anr. ... **Applicants**
V/s.
Central Bureau of Investigation & Anr. ... **Respondents**
.....
Mr.Prashant Sawardekar, Advocate for the Applicants.
Mr.Shishir Hiray, Special Public Prosecutor with Mr.P.H.Gaikwad-Patil, APP for the Respondent/State.
....

CORAM : A. M. BADAR J.

DATED : 17th JANUARY 2017.

P.C . :

1 By this revision petition, revision petitioners/accused are challenging the order dated 17/02/2016 passed by the learned Special Judge (CBI), City Civil and Sessions Court, Greater Bombay, Mumbai thereby rejecting the application for their discharge from offences punishable under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 moved by revision petitioners.

2 Heard the learned advocate appearing for revision petitioners/accused. By drawing my attention to ground No.(f) on page No.5 of revision petition, the learned counsel for revision

petitioners has argued that during investigation, the investigation agency/CBI has deliberately shown income of the couple on the lower side in order to see that there is steep increase in alleged disproportionate assets. The learned counsel further argued that marriage between revision petitioners/original accused was solemnized on 09/05/2001. The check period was from 01/01/2000 to 31/12/2007. The investigation agency considered income of revision petitioner No.2/accused No.2/wife from 01/01/2000, but expenses were not considered. According to the learned counsel for revision petitioners amount of income of accused No.2/wife from 01/01/2000 to June 2001 is totaling to Rs.1,36,785/-. If this income is considered, then case of the prosecution to the effect that revision petitioners amassed assets to the tune of Rs.10,23,590/- disproportionate to their known sources of income will fall on the ground.

3 The learned advocate for revision petitioners further argued that being the public servant, it was incumbent on behalf of the investigating agency to obtain sanction for prosecution of revision petitioners/accused. However, farce of obtaining sanction was conducted and sanction orders are stereo typed. This depict total non-application of mind by the Sanctioning Authority and, therefore, the trial itself is vitiated. The learned advocate for revision petitioners, therefore, argued that as there is no material to frame charge against accused persons, they deserve to be discharged.

4 The learned advocate for the respondent/CBI opposed the revision petition by arguing that whether there is amassment of wealth disproportionate to known sources of income or not can only be decided after due trial by adducing evidence. It is further argued that whether the prosecution is preceded by due sanction or not will have to be examined at the time of trial and that there is no necessity of obtaining sanction order after preparation of the charge-sheet. The learned advocate for the CBI argued that sanction is required at the time of taking cognizance of the offences by the Special Court.

5 I have carefully considered the rival submissions and also compilation of the charge sheet as well as sanction orders produced on record.

6 The accused can claim discharge when upon consideration of record of the case and the documents submitted therewith, the Judge considers that there is no sufficient ground for proceeding against the accused. However, if after said consideration, the Judge is of the opinion that there is ground for presuming that the accused has committed offence alleged against him, then the Court is justified in framing the charge against the accused. In the case in hand, initially the learned Special Judge considering the entire material on record on 06/04/2015 has

came to the conclusion that there is strong *prima facie* case against revision petitioners and that the material placed on record against them is sufficient to frame the charge against them. With this reasonings, on 06/04/2015, the learned Special Judge ordered that the charge be framed against accused persons for offences punishable under Section 109 of the Indian Penal Code read with Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988. It appears that this order was never challenged and has attained finality.

7 It is seen that despite this Order dated 06/04/2015 recording satisfaction by the learned Special Judge that there is material for presuming that accused persons have committed the offence as alleged against them, an application for discharge of accused persons came to be moved subsequently and ultimately by impugned order dated 17/02/2016 passed below Exh.54, the learned Special Judge again recorded similar finding and came to the conclusion that there are grounds for presuming that accused persons have committed the offence alleged against them. In fact, as earlier order of the learned Special Judge recording the very same finding on 06/04/2015 had attained finality, there was no cause to move another application again on the very same subject matter. Even as on today, the order dated 06/04/2015 passed by the learned Special Judge directing framing of charges is not challenged. With passage of time, it has attained finality.

8 Be that as it me, allegations against revision petitioners/original accused are to the effect that they have amassed assets amounting to Rs.10,23,590/-, which are disproportionate to their known sources of income. Even if contention of the learned advocate appearing for petitioners/accused is accepted and it is held that income of Rs.1,36,785/- is not considered by the prosecuting agency then also there is no justification for rest of the amount as the disproportionate assets are pegged at Rs.10,23,590/-

9 Section 19 of the Prevention of Corruption Act requires previous sanction for prosecuting public servants and what is prohibited is cognizance by the Court of alleged offences without sanction. No doubt grant or refusal to grant sanction by the Sanctioning Authority is dependent upon application of mind by it to the material collected by the Investigator but such application of mind is required to be examined during the trial by cross-examining the appropriate authority. Merely because sanction orders are similar in nature it is not possible to jump to the conclusion that sanction orders are vitiated by non-application of mind. Both sanction orders are issued by two different competent authorities. There may be similarity in sanction orders because allegations against both the accused who are husband and wife are similar. Therefore, this is not a stage to come to the conclusion that sanction orders are vitiated by non-application of mind and, therefore, accused are entitled for discharge.

10 At this juncture, it is apposite to quote observations of the Honourable Apex Court in the matter of ***State of Tamil Nadu v. K. Ponmudi & Ors.*** reported in **AIR 2014 SC (Supp) 1982**. In paragraph 20 of that Judgment, the Honourable Apex Court has considered the aspects of discharge and requirement to be fulfilled in order to claim discharge from alleged offences. The same can be quoted with advantage and reads thus :

> *"**20.** 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 hat 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." " .

Bare perusal of these observations of the Honourable Apex Court makes it clear that at this stage only probative value of the materials is required 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. If facts emerging from the record taken at face value creates a strong suspicion that accused persons might have committed the offence then that is enough to frame the charge against accused persons.

11 If considered on the touch-stone of this requirement of the law on the subject, it is not seen that the impugned order of rejecting the application for discharge passed by the learned Special Judge (CBI) is suffering from any error of law or procedural irregularity.

12 In this view of the matter, the revision petition is devoid of substance and the same is dismissed.

(A. M. BADAR J.)