IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.519 OF 2016

RAM UDAR THAKUR)...APPLICANT

V/s.

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

Mr.Rajeev Ravi, Advocate for the Applicant.

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

Ms.Anamika Malhotra, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 31st OCTOBER 2017

P.C. :

1 The petitioner / accused no.4 Ram Thakur in the First Information Report (FIR) bearing no.RC-15/E/2009/MUM registered with CBI, EOW, Mumbai, for offences punishable under Sections 120B read with Sections 420, 467, 468 and 471 of the Indian Penal Code (IPC) and under Section 13(2) read with 13(1) of the Prevention of Corruption Act, 1988 (P.C.Act), by this application, is challenging the order dated 14th July 2016 passed

below Exhibit 72 in CBI Special Case No.86 of 2011 rejecting his claim for discharge.

2 Heard the learned advocate appearing for the revision petitioner / accused no.4. By taking me through paragraphs 8 and 9 of the charge-sheet, the learned advocate vehemently argued that allegation, so far as present revision petitioner / accused no.4 is concerned, is to the effect that he got one reverse factoring invoice of M/s.Eagle Chemicals sanctioned by intentionally suppressing the fact that he is proprietor of said M/s.Eagle Chemicals. It is further averred by the prosecution that the amount was accordingly credited in the account of M/s.Eagle Chemicals and the same was transferred into account of M/s.S.M.Crop Science. The said transaction was not genuine, according to the case of the prosecution. There is no investigation on this aspect. No lorry receipts were collected, no supporting documents were collected by the Investigator. In submission of the learned advocate for the revision petitioner/accused no.4, there is no iota of evidence to connect the revision petitioner /

accused no.4 to the crime in question. He is not proprietor of M/s.Eagle Chemicals, as alleged by the prosecution, and therefore, it cannot be said that he has committed any offence. For want of evidence, he could not be made to stand the charge. The learned advocate further argued that the impugned order which is bereft of reasons, cannot be sustained in the light of the observations of the Hon'ble Apex Court in the matter of **Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota vs. M/s.Shukla and Brothers**[1]. The learned advocate further argued that the learned Special Judge for CBI has only reproduced the charge sought to be leveled against the present revision petitioner / accused no.4 and has not considered whether the same is supported by evidence or not, as is found in the charge-sheet. Therefore, the impugned order, which is bereft of reasons, needs to be quashed and set aside. In submission of the learned advocate for the revision petitioner / accused no.4, as there is no evidence against the present revision petitioner / accused no.4, he needs to be discharged from the CBI Special Case No.86 of 2011.

1 2010 AIR SCW 3277

3 The learned advocate appearing for the CBI opposed the application by contending that the revision petitioner / accused no.4 is the authorized signatory of M/s.Eagle Chemicals and he got the reverse factoring invoice sanctioned and obtained payment of Rs.1 Crore in the account of M/s.Eagle Chemicals. Subsequently, he got that amount transferred to M/s.S.M.Crop Science, of which accused no.5 Sanjeev Malhotra is the proprietor. Infact, there was no genuine transaction and huge amount came to be siphoned from M/s.Global Trade Finance Limited which became subsidy of State Bank of India. The learned advocate appearing for the CBI drew my attention to the pleadings made by the revision petitioner / accused no.4 in the petition.

4 I have carefully considered rival submissions and also perused entire material placed on record. Law in the matter of claim for discharge has been succinctly stated in the matter of **State of Tamil Nadu vs. N. Suresh Rajan & Ors.**[2] The relevant observations read thus :

2 (2014) 11 Supreme Court Cases 709

"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." " .

5 In his petition, the revision petitioner / accused no.4 has pleaded that he has been appointed as an authorized signatory of M/s.Eagle Chemicals for a limited purpose, as one of the joint signatories to operate the bank account of the company, somewhere in the year 2004-05. Pleadings of the revision petitioner / accused no.4 further show that he is also an employee of M/s.Sudarshan Consolidated Limited – a firm, which according to the prosecution case, has caused wrongful loss to M/s.Global Trade Finance Limited, to the tune of Rs.22,87,09,916.40. It is further pleaded in the revision petition that on 18th March 2008, Mr.Sanjeev Malhotra / accused no.5 had instructed the revision

petitioner / accused no.4 to transfer the amount of Rs.1 Crore from bank account of M/s.Eagle Chemicals to M/s.S.M.Crop Science being the payment for goods sold to M/s.Eagle Chemicals. Said Mr.Sanjeev Malhotra is proprietor of M/s.S.M.Crop Science and at the same time he was director as well as authorized signatory of M/s.Sudarshan Consolidated Limited – accused no.1.

6 On this factual position regarding the pleading as well as the material elicited from the charge-sheet, let us put on record what is reverse factoring. Reverse factoring is a financial facility provided to the borrower/client which is also known as Purchase Bill Discounting. Under this financial facility, borrowers submit bills / invoices of goods / supplies received by them from their domestic suppliers. After the borrower submits the bills raised on them by his suppliers, the company makes payment of those bills to the suppliers on behalf of the borrower and after the agreed credit period, the borrower repays the money paid by the company i.e. M/s.Global Trade Finance Limited to the borrower's suppliers under these transactions to the company.

7 In the case in hand, the reverse factoring invoice dated 13th March 2008 came to be tendered for making payment of M/s.Global Trade Finance Limited by M/s.Eagle Chemicals. The revision petitioner / accused no.4 is authorized signatory of M/s.Eagle Chemicals. In this reverse factoring invoice it is shown that 12 metric ton of Gibberalic Acid was sold to M/s.Sudarshan Consolidated Limited – accused no.1 for a consideration of Rs.1.20 Crore. This reverse factoring invoice, which according to the prosecution was taken tendered by the present revision petitioner / accused no.4 being an authorized signatory of the said M/s.Eagle Chemicals, has resulted in disbursement of payment of Rs.1 Crore in bank account of M/s.Eagle Chemicals by M/s.Global Trade Finance Limited. This fact is reflected from the bank statement of M/s.Eagle Chemicals.

8 It is seen from the record that thereafter, on 18th March 2008, the revision petitioner / accused no.4, being authorized signatory of M/s.Eagle Chemicals, had instructed its panel to effect RTGS payment of Rs.1 Crore to M/s.S.M.Crop Science. This

M/s.S.M.Crop Science is a proprietary firm of accused no.5 Sanjeev Malhotra. Accordingly, the amount of Rs.1 Crore is transferred from the account of M/s.Eagle Chemicals to M/s.S.M.Crop Science, soon after encashing the reverse factoring invoice. Ultimately, that amount came to be transferred to the proprietary firm of accused no.5 Sanjeev Malhotra, who also happens to be director as well as authorized signatory of accused no.1 M/s.Sudarshan Consolidated Limited. This documentary evidence collected by the Investigator does not allow me to hold that there is no iota of evidence against the present revision petitioner / accused no.4 of offences alleged against him, thereby warranting his discharge from the special case.

9 In the light of these observations, though the learned court below has failed to give cogent reasons for rejecting the application for discharge of accused no.4 Ram Thakur, he cannot claim discharge from the special case. Therefore, though recording of reasons is heart and soul of the judicial order, merely because the learned court below has failed to record the reasons,

the revision petitioner / accused no.4 cannot *ipso facto* claim discharge from the special case. In this view of the matter, observations of the Hon'ble Apex Court in the matter of **Assistant Commissioner, Commercial Tax Department (supra)** will have to be considered.

10 In the light of the foregoing discussion, I see no merit in the revision petition, and the same is, therefore, rejected.

11 Needless to mention that the observations of this court are *prima facie* in nature, and shall have no bearing on result of the trial, after examining of witnesses.

(A. M. BADAR, J.)