

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4431 OF 2016

Pritam Vidyadhar Nagarkar.] ... Petitioner

Versus

The State of Maharashtra & Ors.] ... Respondents

Mr. S. M. Gorwadkar, Senior Advocate i/b Mr. Subhash Hulyalkar for
Petitioner.

Mr. K. V. Saste, APP for State.

Mr. H. S. Venegaonkar for CBI.

**CORAM :- RANJIT MORE &
SARANG V. KOTWAL, JJ.**

DATE :- 28 JUNE, 2017

P. C. :- (Per Sarang V. Kotwal, J.):-

1. The present petition is filed by the petitioner for quashing of the proceedings concerning FIR No.RCBA1/2016/A0021 dated 27/07/2016 registered with CBI ACB, Mumbai, under Sections 13(2) r/w (13)(1)(e) of Prevention of Corruption Act, 1988.

2. The main contention of the petitioner is that this FIR could not have been lodged, inasmuch as, it is in the nature of a second FIR in respect of the same transaction which was the subject-matter of an

earlier FIR registered with CBI vide FIR No.RCBSM2014E006-CBI/BS & FC/Mumbai.

3. On 14/07/2014, an FIR was registered with the CBI vide FIR No.RCBSM2014E006-CBI/BS & FC/Mumbai. The said FIR was lodged at the instance of one Motilal Behara who was then working as the Deputy General Manager in the zonal office of Dena Bank at Horniman Circle, Mumbai. The allegations in the said FIR are that the present petitioner was working as the Branch Manager of Malabar Hill branch of Dena Bank. It is alleged that the petitioner, in connivance with the main accused Vimal Barot, procured fixed term deposits from 7 organizations / corporates to the tune of Rs.256.49 Crores. It was observed that that the petitioner did not follow the standard procedure of obtaining KYC documents duly verified in the presence of the bank officials and he also did not follow the procedure of delivering the original deposit receipts to the authorized persons of the organizations, under acknowledgment in the presence of bank officials. It was further observed that the KYC documents were received through the co-accused Vimal Barot in the suspected fraudulent accounts and the TDR receipts were delivered based on the organizations' fabricated authority letters brought by Vimal Barot or his associates. In furtherance of the said fraud, the petitioner sanctioned loan/overdraft facilities of big amounts in the names of those 7 organizations/corporates; though they had not applied for the same. These loans/overdraft facilities were sanctioned on the basis of forged and fabricated documents like loan applications, specimen

signatures, resolutions of the organization, etc. The petitioner, acting on these documents, had sanctioned the loan / overdraft facilities and the money was remitted to various accounts in several banks which were subsequently utilized fraudulently by the other accused.

4. The investigation in this FIR was carried out and it culminated into filing of the charge-sheet on 23/06/2015 under Sections 120-B r/w 420, 409, 471, 467 and 468 of IPC and under Sections 213(2) r/w 13(1)(c) and (d) of the PC Act. The present petitioner was shown as accused no.2 in the said charge-sheet and there were 4 accused in all. The afore-mentioned Vimal Barot was shown as the accused no.1 in the said charge-sheet. The investigating agency concluded that the act of the accused has caused wrongful loss of Rs.244.25 Crores to Dena Bank by committing the aforesaid offences. Significantly, the case mentioned in the charge-sheet shows that the said fraud was committed between the period of January 2014 to July 2014.

5. In this background, another FIR came to be lodged on 27/07/2016 with the CBI, ACB, Mumbai, vide FIR No.RCBA1/2016/A0021 under Sections 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 against the present petitioner; which is the subject-matter of the present petition. It is mentioned in the said FIR that the petitioner, during the period 31/01/2014 to 16/07/2014 had amassed and was in possession of assets of Rs.15,39,556/- which were disproportionate to his known sources of

income. The FIR proceeds to list various investments made by the petitioner and his family members. The said FIR is being investigated and the main contention of the petitioner is that this FIR could not have been lodged as it pertains to the same transaction which was the subject-matter of the earlier FIR which was registered vide FIR No.RCBSM2014E006-CBI/BS & FC/Mumbai with the CBI and which had culminated into filing of the charge-sheet.

6. We have heard Mr. S. M. Gorwadkar, the learned Senior Advocate for the petitioner, Mr. H. S. Venegaonkar, the learned Advocate for CBI and Mr. K. V. Saste, the learned APP for State.

7. After considering the submissions advanced on behalf of the petitioner by the learned Senior Advocate Mr. Gorwadkar, we are unable to agree with him and we are unable to hold that the FIR which is the subject-matter of the present petition, is part of the same transaction for which another FIR was lodged earlier which had culminated into filing of the charge-sheet.

8. Mr. Gorwadkar has relied on the judgment of the Hon'ble Supreme Court in the case of *Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation and Another, reported in (2013) 6 Supreme Court Cases, 348* as well as in the case of *T. T. Antony Vs. State of Kerala, reported in 2001 AIR (SC) 2637*. Both these cases lay down the proposition that the second FIR in the same case is impermissible. In the case of *Amitbhai Shah (supra)*, in para 37, the

Hon'ble Supreme court has held thus :-

“37. This Court has consistently laid down the law on the issue interpreting the Code, that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. In T. T. Antony, this Court has categorically held that registration of second FIR (which is not a cross-case) is violative of Article 21 of the Constitution.”

9. While it is a settled position in law that a second FIR for different offences committed in the course of same transaction is impermissible; however, the test which requires to be applied is that whether both the FIRs pertain to the offences committed in the course of the 'same transaction'. In the present case, it cannot be said that the FIR which is the subject-matter of the present petition pertains to the offences which form part of the same transaction.

10. There is another aspect of the matter, and that is the distinction between the wordings of sections 13(1)(d) and 13(1)(e) of The Prevention of Corruption Act, 1988. The Section 13(1) of the said Act explains as to when the public servant is said to have committed the offence of criminal misconduct. Section 13(1)(d) reads thus :

“(d) if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary

- advantage; or*
- (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or*
- (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest;”*

Whereas sub-section 13(1)(e) reads thus;

“(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. Explanation.—For the purposes of this section, “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.”

Sub-section (2) of section 13 of The Prevention of Corruption Act, 1988 provides punishment for criminal misconduct. Thus, it can be seen that there is a clear distinction between the wordings of Section 13(1)(d) and 13(1)(e) of The Prevention of Corruption Act, 1988 . The scope of these two clauses is entirely different. Broadly, Section

13(1)(d) can be called incident specific or situation specific and Section 13(1)(e) is period specific. We find support of these propositions in the observations made by the Honourable Supreme Court in the case of ***Yogendra Kumar Jaiswal Vs. State of Bihar, reported in (2016) 3 Supreme Court Cases 183***. In paragraph no.121 of the said reported case, it is held thus :

“It is to be noted that Section 13(1)(e) has its own significance in the context of the range of offences provided under the 1988 Act. Section 13(1)(e) covers a period which is called check period. It pertains to amassing of disproportionate assets. The condition precedent is that accused is prima facie found in possession of disproportionate properties or possessing resources not known to his sources of income. It is obligatory on the part of the accused in that case to explain his sources, which has been the basis for accumulating the assets which are alleged to be disproportionate. The offences Under Section 13(1) (a) to (d) in a broad way can be called incident specific or situation specific whereas the offence Under Section 13(1) (e) is period specific and it is not incident specific.”

Similarly in paragraph No.127 of the same judgment it is observed thus :

“From the above stated ratiocination, it is quite evincible that there is a difference, a demonstrable one, between the offence Under Section 13(1)(e) and the rest of the offences

enumerated in Section 13. Section 13(1)(e) targets the persons who have disproportionate assets to their known sources of income. This conceptually is a period offence, for it is not incident specific as such. It does not require proof of corruption in specific acts, but has reference to assets accumulated and known sources of income in a particular period. The test applicable and proof required is different.”

Thus from the above observations it is quite clear that the test applicable, the proof required and the consideration for these two offences are entirely different. Therefore in the present case it cannot be said that the FIR lodged vide FIR No.RCBA1/2016/A0021 registered with CBI ACB forms part of the same transaction or the offence which was the subject matter of the earlier FIR registered with CBI bearing No.FIR No.RCB SM2014E006.

11. Mr. Gorwadkar invited our attention to the fact that the period mentioned in the FIR which is the subject matter of the present petition was between 31/01/2014 and 16/07/2014 which substantially overlapped the period of alleged offences, which were the subject-matter of the earlier FIR lodged in the year 2014. Though Mr. Gorwadkar tried to submit that the FIR lodged in the year 2016 should not have been registered being the second FIR, he clarified that he was not submitting that the investments made by the petitioners, which were the subject-matter of the present FIR in the year 2016 were connected in any manner with the alleged offences, which were

the subject-matter of the earlier FIR lodged in the year 2014. This, by itself, destroys the petitioner's case that the present FIR could not have been lodged being part of the same transaction which is the subject-matter of the earlier FIR lodged in the year 2014.

12. Having considered the present petition, in the light of the above observations, we are of the considered opinion that there is no merit in the present petition and therefore the petition is dismissed.

(SARANG V. KOTWAL, J.)

(RANJIT MORE, J.)