IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 604 OF 2015

Sunil Singla .. Applicant
Vs.
The State of Maharashtra and Anr. .. Respondents

WITH
CRIMINAL REVISION APPLICATION NO. 96 OF 2016

Murli Singla .. Applicant
Vs.
The State of Maharashtra and Anr. .. Respondents

Mr. Girish Kulkarni a/w Mr. N.S. Mundargi I/b Mrunmai Kulkarni for applicant.
Mr. Sandeep Kumar Singh for Respondent No.2
Mrs. N.S. Jain, APP for respondent/State.

CORAM : 23 JULY 2018.

DATE : PRAKASH D. NAIK, J.

P.C:-

. The applicants in both these applications have challenged the order dated 18.11.2015 passed by the Special Judge, CBI rejecting application for discharge preferred by the applicants.

2. The prosecution case is that Mr. Venkoba Gujjal, Dy. General Manager of Punjab National Bank, Corporate Branch, New Delhi

received illegal gratification in conspiracy with co-accused Vinit Kumar and accused No.4 (revision applicant in Cri. Revision Application No.96 of 2016).

3. The accused No.2 Shri. Vinit Kumar is the Managing Director of M/S. Temptation Foods Limited and revision applicant is the director of M/S. Portfolio Financial Services Limited. On receipt of information the telephone were kept under surveillance during November 2009 to February 2010. Mr. Venkoba Gujjal wanted to purchase gold worth Rs.10,00,000/- from Dubai and expressed his desire to Vinit Kumar. M/S. Temptation Foods Limited had presented proposal of STL of Rs. 50 Crores on 20.08.2009 for a period of six months and after deliberation the proposal was allowed. Accused No.4 delivered the payment in accordance to illegal gratification at the residence of Mr. Gujjal on behalf of his brother (revision applicant in Cri. Revision Application No.604 of 2015), accused No.3 was consultant to M/S. Temptation Foods Limited and had presented other proposals to Punjab National Bank. The complaint was lodged with CBI, EOW, Mumbai on 11.04.2011. After completing the investigation, charge sheet was filed.

4. The applicants preferred application for discharge before the Special Court which were rejected by order dated 18.11.2015.

5. Learned Advocate for the applicant submitted that there is no legally admissible evidence to prosecute the applicants in this proceedings. The learned Special Judge has erroneously rejected the application for discharge. Charge sheet reveals no offence against the applicants. The case is based on inferences. It is not established that there was initial demand, such demand, if any, was not verified by following procedure of law. There is no evidence to attribute charge of aiding and abating to the applicants. Section 7 of Prevention of Corruption Act is not attributed. The statement of wife of Mr. Gujjal does not provide any assistance to the prosecution against the applicant. The conversation between Mr. Gujjal and his wife cannot be used in prosecuting the accused as it was a privilege conversation, use of which is barred by provisions of Section 122 of the Evidence Act. The wife of Mr. Gujjal is not accused. There is no evidence to suggest that the applicant/accused No.4 has handed over money. There is no certificate as per requirements of Section 65 B (4) of Indian Evidence Act. The purported certificate relied upon by the prosecution do not provide details as to the source from which CD containing the conversation was

generated. The certificate only talks of a system used to record voice, but it does not certify that the contents of CD was actually the conversation which was transferred from computer containing the system for capturing voice to the CD such conversation has no evidentiary value. The certificate under Section 65 B of the Evidence Act is not actually a certificate but a statement of witness Shailendra Kumar Singh under Section 161 of Cr.P.C. No approval of revision committee as contemplated under Section 419 A of Indian Telegraph Rules, 1951 have been obtained by prosecution. As per Sub Rule 2, the respondent shall forward the order issued by Ministry of Home Affairs to the review committee within a period of seven working days which the review committee ought to have approved as per Sub Rule 17 of Rule 419 A of Indian Telegraph Rules, 1951. There has to be specific role attributing necessary corroboration to frame charge. It is further submitted that in the statement of Mrs. Alka Gujjal, there is no identity of the person who came to deliver the amount and hence there is no material to suggest that accused No.3 gave money. The opinion of expert in connection with the CD was sent belatedly and till then it was in possession of investigating agency till 20.10.2011. Acceptance of an amount and proof of initial demand of money needs to be established. The prosecution is based on telephonic transcript between accused Nos.

1 and 2. It is a casual talk. Conversation did not suggest that there is offer and acceptance of bribe to bring home the charge of conspiracy. The chain of circumstances should be incapable of any other hypothesis than the involvement of the accused. The FIR was registered belatedly. There is no authentic evidence against the applicants. Loan was sanctioned by Punjab National Bank by following procedure. There is no irregularity in disbursement of loan.

6. Learned Counsel for the applicant relied upon following decisions :-

i) Anvar P.V. Vs. P.K. Basheer & Ors.[1]

ii) Balasaheb Gurling Todkari Vs. State of Maharashtra delivered by Aurangabad Bench of this Court in Criminal Appeal No.432 of 2012.

iii) K.L.D. Nagasree Vs. Government of India[2]

iv) People's Union of Civil Liberties Vs. Union of India(UOI)[3]

v) Tabassum Khan Kayyum Khan Vs. State of Maharashtra decided by this Court in Criminal Appeal No.198 of 2002.

vi) Vilas Raghunath Kurhade Vs. State of Maharashtra[4]

1 2014 (10) SCC 473
2 2007 (1) ALD 553
3 AIR 1997 SC 568
4 2011 Scc Online Bom. 130

vii) **Dibu Das Vs. The Sub Inspector of Police, Kerala**[5]

viii) **Nagaraj Vs. State of Karnataka**[6]

ix) **Ramachandran Shankarseth Urvane Vs. Emperor**[7]

7. Learned Advocate for the respondent submitted that there is sufficient evidence against the applicant showing his involvement in the crime. The issues raised by the applicant are matter of evidence to be tried at the time of trial. The investigation conducted by the respondents reveals the involvement of the applicants. Voice samples of accused Nos. 1, 2, 3 and 4 were forwarded to CFSL for the experts opinion and the report in that regard was received on 03.07.2013. The voice identification panchanama of accused Nos.3 and 4 (applicants) wherein their voices were identified by Santosh Mane, IT Manager M/S. Portfolio Financial Services Limited, Mumbai is part of record. The charge sheet filed by CBI makes out prima facie case against applicants. The accused No.1 had demanded and accepted illegal gratification from the accused No.2 and the applicants in order to process and recommend the proposal for credit facilities made by company of accused no.2 through M/S. Portfolio Financial Services Limited of which accused Nos. 3 and 4 (applicants) were directors. They were part of conspiracy. They have delivered the gratification at the residence of accused No.1. The

5 2011 Scc online Kerala 1986 131
6 1996 Cri. LJ 2901
7 AIR 1933 BOM 153

recordings of the conversation between accused nos. 1, 2, 3 and 4 exist. The proof of the same is matter of evidence. As far as recorded conversations are concerned, the charge sheet contains certificate of Shailendra Kumar Singh Inspector of Police, CBI Special Units, Mumbai dated 17.11.2011 which is a certificate under Section 65 B of the Evidence Act. The applicant therefore cannot contend that there is no such certificate. The proof of recorded conversations and certificate under Section 65 B of the Evidence Act is a matter of trial and cannot be gone into at this stage. This certificate of Shailendra Kumar Singh gives complete details of computer system on which phone calls in respect of mobile were recorded during the period 29.10.2009 to 26.04.2010. CD was forwarded to CSFL, Delhi which was received in sealed condition as evidence from the forwarding letters as well as the report of CFSL dated 03.07.2013. Thus, there is no doubt about the authenticity of contents of CD. The recorded conversations between accused No.1 and Alka Gujjal is admissible evidence and being a relevant fact. The respondent shall independently lead evidence to prove the same. Section 122 of Evidence Act have no application as far as the subject recording is concerned, prima facie case is made out against the applicant about their involvement and hence no case was made out for discharge.

8. I have perused the documents, the primary contention of the applicants is that there is no evidence against them being conspirator or the persons who have aided and abetted the co-accused in commission of crime. The prosecution case is based on documents and electronic evidence. It is vehemently urged that the evidence relied upon by the prosecution cannot be accepted for non compliance of Section 65B of the Evidence Act, non compliance of Rule 419-A of Indian Telegraph Act and bar in accepting conversations between husband and wife being privileged communication in accordance with Section 122 of the Evidence Act. The respondents have filed affidavit-in-reply opposing the applications. It is a settled principle of law that prima facie case is required to be made out against the accused at the stage of discharge. The Court is not expected to hold a roving enquiry or to do exercise of appreciating evidence. The contentions of the applicants are a matter of evidence which will be required to be tested during the trial and cannot be considered at this stage. Prima facie case against accused Nos. 3 and 4 (applicants) is made out. There is sufficient material to show their involvement in the offence and frame charge against them. No case for discharge is made out. In the light of evidence collected during evidence. The prosecution ought to be given an opportunity to lead evidence to prove the charges against the

applicants. There are recorded conversations, reports of experts which cannot be brushed aside at this stage. The decisions relied upon by the learned Advocate for the applicant were applicable in the facts of the said case. There is no dispute about the principles enunciated in the said decision. However, in the light of the evidence collected by the respondents against the applicants, the trial shall proceed and it would be open to the applicant to agitate the said issues at the time of trial. The charge sheet contains certificate of Shailendra Kumar Singh which is disputed by the applicants on the ground that it is not in consonance with Section 65 B of the Evidence Act. It would be a disputed question of fact and cannot be accepted at this stage. On 10.05.2011 voice identification panchanama of accused No.1 was drawn wherein his voice was identified by Sudarshan Vadhawa, AGM Punjab National Bank, Circle office, Mumbai. On 22.04.2011, voice identification panchanama of accused No.2 was drawn wherein his voice was identified by Mr. Chandan, Manager M/S. Temptation Foods Limited, Mumbai. On 03.09.2011, voice identification panchanama of accused Nos. 3 and 4 was drawn wherein their voices were identified by Santosh Mane, I.T. Manager M/S. Portfolio Financial Services Limited, Mumbai. Voice samples of accused Nos. 1 and 2 were obtained on 04.07.2011 and 26.4.2011 and those of accused Nos. 3 and 4 (applicants) were obtained on 03.10.2011 which is sent to CFSL for experts opinion vide letter dated 20.10.2011. The prosecution relying on forensic voice examination report of the CFSL, New Delhi dated 03.07.2013. According to the prosecution, during conversation of accused No.1 with accused No.2, the accused No.3 was aware of the amount which accused No.2 had agreed to pay accused No.1. It is the case of the prosecution that during the investigation, it was revealed that after submitting the credit proposals, Sunil Singla (accused No.3) would contact Mr. Venkoba Gujjal (accused No.1). The conversation between accused Nos.1, 2, 3, 4 and 5 were recorded as the mobile number of accused No.1 was under authorized surveillance. In one of the conversation, accused No.3 informed accused No.1 that his brother accused No.4 is in Delhi and he would meet accused No.1 regarding M/S. Orris and Also discussed about the balance amount with accused No.1 to which accused No.1 replied by saying Okay. On the same day i.e. 30.11.2009, accused No.3 called accused No.1 and informed him that his brother (accused No.4) was in Delhi to which accused No.1 replied that he would give him the address of his residence where the delivery was to be made as he had to attend the meeting because of which it would not be possible for him to meet accused No.4. Thereafter, it was decided that Murli Singla would meet accused No.1 at Meridian for some time.

Thereafter, accused No.1 informed accused No.4 that he had to rush for a meeting and since he would take some tome to reach, accused No.4 should make delivery at his residence to his wife. Accused No.1 then telephoned his wife and spoke to her in Kanada asking whether the person had come and how much he had delivered, to which she replied that she had not opened the packet. Thereafter, accused No.4 called accused No.1 to inform him that he had delivered the amount to his residence. Thus, the prosecution is relying upon the conversations. The voice identification and experts opinion in support of this case is required to be tested in evidence.

9. Learned Sessions Judge has rejected the application for discharge on the ground that prima facie case is made out against the applicants showing their complicity in the crime. I do not find any reason to take a different view of the matter in the light of the evidence collected during investigation. Statements of various witnesses are recorded. Prima facie involvement of the applicant is disclosed which is sufficient to proceed with the trial against the applicants. The decision in the case of **Anvar (Supra)** deals with electronic evidence. It is observed that if the electronic record is duly produced under Section 65B of the Evidence Act, the question would arise as to genuineness of

the electronic record. It was held that the transcription submitted along with the charge sheet for non compliance of Section 65 B and since the case was based on CD computer generated record, the accused were discharged. The decision in the case of **Balasaheb Todkari (Supra)** also relates to similar issue. The other decisions are relating to Section 419-A of Indian Telegraph Rules, 1951 and Section 122 of the Indian Evidence Act. According to the CBI, the certificate relied upon by them complies section 65 B (4) of the Indian Evidence Act and the said record is admissible in evidence. So, at this stage, evidence cannot be discarded. The respondent had contended before the trial Court that CBI has obtained approval in accordance with Section 419-A of Indian Telegraph Rules, 1951 and the same will be produced at the time of evidence. It was contended by the applicant that the alleged bribe amount was not recovered. However, demanding illegal gratification is a matter of evidence required to be decided during trial. The admissibility of evidence under Section 122 of Evidence Act is the issue which is also required to be dealt with at the time of trial. There is prima facie independent evidence against the applicant showing their involvement. CBI has filed certificate at D-7 and thereby complied the condition prescribed under Section 65 B (4) of the Evidence Act. It is the case of the prosecution that accused No.1 has accepted bribe from accused Nos. 3 and 4 for providing finance to M/S. Temptation Foods Limited, Mumbai. Accused Nos.3 and 4 are directors of M/S. Portfolio Financial Services Limited and submitted the proposal to the Punjab National Bank. The interception between the accused shows that accused No.1 had sanctioned credit proposal to the company of accused No.2. From the CD conversation, it is clear that there is prima facie case against accused Nos. 1 to 4. Statements of witnesses were recorded. Some of them have stated that the director of M/S. Temptation Foods Limited enjoyed the funds to the extent of Rs.225 Crores. The account of M/S. Temptation Foods Limited was classified as NPA and crores of amount is outstanding against accused No.2. Investigating officer had recorded statements of witnesses under Section 161 and 164 of Cr.P.C. Thus, there is sufficient evidence to proceed against the applicant. Hence, no case for granting relief prayed in this application is made out. Hence, I pass the following order :-

:: ORDER ::

(i) Criminal Revision Application No.604 of 2015 and Criminal Revision Application No. 96 of 2016 are rejected and stands disposed of.

(PRAKASH D. NAIK, J.)