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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1012 OF 2018

Ashutosh Joshi and another .....Petitioners

V/s.

The State of Maharashtra .....Respondent

Mr. Anil D'Souza for the petitioners.
Mrs. S. S. Kaushik APP for the State.

CORAM : NITIN W. SAMBRE, J.

DATE : APRIL 10, 2018.

P.C.

In C.C. No. 352/PW/2014, pending on the file of 19th Court, Metropolitan Magistrate, Esplanade, present petitioners are accused nos. 3 & 4 against whom charge was framed on 08/11/2016 for offence punishable under section 406, 465, 467, 468, 471 & 420 r/w 120 (B) of the Indian Penal Code. It is against this order, accused nos. 3 & 4 petitionerss herein have approached this Court having pleaded not guilty before the learned Trial Court.

2 Heard the learned counsel for the petitionerss. While inviting attention of this Court to the order impugned dated 8/11/2016 passed by the learned Magistrate framing charge against the petitioner, he would urge that an error of Law is committed by the said Court by not granting hearing to the petitioners. He submits that said approach on the part of the Magistrate is contrary to the scheme of section 226 & 227 of the Code of Criminal Procedure, 1973. According to him, if order framing charge is passed without hearing accused persons, order is not sustainable and the same is liable to be quashed and set aside with order to grant opportunity of hearing to the accused before framing of charge. So as to substantiate his contentions, he has drawn support from two judgments of this Court **Akshay Manoj Jaisinghani V/s. The State of Maharashtra** in **Criminal Writ Petition No. 3599 of 2017** and **Rajkumar Girdharlila Yadav V/s. State of Maharashtra** in **Criminal Application (Apl) No. 129 of 2013**.

3 The learned counsel for the petitioners submits that perusal of the order impugned, framing charge does not reflect the application

of mind by the learned Magistrate. According to him, order impugned also does not speaks of material available against the accused persons in the form of evidence so as to frame charge against them. He would then urge that ingredients of relevant section, upon perusal of the charge, are not satisfied and as such, order of framing of charge is liable to be set aside. He would draw support from the Judgment of the Apex Court in the matter of **State of Maharashtra V/s. Som Nath Thapa, Etc.** reported in **[(1996) 4 S.C.C. 659]**, **Satish Mehra V/s. Delhi Administration and Anr.** reported in **[(1996) S.C.C. 766]**.

4 Based on the aforesaid Judgments, the learned counsel would urge that in absence of *prima facie* case against accused persons for which accused are to be tried, petitioners are entitled for discharge. In addition, the learned counsel for the accused would urge that even if the defence of the accused is not to be considered, still the fact remains that available material on record does not pin point the involvement of the accused in crime in question. He submits that the allegation against present petitioners are, accused no. 1 Niraj

received Rs. 6.65 Crores by means of misappropriation, which was deposited in the account of accused no. 2, his wife and then transferred the said amount in his own account. On 31/01/2011, he has invested the amount to the extent of Rs. 2 Crores in M/s. Tech Build who in turn invested Rs. 39.60 Lakhs in Infrastructure Company. It is further claimed that on 10/08/2011 the entire amount was returned by the company namely Kakade Infrastructure to M/s. Tech Build Limited of which petitioners are directors. According to him, the object with which the company, of which petitioners are directors is required to be appreciated i.e. investment made by the accused no. 1 in the company of present accused in Infrastructure or other projects with promise of higher returns. As such, according to him, the order of framing of charge is liable to be set aside.

5 *Per contra*, the learned APP opposed the claim put forth by the accused. According to her, the charge was framed against the accused on 08/11/2016 which order is questioned by the petitioners after period of almost two years before this Court. The learned APP

then would urge that the plea of the accused was already recorded wherein they had pleaded not guilty and in view thereof, petition which suffers from delay and latches is liable to rejected. The learned APP then would take me through the entire charge-sheet and submits that even if presuming at this stage that the petitioners were not aware about the source of money, still the fact remains that the amount of Rs. 2 Crores were accepted by the petitioners in their company in clandestine manner. The learned APP then would invite attention to clause 13 (8) of the charge-sheet which demonstrates that amount of Rs. 2 Crores were accepted by the petitioners by transferring 2 thousand shares of total value of Rs. 10 Lakhs to the accused no.1 Niraj Patil. She would then urge that the present petitioners have tried to avoid investigation process as they have not co-operated with the investigation. She would then urge that the receipt of amount of Rs. 2 Crores by the petitioners company is not in dispute, however, according to her, amount of Rs. 2 Crores is received by the petitioners for further investment without any promise of substantial returns which raises a serious doubt about the intentions of the petitioners in accepting the deposit without any interest. According to her, if the flow of the amount from the accused no. 1 to his wife's account, then to his own account and then to the company of the petitioners who in turn invested the same in Kakade infrastructure, who immediately returned the same to the company of the petitioners speaks of clandestine and suspicious deal. If entire transaction is appreciated, the deal appears to be suspicious one. She submits that he arguments of the petitioner, if are appreciated, same amounts to appreciating the defence of the accused persons which is not permissible at this stage and as such prays for dismissal.

6 Considered rival submissions. It is not in dispute that company of the petitioners namely M/s. Tech Build has received the amount of Rs. 2 Crores against which only share of 10 Lakhs were given to the accused no. 1 Niraj. The remaining amount i.e. 1 Crore 90 Lakhs appears to have been accepted by the petitioners without any interest in their's company. The said amount is then invested by the company of the petitioner in Kakade Infrastructure and immediately took back the amount from the said Infrastructure

company. So far as aforesaid conduct on the part of the petitioners and their company is concerned, it can be inferred that the amount which was illegally received by accused nos. 1 & 2 was given to present petitioners-accused nos. 3 & 4 without there being any lawful liability of accused nos. 1 & 2. Present petitioners have accepted the amount of Rs. 2 Crores that too without offering any interest or returns, which speaks suspicious transaction between accused nos. 1 & 2 and the present petitioners. The amount returned by the Kakade Infrastructure to the company of the petitioners appears to have been split into the account of the company and individuals. Even if presuming that petitioners' company M/s. Tech Build has received the amount from the accused nos. 1 & 2 towards investment to be made, however, the same does not appear to be a transaction in accordance with the provisions of the Contract Act or other legal provisions when the petitioners are claiming that amount was received for investment without any assurance of returns to the accused nos. 1 & 2. The entire transaction in the aforesaid background appears to be too suspicious to believe it to be a lawful transaction. In the wake of above, the order of framing charge against accused persons cannot be faulted with on the aforesaid count, keeping in mind that such charge is subject to alteration any time before pronouncement of the Judgment by the Court.

7 As far as the claim put forth by the present petitioners that they were not granted opportunity of hearing before the order of framing of charge under section 227 of Code of Criminal Procedure, 1973, as reflected in two judgments, it is worth to note that order of framing of charge was passed way back on 08/11/2016. The charge that was framed against present petitioners was one punishable under section 406, 465, 467, 468, 471, 420 r/w 120 (B) of the Indian Penal Code. It is thereafter, the petitioners pleaded not guilty to the charge framed on the very same day, is reflected from the order passed below Exhibit 26-29. Once the accused have not pleaded guilty to the order of framing of charge, it is really difficult to accept at this stage that petitioners were not heard before passing the order of framing of charge. Apart from above, it took more than one and half year to the petitioners-accused to raise the said issue before this

Court which *prima facie* appears to be by way of after thought. In the backdrop of aforesaid scenario, I hardly notice any illegality, particularly denial of opportunity of hearing to the petitioner when the charge was ordered to be framed. Both the judgments cited by the petitioners-accused in the backdrop of aforesaid scenario has no application to the case in hand. As such, the said contention of the petitioner is also rejected.

8 So far the reliance placed by the learned counsel for the petitioner on para 27 in the matter of **State of Maharashtra V/s. Som Nath Thapa** and para a8 in the matter of **Satish Mehra V/s. Delhi Administration and Anr** [*Cited supra*] is concerned, it is required to be noted that the intent of the petitioners, *prima facie* can be inferred from their knowledge of having received amount of Rs. 2 Crores for investment without any assured returns or interest to the other accused/investor. At this stage, it is difficult to call upon prosecution to establish that the accused knew that the amount received was out of ill-gotten money. May be receipt of amount by petitioner-accused is not illegal but a legal act carried out by illegal

means necessarily warrants the Court bellow to frame charge. The narrations in the entire transaction as reflected in the foregoing para speaks of *prima facie* case against accused persons which justifies framing of charge. Perusal of material in the charge-sheet against accused appears to have been considered by the learned Court below while framing the charge. In that eventuality the claim of the petitioners that the Court below has failed to consider the material before framing of charge is without any basis.

9 For the aforesaid reasons, no case for interference is made out. Petition as such fails, dismissed.

[NITIN W. SAMBRE, J.]