

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1196 OF 2018

Sadanand Jagannath Vardam	Petitioner
versus	
Joint Director, CBI, ACB and another	Respondents

Mr.Aaditya Gore for petitioner.

Ms.Subhada Khot for respondent no.1.

Mrs.N.S.Jain, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 25th June 2018

PC :

1. The petitioner is prosecuted for offence under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act and Sections 420, 465, 468 and 471 of Indian Penal Code.

2. The first information report was registered on 6th January 2014. On completing the investigation a charge sheet was filed before the competent Court. The applicant is aggrieved by the order framing charge passed by the Trial Court dated 13th November 2017. The contention of the petitioner is that the charge was framed without compliance of Section 207 of Code of Criminal Procedure, 1973.

3. The prosecution case is that accused no.1-the then Chief Administrative Officer of Finlay Mills Mumbai, accused no.2

(petitioner herein)-the then Assistant Manager of Digvijay Mills, Mumbai, accused nos.3 and 4-accounts in-charge of Finlay Mills and accused no.5 entered into a criminal conspiracy to cheat Finlay Mills and National Textile Corporation and in furtherance of the conspiracy, accused no.5 prepared false bills and the other accused approved the same and disbursed the amount to accused no.5 causing wrongful loss to the tune of Rs.36,59,780/- to Finlay Mills and thereby committed the offences under section 420. 120-B of Indian Penal Code. It is further alleged that accused nos.1 to 4 were public servants and committed the aforesaid acts and obtained pecuniary advantage and further committed the offence under section 13(2) r/w Section 13(1)(D) of Prevention of Corruption Act.

4. Pursuant to filing of the charge sheet, the accused before the Trial Court. It appears that the charge sheet was filed on 1st March 2018. The petitioner and other accused thereafter preferred an application for bail on appearance before the Trial Court. Bail was granted by order dated 27th February 2015. From the record it is apparent that the plea of the accused was recorded on 13th November 2017.

5. Learned counsel for petitioner pointed out the roznama dated 20th February 2018, which is annexed to the petition, which reads as follows :

20.02.18	Coram : H.H.The CBI Special Judge Shri P.K.Sharma (CR 48)
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CBI Spl. 111/14	SPP Mr.Ashok Bagoria for CBI is present. Accused no.1 to 5 present. Adv.Mr.Arjun for accused no.5 present. Copies of charge sheet and documents are supplied to all accused. The matter is adjourned for application u/s.294 of Cr.P.C to 01.03.2018.
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On perusal of the roznama it is apparent that the copies of charge sheets and documents were supplied to the petitioner-accused on 20th February 2018 and the matter was adjourned for hearing the application under section 294 of Criminal Procedure Code. The petitioner's grievance is that without supplying the documents including the statements relied upon by the prosecution in the form of charge sheet, as envisaged under section 207 of Cr.P.C, the Special Court had framed the charge against the accused prior to that on 13th November 2017. It is submitted that the accused were deprived of the opportunity to exercise the right to apply for discharge before the Trial Court. The Trial Court ought to have ascertained as to whether the charge sheet is supplied to the accused and then should have proceeded to frame the charge. It is, therefore, submitted that the order of framing the charge is contrary to law and deserves to be set aside.

6. Learned counsel for respondent submitted that the plea of accused was recorded on 13th November 2017, which is also annexed to this petition vide Exhibit-C. She pointed out the statement of the accused recorded by the Trial Court wherein petitioner was asked as to whether he had received the copies of police papers to which he has answered in affirmative and then pleaded not guilty of the offence. It is submitted that the accused

could have pointed out to the Court that the charge sheet is not supplied to him and therefore at this stage such a grievance cannot be made after the charge is framed against the petitioner-accused.

7. On perusal of the plea it indeed appears that the Court had asked him whether he had received the police papers and the petitioner-accused has answered in affirmative. However, on perusal of entire roznama annexed to the petition it is crystal clear that the charge sheet was supplied to the petitioner-accused on 20th February 2018 and the charge was framed prior to that on 13th November 2017. It also appears that even while supplying the charge sheet on 20th February 2018, according to the accused, some of the documents were not supplied to them and a grievance in that regard was made on 1st March 2018. In any case, it is clear that the charge sheet was supplied to the accused after charge was framed. The accused can apply for discharge which right can be exercised after he is served with the copy of entire charge sheet which is filed against him or even oppose framing of charge. The roznama which is placed on record clearly indicates that the charge sheet was supplied to the petitioner subsequently. In the circumstances the order framing charge passed by the Trial Court on 13th November 2017 is required to be set aside.

8. Learned counsel for petitioner submitted that all the documents pertaining to the charge sheet has been supplied to the petitioner-accused. Hence, I pass following order :

ORDER

(i) The impugned order dated 13th November 2017 framing charge is set aside;

- (ii) The petitioner will be at liberty to apply for discharge. In case such an application is preferred by the petitioner, the same shall be decided in accordance with law by the Trial Court without being influenced by earlier order of framing charge;
- (iii) Writ Petition No.1196 of 2018 is disposed of in above terms.

(PRAKASH D. NAIK, J.)

MST