**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL REVISION APPLICATION NO. 221 OF 2016**
**WITH**
**CRIMINAL REVISION APPLICATION NO. 222 OF 2016**

V.N. Ramamoorthi … Applicant
Vs.
CBI / ACB, Mumbai & Anr. … Respondents

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Mr. V.N. Shingnapurkar I/by N.H. Associates for the applicant.
Mr. H.S. Venegaonkar for the Respondent-CBI
Mr. Y.M. Nakhwa, APP for the Respondent-State.

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**CORAM : PRAKASH D. NAIK, J.**
**DATE : 16th JULY, 2018.**

**P.C.**

1 Heard both sides for final disposal.

2. Applicant has invoked the revisional powers of this Court under Section 397 of Code of Criminal Procedure challenging the impugned order dated 25th January, 2016 proceedings and the order passed by the Court of learned Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade at Mumbai rejecting the application for discharge.

3. The applicant in both these applications is common and issues raised in these applications are also common and hence both the revision applications are disposed off by common order.

4. Criminal Revision Application No. 221 of 2016 relates to F.I.R No. RC 40(A)/2005 CBI/ACB/Mumbai which is subject matter of C.C. No. 162 of 2010 pending in the Court of Learned Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade at Mumbai whereas Criminal Revision Application No.222 of 2016 relates to F.I.R No. RC 42(A)/2005 CBI/ACB/Mumbai which is subject matter of C.C. No. 121/PW/2010 pending in the Court of Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai.

5. Gist of the case of the prosecution in relation to C.C. No. 162/PW/2010 which is subject matter of Criminal Revision Application No.221 of 2016 is that the accused borrower Pawankumar Gopiram Shah, Proprietor M/s Asia Gomur, Mumbai dishonestly opened current loan account in Central Bank of India, Andheri (East) Branch, Mumbai and applied for credit facilities on 25th July, 2001 with collateral security of the property at village Khandala, Maval, Pune in the name of cousin Shri V.C. Shah as guarantor. The applicant enclosed profile of the borrower and the guarantor, their assets details Income Tax Returns, balance sheets and audit reports. During the course of investigation all the documents used by the accused borrower for availing the credit

facility were found to be forged and fictitious. In furtherance of conspiracy, accused No.3, submitted his false search report dated 17th August, 2001 certifying that the property under collateral security in the name of Vikram Shah was having clear and marketable title without any encumbrance and perfect for equitable mortgage. Accused No.3 submitted valuation report dated 17th August, 2001 in respect of the aforesaid property to the bank that the property under collateral security was valued to Rs.244.34 lacs containing residential premises in the form of bungalow in the name of Vikram C. Shah. In pursuant thereof, the applicant under the signature together with accused late Shri J. Kanagarajan submitted false report of pre-sanction inspection in respect of sale of his office of the accused borrower and firm M/s Asia Gomur and the property under collateral security shown to have been conducted on 24th August, 2001 mentioning therein about satisfactory stock position at the sales office and presence of bunglow Nos. 1 and 2 at the property falsely mentioning that there was an independent bungalow with six spacious bed rooms, two living rooms etc. having value at Rs.244.34 lacs. Infact the property under collateral security was found to be piece of agricultural land owned by Shri Keval Mirchandani and not by the said non existent guarantor. It was also found that the documents and other endorsement pertaining to the property under collateral security submitted by the accused borrower were forged and appended by the accused Sandesh Nage while the signatures of purchaser Vikas Shah were forged by Shantilal Chouhan. The address of Vikram Shah does not exist. The credit limits were available by accused borrower but he did not pay, back, which resulted liability of Rs. 1,49,97,615/- as on 30$^{th}$ September, 2004 when the amount was declared as NPA and all accused thereby defrauded the bank.

6. As far as the case relating to C.C. No. 121 of 2010 which is subject matter of Criminal Revision Application No. 222 of 2016 is concerned, the prosecution case is that the applicant being Assistant Manager of Central Bank of India entered into a criminal conspiracy with other accused who were bank officials and private persons by which Pravin Parekh and Ramesh Kothari, Partners of M/s Neha Exports availed all credit limits of Rs.25 Lacs each under cash credit and overdraft against book debts using forged fictitious documents of the property under collateral security causing loss to the bank to the tune of Rs.49,93,026/-. The applicant under the signature together with accused late Shri J. Kanagarajan submitted

false report of pre sanction inspection in respect of sale unit of the accused borrowers through Shri Pravin Parekh and Ramesh Kothari both partners of M/s Neha Exports and false report showing satisfactory satisfaction of the property under collateral security shown to have been conducted on 22nd June, 2001 in the report the presence of land well maintained farm house was shown but investigation revealed that it was just a land without any construction. Investigation revealed that documents pertaining to the property under collateral security submitted by the accused contained signatures of the seller, the borrower and the Sub-Registrar alongwith other endorsement forged by the accused. Credit limits duly got sanctioned from the competent authority of the bank and availed by the accused borrower but they did not pay back the credit resulting into creation of liability to the tune of Rs.49,93,026/- when the account was declared NPA.

7. The chargesheet was filed for the offence under Section 120B, 419, 420, 467, 468 and 471 of Indian Penal Code and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988. The applicants in both these applications preferred discharge application before the Court of learned Magistrate. The application was opposed by the prosecution by

filing say. The application for discharge was rejected by the learned Magistrate vide order dated 25th January, 2016 in both these applications.

8. By common ground raised in both applications before the trial Court is that the FIR was registered in the absence of sanction. It is submitted that sanction for prosecution was refused by the competent authority. The matter was placed before the Central Vigilance Commission, however, the Commission also concurred with the opinion of the competent authority and the sanction to prosecute under Section Prevention of Corruption Act was refused. It is contended that once the authorities refused to grant sanction to prosecute the applicant for offence under Section Prevention of Corruption Act, the accused cannot be prosecuted for the other offences under the Indian Penal Code. It is further submitted that it was abuse of process of law to prosecute the accused. The application for discharge was rejected by the learned Magistrate. Hence, applicant has preferred this revision applications challenging the said orders.

9. Learned advocate for the applicant submits that in the absence of sanction, the applicant cannot be prosecuted for the offence under Indian Penal Code. The offence cannot be

segregated. It is further submitted that there was a legal record that sanction for the offence had been refused by the competent authority, the same amounted to a discharge, which tantamounts to acquittal hence the prosecution, under the disguise of other offences under Penal Code could not reinstate the prosecution since the FIR is registered under Prevention of Corruption Act and Indian Penal Code. Unless the Special Court accepts closure report, the learned Magistrate has no jurisdiction to take cognizance of the case. It is submitted that after careful consideration and also on the advice of the Central Vigilance Commission, sanction under the Prevention of Corruption Act was refused and therefore prosecution should have closed the proceedings against the applicant.

10. Learned counsel for the applicant relied upon following decisions

i) **State of Rajasthan Vs. Fatehkaran Mehdu**[1]

ii) **Amit Kapoor Vs. Ramesh Chander and Anr.**[2]

iii) **Sampat Singh & Ors. Vs. State of Haryana and Ors**[3]

1. (2017) 3 SCC 198

2. (2012) 9 SCC 460

3.(1993) 1 SCC 561

iv) **Mahendra Lal Das Vs. State of Bihar & Ors.**[4]

v) **Atchut Mucund Alornekar & Ors. Vs. Central Bureau of Investigation ACB, Goa** [5]

vi) **N.R. Saraiya & Anr. Vs. Union of India & Anr.**[6]

11. Learned APP submitted that merely because the sanction to prosecute was refused by the competent authority for offence under the Prevention of Corruption Act, the regular Court is not precluded from conducting the trial in respect to other offences. It is further submitted that offence under the Prevention of Corruption Act and Indian Penal Code are distinct in nature. It is submitted that applicant had played a vital role in the said crime. In pursuant to rejection of the application for discharge, the charge was framed against the accused and the trial has commenced. The applicant cannot be discharged from the proceedings at this stage. The applications were preferred by the applicant belatedly. The grounds raised in these applications can be raised during the trial.

12. The applicant has challenged the proceedings before the Sessions Court and has approached this Court after rejection of application for discharge. The prayer for discharge is not

4.(2002) 1 SCC 149

5. 2012 SCC Online Bom 1256

6. Criminal Writ Petition No. 322 of 2013 of Bombay High Court.

maintainable after the framing of charge. It is further submitted that the charge of preparation of false report would be covered by the provisions of Indian Penal Code. The offence under the Prevention of Corruption Act is distinct in nature. The learned Magistrate has observed that there is nexus and involvement of the accused in commission of the offence under the Indian Penal Code and there is no bar in law to try the accused for the offences punishable under the Indian Penal Code. The applicant had acted beyond discharge of his official duty, hence question of sanction does not arise. The applicant under his signature together with Late Kanagarajan submitted false report of pre-sanction inspection (D-9) in respect of sales office of the accused borrower and his firm M/s Asia Gomur and the property under collateral security shown to have been conducted on 24th August, 2001 mentioning therein about satisfactory stock position at the sales office.

13. The discharge application was preferred only with a view to delay the proceedings. It is further submitted that in the case which is subject matter of Criminal Revision Application No. 222 of 2016 pre-sanction report having shown the date of visit as 22nd June, 2001 was jointly given by Late J. Kanagarajan and the applicant which clearly speaks that the property under collateral

security is a land with one farm house and two cattle sheds. It was also certified in the report that as per the stock statements stock worth Rs.21.50 lacs was in hand as on the day of visit and the debtors amounting to Rs.33.87 lacs were outstanding. It was found that collateral security is just a piece of agricultural land with no any construction. It is therefore submitted that the application be dismissed.

14. On scrutiny of the documents it appears that the accused were prosecuted for the offence under the Prevention of Corruption Act as well as Indian Penal Code. Sanction was not granted to prosecute the applicant for the offence under the Prevention of Corruption Act. Hence, the Special Court discharged applicant for the offence under Prevention of Corruption Act and remitted back the matter to the regular Court for trial for the offence under the Indian Penal Code. The said order was passed on 13th November, 2009. However, apparently, the applicant did not challenge the order remanding case to regular court of Magistrate and thereafter preferred an application before trial Court. The said order was passed after hearing both sides. While passing the said order it was observed that, in view of settled

position of the law, cognizance against accused to proceed with the trial case under the provisions of Prevention of Corruption Act, 1988 will not survive for refusal of the sanction to prosecute as revealed from the say filed by the prosecution. In the case apart from provisions of Prevention of Corruption Act, there are provisions under Sections 120-B read with 419, 420, 467, 468, 471 of Indian Penal Code were also invoked. It was also observed that, as per prosecution there is nexus and involvement of accused No.1 in commission of offences under Indian Penal Code. So far as the provisions of Indian Penal Code are concerned the trial against accused will proceed before the competent curt. This order has attained finality. The charge was framed and the trial had commenced. The applicant preferred an application for discharge. The application for discharge cannot be entertained after framing of charge. Since the trial has commenced, the issue raised in this application can be adjudicated during the course of trial. Serious role is attributed to the applicant. The allegations which were part of the chargesheet also constitute offence under the Indian Penal Code. It is alleged that false report was submitted which constitutes to offence of forgery provided under the Indian Penal Code. The offence under the provisions of

Prevention of Corruption Act and Indian Penal Code are distinct in nature. In the factual background and the nature of allegations made herein the proceedings cannot be quashed at this stage. In the case of *State of Rajasthan Vs. Fatehkaran Mehdu* (supra) the Court had considered the powers of the Court for interference under Section 397 after framing of charge. It was held that framing of charge is not the stage, at which final test of guilt is to be applied. The Court should apply the test as to whether uncontroverted allegations as made from record of case and documents submitted therewith, prima facia establish the offence or not. In the case of *Amit Kapoor Vs. Ramesh Chander and Another* (supra) it was observed that Section 397 of Code of Criminal Procedure vests the Court with power to examine the record of subordinate Court. The jurisdiction under Section 397 of Code of Criminal Procedure can be exercised to examine the correctness, legality and propriety of order passed by the Court. In the case of *Sampat Singh and others Vs. State of Haryana and others* (supra) it was observed that it is not for a court to keep track of an investigation and watch its day to day progress but when an investigation culminates into a final report as contemplated under Section 173 of Code of Criminal Procedure than competent Court enjoins a duty within its authority sanctioned by law to scrutinize the final report and apply judicial mind and take decision to accept or reject report. Hence, it was necessary to send the final report to the Special Court. In *Mahendra Lal Das Vs. State of Bihar and Ors.* (supra), the Court has observed speedy trial encompassed all stages of investigation, enquiry, trial, appeal, revision retrial. FIR was quashed on account of long delay in trial due to non grant of sanction. In the case of *Atchut Mucund Alornekar Vs. Central Bureau of Investigation* (supra) it was observed that the competent authority found that matter was not fit for launching prosecution the respondent could not have laid chargesheet of Indian Penal Code offences. The factual matrix of the said case indicate that, the Commissioner of Customs and Central Excise referred the matter to the Chief Commissioner Customs and Central Excise forwarded it to CBEC New Delhi. Upon examination and interpretation of Section 14(1) of the Customs Act, the CBEC issued circular dated 3rd June, 2010 which states that, in case of sale of imported goods, after they are warehoused on Indian Territory. The value of such transaction took place will not qualify as the transaction value as per section 14 of Customs Act. In view of circular petitioners cannot be said to have committed offences. The CVC had not granted sanction. The petitioner therein were public servants. The offences were interlinked and acts were committed during official duty. In the case of N.R. Saraiya (supra) CVC had assigned detailed reasons for referring sanction. There was no dispute that facts constituting offences alleged under Prevention of Corruption Act and Indian Penal Code are same. The factual aspects as narrated herein above in the present case are distinct. The order passed by competent authority giving reasons for sanction is not before the Court. Except stating that sanction has been refused by competent authority and CVC has concurred. In the light of the present case, the decision referred to above are not applicable. The charge is framed. The earlier order remanding case to court of Magistrate was passed in 2009 was not assailed. The Indian Penal Code offences included charge under Sections 120B, 419, 420, 467, 468, 471 of Indian Penal Code.

15. In the aforesaid circumstances, the applications are devoid of merits and the same required to be rejected.

**ORDER**

i) Criminal Revision Application No. 221 of 2016 and Criminal Revision Application No. 222 of 2016 are dismissed.

ii) The trial Court shall dealt with case in accordance with law, without being influenced by this order.

Sachidanand Kuttan Nair Digitally signed by Sachidanand Kuttan Nair Date: 2018.09.10 15:14:34 +0530

**( PRAKASH D. NAIK, J. )**