IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 457 OF 2017

Rajesh Lakshman Dhanawade … Applicant
Vs.
State of Maharashtra … Respondent
...
Mr. Hrishikesh Mundargi a/w Ms. Shraddha Sawant for the Applicant.
Ms. P.N. Dabholkar, APP for the Responden-State.
...

CORAM : PRAKASH D. NAIK, J.
DATE : 8th JUNE, 2018.

P.C.

1. The applicant has preferred this application under Section 482 of the Code of Criminal Procedure challenging the order dated 3rd March, 2017 passed by the Special Judge for Anti Corruption Case rejecting application for discharge in ACB Special Case No.68 of 2014.

2. The prosecution case is that the applicant (accused No.1) a public servant was charged for holding disproportionate assets to the known source of income. Offences were registered vide Cr.No.15/2012 under Section 13(1)(e), 13(2) of Prevention of Corruption Act, 1988 read with Sections 465, 466, 467, 468, 471,

474, 420 and 109 of Indian Penal Code. On receipt of complaint with regards to the disproportionate assets against the applicant, a inquiry was conducted vide Inquiry No.8 of 2004 and it was noticed that the applicant was holding disproportionate assets and thereafter open inquiry was conducted vide open inquiry No. 8/2006 on directions of the authorities. It is alleged that during the service period from 1987 to March 2006 as a public servant, the applicant was holding disproportionate of assets worth Rs.16,89,383/-. The inquiry officer submitted report in that regard. In pursuant to that First Information Report was registered on 23rd May, 2012 vide C.R. No.15 of 2012 against the applicant and his wife. Thereafter, the investigation was conducted and the chargesheet is filed. It is alleged that during the course of investigation, additional facts came to light and documents were collected.

3. The applicant preferred an application for discharge before the Special Court by Exh.14. The said application was rejected by order dated 3rd March, 2017. Hence, the petitioner has preferred this application challenging the said order.

4. The applicant's contentions before the trial Court as well as this Court is that the inquiry had commenced in 2006 on the basis

of anonymous complaint and thereafter the First Information Report was registered on 23rd May, 2012 which is almost after a period of about six years. Even if the material placed on record is perused, the charge of disproportionate assets is not sustainable. The Investigating Officer did not verify the genuineness of documents. The Investigating Officer had miscalculated the income and expenditure. The explanation tendered by the applicant was not properly considered by the Investigating Officer. It is submitted that inquiry officer had initially made analysis of entire material and came to the conclusion that there was no substance in the applications had recommended for closure of inquiry, however, the Investigating Officer continued with the inquiry. The opinions given by the concerned officials were ignored by the Investigating Officer. It is submitted that decision of the Investigating Officer to continue the investigation was criticized by the officials. The learned counsel for the applicant had drawn attention of this Court to the opinion expressed by inquiry officer and legal advisory. It is submitted that there is nothing to substantiate the charge of forgery. He also pointed out the statement of Mr. Mazhar Ali Ansari dated 6th April, 2010 which according to him supports the case of the applicant that the wife of the applicant had undertaken tailoring work and she had earned income to the extent of Rs.5,60,805/-. It was also submitted that the sanction to prosecute was granted by the officer who directed investigation and therefore such sanction bad in law. It is submitted that on completing the initial inquiry C-summary was approved. The applicant had applied for the papers of investigation through Right to Information and obtained the copies of the notings which were maintained during the investigation. On the basis of the said noting, the submissions as stated above were advanced by the applicant's counsel. It is submitted that remarks for classification of the cases C-Summary were passed on the basis of the opinion of the legal advisor. The Court did not consider aforesaid aspect and reject the application for discharge. It is submitted that no case is made out to proceed against the applicant and hence the applicant deserves to be discharged from the said proceedings. The applicant had tendered the chart giving the calculations about the income and tried to canvass that the prosecution has not made out the case of disproportionate assets.

5. The Assistant Commissioner of Police presently attached to Anti Corruption Bureau, Mumbai has filed the affidavit in reply dated 9th February, 2018. In the reply, it is stated that a discrete

inquiry was made in the year 2004 bearing No. 8 of 2004 by Anti Corruption Bureau, Mumbai with regards to acquiring of properties by the applicant which was followed by the open inquiry bearing No. 8 of 2006. During the open inquiry it was revealed that the income of the applicant is more than his lawful income. The affidavit gives the chart showing income, total expenditure, total assets and disproportionate assets of the accused. The disproportionate assets are mentioned as Rs.16,89,383/- which is 31.57 per cent. It is further stated that CR No. 15/2012 came to be registered against the applicant and during the investigation the statement of witnesses were recorded and it reveals the commission of offence committed by the accused. It is further submitted that the applicant and co-accused had prepared bogus documents i.e certificate of basic tailoring course and shown their extra income. It is further stated that during further investigation it was revealed that the accused had acquired disproportionate total assets of Rs.81,91,815/- and the percentage is 218.597% to the said amount. The sanction was granted by the Director General of Police and chargesheet was filed before the Special Court against the accused.

6. Learned APP submitted that grounds for discharge raised by

the applicant were considered by the Special Court and by assigning reasons, the application for discharge was rejected. It is further submitted that the documents relied upon by the applicant is a matter of defence which has to be adjudicated during the trial. It is further submitted that the submissions made at the instance of applicant are required to be tested in evidence during the trial. *Prima-facie,* case is made out against the applicant to proceed against him at the stage of framing of charge and dealing with the application for discharge, the Court has limitation and the documents relied upon by the applicant cannot be appreciated at this stage. The Court cannot travel beyond the scope of the provisions of law and therefore no case is made out to set aside the order of the Special Court and discharge the accused.

7. After going though the documents on record, it can be noted that on completing the investigation the chargesheet is filed. The applicant has relied upon the various notings of the Investigating Authorities made during the course of investigation in relations to the inquiries conducted by the police officers and has contended that time and again it was noted that no case is made out against the applicant about the disproportionate assets. It is pertinent to note that investigation proceeded and the chargesheet has been

filed. The prosecution case is that documents and material collected during the inquiry and investigation conducted by the Investigating Officer shows that the accused-applicant had acquired disproportionate assets to the known source of income and hence there is sufficient material against the applicant-accused to frame the charge. The grounds raised by the applicant are in the form of probable defence. The applicant is relying upon the opinions made by the Inquiry Officer and legal advisor. The question which arises for consideration is whether the said opinions could prevail over the investigation conducted by the police and the chargesheet filed against the applicant. Even after the inquiry was conducted, the Investigating Officer proceeded with the investigation and on being satisfied that there is sufficient evidence against the applicant, the chargesheet was filed. It is settled law that the at the stage of framing of charge, roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini trial at the stage of framing of charge. That would defeat the object of the Code. It is well settled law that at the stage of framing of charge, the defence of the accused cannot be considered. From the chargesheet and the reply filed by the prosecution on the basis of chargesheet, it appears that the prosecution case is that the accused is holding disproportionate assets worth Rs.16,89,383/-. The documents relied upon by the applicant can be considered as defence during the trial. The prosecution case cannot be brushed aside by considering the submissions advanced by the applicant. At the stage of consideration of application for discharge, the Court has to proceed with an assumption that the material brought on record by the prosecution is true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all ingredients constituting the alleged offences. The Special Court has taken into consideration the said principles laid down by the Apex Court in the case of *State of Tamilnadu Vs. N. Suresh Rajan & Ors.*[1]. In the said decision, it was also observed that at this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. If the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge.

1.*2014 ALL MR (Cri) 781 (S.C)*

8. In the aforesaid circumstances and considering the material on record and the principles of law which are to be applied while dealing with the applications for discharge, I find that no case is made out for discharge, the application deserves to be dismissed.

ORDER

(I) Criminal Application No. 457 of 2017 stands dismissed;

(ii) It is clarified that the observations made in this order are only for adjudicating the present application and trial Court shall not influenced by the same;

(iii) Applications stands disposed of.

(PRAKASH D. NAIK, J.)