IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRI. REVISION APPLICATION NO.214 OF 2018

Kaushalya Devi Yadav .. Applicant
Vs.
The Union of India & Anr. .. Respondents

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Mr.Girish Kulkarni I/b. Ms.Mrunmai Kulkarni, Advocate for the Applicant.
Ms.Ameeta Kuttikrishnan, Advocate for Respondent No.1.
Mr.A.R. Patil, APP for the Respondent – State.
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CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 10, 2018.

P.C. :

Heard both sides for final disposal.

1 The applicant is prosecuted in the proceedings initiated by the respondent No.1–CBI for offences punishable under Section 109 Indian Penal Code with Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "The PC Act", for short). Applicant is arrayed as accused no.3 in Special Case No.69 of 2012. Applicant had preferred an application for discharge before the Special Court, which has been rejected by order dated 3rd April, 2018.

2 The case of the prosecution is as follows:

(a) The original accused no.1, got employed with RPF in the year 1996 and during the period from 16th January, 1996 to 22nd October, 2010, being public servant, acquired immovable and movable assets to the tune of Rs.98,67,558/- in his name and his in the name of his family members and relatives against the likely saving of Rs.26,28,132/-, during the said period.

(b) It is also the case of the prosecution that during the period Mrs.Sushma Yadav wife of accused no.1 the applicant who is the mother of accused no.1 and other relatives had aided and abetted accused no.1 in acquiring assets in their name which were disproportionate to the income and likely savings of accused no.1, applicant and Stm.Sushma Yadav. That on 22nd October, 2010, accused no.1 was found in possession of the assets worth Rs.72,39,426/-, which are disproportionate to his known source of income for which he did not give satisfactory account. It is alleged that the original accused no.1 i.e. the public servant had during the check period, arranged cheques and demand drafts in the name of other accused through private persons after giving equivalent amount of cash and commission to them.

(c) The allegations against the present Applicant is that she had purchased a flat in her name at 402, Type – C, A-Wing, Wadwa Group, Shiv Aradhana, Khadakpada, Kalyan (West), for consideration of Rs.16,10,000/- during the check period.

(d) After completing investigation, charge-sheet was filed before the Special Court. The application for discharge was preferred by applicant, which was rejected on 3rd April, 2018.

3 Learned counsel for the applicant made following submissions:

(a) The evidence on record does not make out any case to proceed against the applicant. The applicant has been prosecuted by invoking Section 109 of I.P.C. and it is alleged that she has aided and abetted accused no.1 for committing the offences under Sections 13(2) and 13(1)(e) of the PC Act.

(b) The essential ingredients to constitute the offence of abetment against the applicant is lacking in the impugned proceedings. The prosecution has not brought out any incriminating material in the form of documents on record to make out *prima facie* case against the applicant.

(c) Accepting the entire allegations in the charge – sheet as true, the prosecution has not made out any case to proceed against the applicant, as an abettor to the alleged crime.

(d) Charge–sheet was filed alleging that the applicant had abetted the public servant (original accused no.1), in acquiring the flat amounting to Rs.16,10,000/-, at Kalyan. However, the said flat was acquired by the applicant after she has sold her earlier flat which was in her name and the amount was acquired from the proceeds of the said flat and other income were utilised in purchase of flat at Kalyan.

(e) The husband of the applicant was working as a teacher for a period of about ten years in Uttarpradesh and thereafter from 1982 to 1994, he was working as school teacher in

BMC School at Mumbai. His income from salary and savings thereon were used by the applicant for the purchase of the said flat at Kalyan. This fact has been overlooked by the investigating agency.

(f) The husband of the applicant had passed away in the month of August 1994 and after his death, the applicant is receiving pension from BMC for the service rendered by her husband. The same has been shown as income by way of pension to the applicant in the charge–sheet, but, the prosecution has neglected to consider the same while computing her income.

(g) Prosecution has deliberately shown that the earnings of the applicant were only through pension and has failed to take note that she owned a flat which was sold earlier much prior to the check period. It is further submitted that the applicant was receiving regular income from the rent of his flat which was situated at Miraroad.

4 The case of the prosecution is that the alleged flat was purchased for Rs.16,10,000/-, vide agreement for sale dated

27th November, 2009, for which Rs.14,00,000/- were paid by cheques and Rs.2,10,000/-, in cash has been paid to builder. Rs.8,00,000/-, were paid by the original accused no.1. It is submitted that the amount of Rs.6,00,000/-, was paid from account of applicant. During investigation, applicant could not explain the source of cash amount deposited in her account.

5 Mr.Kulkani further submitted that the amount of Rs.8,00,000/- was paid by accused no.1 to builder by cheque and through his undisputed source *viz.* salary account. Applicant has satisfactorily explained all the expenditures incurred by her during the relevant period as also she has sufficient source of income to pay for such expenditure. Therefore, it cannot be said that the expenditures are made out of illegitimate amount allegedly made by original accused no.1. Out of all the payment of Rs.16,10,000/-, for purchase of the flat, an amount of Rs.8,00,000/-, was paid by the applicant through her income generated by way of pension of Rs.5,44,396/-, gratuity of Rs.36,216/- and sale of flat was Miraroad in the year 1999 for Rs.2,50,000/-, which she received after death of her husband. It is not disputed that an amount of Rs.14,00,000/-, was paid by cheque and cash of Rs.2,10,000/-, was paid to builder. However,

inspite of the aforesaid factual aspects, the applicant is being prosecuted for aiding and abetting accused no.1, who is son of the applicant.

6 It is submitted that the income received by the applicant during the check period is computed which would reveal that all that the expenses have been satisfactorily accounted for and except inferences, there is no cogent evidence of her having purchased the property at Kalyan by utilizing the money of the original accused no.1. It is submitted that there is nothing on record to establish that apart from the amount of Rs.8,00,000/-, which was parted for purchasing the said flat premises from the salary account of accused no.1, the other amount is being transferred from the account of accused no.1 to the account of the applicant for purchasing the said flat. It is submitted that the detailed explanation has been stipulated in ground “o”, of this application, which is ignored by the prosecution as well as the Sessions Court while dealing with the application for discharge.

7 It is submitted that the Sessions Court has rejected the application for discharge by overlooking the fact that there is

no cogent evidence to prosecute the applicant by invoking Section 109 of IPC.

8 The emphasis is placed by the Sessions Court on the aspect that the applicant did not have independent source of income, and, she, therefore, could not have made payment of cash of Rs.2,10,000/-, towards the purchase of the flat in Kalyan. In this regard, it is submitted by applicant that her savings during the check period exceeds her expenditure, and, therefore, there is no reason to draw adverse inferences against the applicant.

9 The trial Court has wrongly erred in considering the income and savings of the applicant within the four corners of the case put forth by respondent no.1 and on bare perusal of the impugned order rejecting the application for discharge, it is apparent that the Special Court has ignored several aspects highlighted by applicant. It is submitted that the prosecution cannot draw inferences in prosecuting the accused in the absence of any cogent evidence.

10 Per contra, the learned counsel for respondent no.1–CBI submitted that there is no reason to interfere in the order

passed by the Special Court, rejecting the application for discharge. The prosecution has made out *prima facie* case to proceed against the applicant on the basis of the documents on record, the statements of witnesses, and, therefore, there is no reason to quash the proceedings against the applicant. The Court while dealing with the application for discharge has limitations and the Court is not expected to enter into a roving inquiry and what is required is that the prosecution should make out a *prima facie* case to proceed against the accused for framing charge. The submissions advanced by the advocate for the applicant are the probable defences which cannot be considered at this stage, and, it would be a matter of evidence during the course of trial. The respondent has also filed reply opposing the grant of relief to the applicant. In the reply, it is stated that the charge–sheet makes out *prima facie* case against applicant. It indicates that accused no.1 has wisely invested the alleged disproportionate assets in the name of his mother (applicant). At the relevant time, amount of Rs.2,10,000/-, was not meager. The figures, *prima facie,* appears to have been tallied and since there is no justification as to how the applicant has paid Rs.2,10,000/-, in cash to the builder, the prosecution has indeed made out *prima facie* case against the applicant to prosecute her for the said offence. It is submitted that accused no.1 has not explained source of the income and he had accumulated the huge wealth which is disproportionate to his known source of income and the amount was divested in the account of various relatives including account of the present applicant. It is, thus, submitted that the application preferred by the applicant may be rejected.

11 Having heard both the sides and going through the documents on record, it is apparent that primarily grievance of the prosecution is with regards to the cash amount of Rs.2,10,000/-, although, it is contended during the course of hearing of this application that the dispute is also with regards to the amount of Rs.8,00,000/-, which was utilized by the applicant for purchasing the flat at Kalyan. It is necessary to note that as far as amount of Rs.8,00,000/- is concerned, the said amount was transferred by accused no.1 through the known source of income. The said amount was from the salary account of accused no.1. The dispute, at the most, is with regards to the balance amount which was paid towards the purchase of the flat premises. Prosecution has vehemently submitted to the trial Court as well as before this Court that there is absolutely no justification with regards to the cash amount of Rs.2,10,000/-, utilized by the

applicant for purchasing the flat. It is pertinent to note that the applicant has pointed out that the husband of the applicant was employed as a teacher at Jonpur, Uttarpradesh and after his retirement he was drawing pension. It is also pointed out that the applicant had saved the amount from the pension of her husband. After the death of her husband she is also getting pension. It is also submitted that the husband of the applicant was also working in BMC School at Mumbai. The total amount paid by cheque is Rs.14,00,000/-, and out of which Rs.8,00,000/-, were transferred by accused no.1 and the rest of the amount is explained by applicant. From the tenor of the prosecution case, it is apparent that the prosecution is expecting the applicant to satisfactory account the amount, which is utilized in purchasing the said flat. The explanation on record is sufficient to exonerate the applicant for being abettor of the alleged crime. Apart from that, implead a particular person and prosecute him for an offence of abetment, there has to be cogent evidence to show the involvement of abatement in commission of the crime, which is lacking in the present complaint. Section 109 of IPC relates to punishment of abetment. As per the said penal provision whoever abets any offence shall if the act is abetted is committed in consequence of the abetment, and no express provision is made by this Code for punishment of such abetment, be punished for that act. The explanation to the said provision envisaged that, an act or offence is said to be committed in consequence of abetment when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with aid which constitutes the abetment. It would be relevant to quote illustration (a) to Section 109 which reads thus:

> *“(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. Be accepts the bribe. A has abetted the offence defined in Section 161.”*

The case of prosecution is that accused no.1 has amassed income which is disproportionate to his known source of income, some of which is purportedly utilised for purchasing alleged asset thorough applicant. The prosecution has to qualify its case to satisfy the elements to constitute abetment. Prosecution cannot proceed on the basis of inferences.

12 Section 13(1)(e) of the PC Act, reads thus:

> *“Section 13(1)(e) in The Prevention of Corruption Act, 1988*

(e) If he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.—For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant."

13 On reading the said provisions, it is apparent that for the purpose of the said provision, the known source of income means income received from any lawful source and such receipts has been intimated in accordance with the provisions of any law, rules and orders for the time being applicable to the public servant. Section 13 (1)(e) envisages that the public servant is required to satisfactory account for the disproportionate assets to his known source of income. The onus is sought from the public servant to explain. However, going thorough the documents on record and the allegations made in the present charge–sheet, and the case of the prosecution, it appears that the prosecution

proceeds on the basis that the applicant is required to explain the known source of income. It was for the prosecution to establish that the accused no.1 being public servant has not accounted for the disproportionate asset and that the said amount has been parted to the applicant being his mother. The prosecution cannot base its case only on the basis of presumption and prosecute the accused for aiding and abetting the principal accused. Although at the stage of framing of charge or dealing with the application for discharge, the Court is not required to enter into the arena of the detailed inquiry. It is expected that *prima facie* the case should be made to frame the charge on the basis of the material on record. The applicant is being prosecuted by invoking Section 109 of IPC, and, more particularly, on the basis of the fact that she has not explained the source of cash amount of Rs.2,10,000/-. In the circumstances, it would be an abuse of process of law to prosecute the applicant in the said proceedings. The case is made out for quashing and set aside the proceedings.

14 Hence, I pass the following order:

:: <u>O R D E R</u> ::

(i) Criminal Revision Application No.214 of 2018, is allowed;

(ii) The impugned order dated 3rd April, 2018,passed by CBI Special Court in Special Case No.69 of 2012, pending before the Special Judge, CBI, City Civil & Sessions Court, Greater Bombay, is quashed and set aside and the applicant is discharged from the said proceedings;

(iii) Criminal Revision Application No.214 of 2018, stands disposed of.

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