IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.710 OF 2017

S. Raghunath .. Applicant
Vs.
Senior Inspector of Police
CentralBureau of Investigation
Bandra Kurla Complex,
Bandra (East) & Anr. .. Respondents

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Mr.M.S. Mohite i/b. M/s.T.N. Tripathi & Co., Advocate for the Applicant.

Ms.Shubhada Khot, Advocate for Respondent No.1.

Mr.S.R. Shinde, APP for the Respondent No.2–State.
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CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 7, 2018.

P.C. :

The petitioner has taken exception to the order dated 17th March,2017, passed by the Special Court for CBI, rejecting Criminal Revision Application No.158 of 2017 as well as the order dated 2nd December, 2016, passed by the Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai, in C.C. No.721/PW/2009, rejecting applicationfor discharge.

2 Applicant is prosecuted for offences punishable under Sections 120-B, 420, 465, 467, 468 & 471 of Indian Penal Code ("IPC", for short). The brief facts of the prosecution case are as follows:

(a) That since 1985, M/s.Blue Blends (India) Ltd. (BBIL) (Accused No.2) was banking with Canara Bank, Tamarind Lane, Fort, Mumbai. That during the period 1997-1998, BBIL was enjoying credit facility of Working Capital Debt Loan (WCDL) and Open Cash Credit (OCC)/Overdraft against Book Debts (ODBD) against the security of Book Debts.

(b) That Shri. Anand Arya (Accused No.1), Chairman and Managing Director of BBIL submitted "Book Debt" statement under his signature to the Bank and that the statements were duly prepared and forwarded by Shri Rajesh Moondra (Accused No.15), Finance Controller of BBIL with dishonest intention to cheat the bank by including the names of those debtors on whom bills were already drawn and discounted and further claiming that the payment is still outstanding from such debtors and thus availed the "Double Finance", for which BBIL was not entitled.

(c) That during the year 1997-1998, as per sanction no.S-25 dated 7.4.1997, BBIL was sanctioned with the "Bills Discounting" limit of Rs.300 lacs in which BBIL was allowed to discount the bills arising out of credit sales accompanied by documents of title to goods, RRs/Lorry Receipts and/or Accepted Bill of Exchange/LBDs with the receipted challans with usance period not exceeding 90 days.

(d) That for availing this facility, it was required by BBIL to submit the above documents of credit sales made to the party and duly executed Hundie by the buyer and also signed by the Authorised Signatory of BBIL in favour of Canara Bank.

(e) That during the relevant period of Authorised Signatories of BBIL were Shri Suraj Dugar (Accused No.3), shri Suresh John (Accused No.13) & Shri S. Raghunath (Accused No.14)(Applicant herein). Reliance is placed on

D8 being the specimen signature cards and resolution dated 26th March, 1992, for the Autorised Signatories of BBIL.

(f) That BBIL during the period 1st December, 1997 to 31st March, 1998,presented 7 false and fabricated hundies to Canara Bank duly countersigned by S/Shri. S.Jhon (Accused No.13) & S. Raghunath (Accused No.14 – the Applicant herein), Authorised Signatories on behalf of BBIL.

(g) That the hundies were accompanied with the invoices and delivery challans, which were got discounted from Canara Bank. It is alleged that though the bills were prepared in the name of various firms, the goods were actually delivered to parties which were specifically within the knowledge of accused persons who pocketed sale proceeds.

(h) That the parties/firms on whom the said 70 bills were drawn were floated by S/Shri Bajrang Bardia (Accused No.10), Dayandand Panihar (Accused No.8), Rajeshkumar

Jain (Accused No.4), Manoj Jain (Accused No.11), Khushal Rajpurohit (Accused No.9), V.S. Nakkhwat (Accused No.12) & Smt. Sheela Panihar (Accused No.7) w/o. Shri Ramanand Panihar, who were working with BBIL or with its group companies.

(i) That BBIL had drawn and discounted total 70 bills during the period from 1st December,1997 to 31st March, 1998 which remained outstanding for payment, because the parties / firms on whom bills were drawn could not retire these bills amounting to Rs.2,78,88,552/-, from Canara Bank and thus BBIL (Accused No.2(had caused the wrongful loss to Canara Bank and corresponding gain to itself.

(j) That BBIL got opened the LCs mentioned in Annexure – B of the Charge Sheet from Canara Bank during the period January 1998 to March 1998 for which BBIL could not honour the LC commitments regarding its payment on due dates to Canara Bank and hence those LCs were devolved by the Bank which are still outstanding for payment. Reliance is placed on D 14 being the original devolved LCs.

(k) That BBIL never cleared their LC liabilities despite the fact that they received the materials against the same from the suppliers and by manufacturing their product they sold the goods in market and received its payment. However, as per transaction covered under LC No.140/98 for Rs.50 lakhs with M/s.Jayeshkumar Rajinikant, Ahmedabad, in which they had received back the payment of LC from the said suppliers the company and its directors/officials did not deposit back the funds with Canara Bank and thereby caused wrongful loss of rs.50 lakhs to Canara Bank and corresponding gain to BBIl.

(l) That during the period 1st April, 1996 to 31st March, 1997, BBIL (Accused No.2) dishonestly diverted the funds and invested the same in its group companies in order to invest the same in M/s.Premier Synthetics Ltd. under which they were establishing a cotton spinning unit at Ahmedabad.

(m) That BBIL (Accused No.2) had also utilized the funds of the Loan Account No.GA 2605 of Canara Bank to an extent of Rs.2 crores for repaying the short term loan borrowed by them from Jindal Group of Companies by issuing 10 cheques of Rs.20 lakhs each between 25th March,1998 and 27th March, 1998 from the said Loan Account No.GA 2605. Reliance is placed on D 67 to D 69 being the originals of the said 10 cheques.

(n) That Shri Anand Arya (Accused No.1), Shri Suraj Dugar (Accused No.3) and Shri Suresh John (Accused No.13) are the Authorised Signatories and Directors to operate the Federal Bank, Fort, Mumbai account of M/s.Premier Synthetics Ltd. in which BBIL had diverted the funds. No documents, however, is relied upon for this allegation.

3 On completing investigation, charge -sheet was filed. Applicant was arrayed as accused no.14.

4 Applicant preferred an application for discharge before the Court of learned Metropolitan Magistrate, which was rejected on 2nd December, 2016. In pursuant to that the applicant preferred Criminal Revision Application before the Sessions Court which was dismissed on 17th March,2017. Hence, the petitioner has preferred the present application by invoking the inherent powers of this Court under Section 482 of Cr.P.C.

5 Learned counsel for the applicant Mr.Mohite, submitted that there is no evidence to proceed against the applicant for the alleged offences. No offence is disclosed against the applicant. No overtact has been attributed to him. There is no documentary evidence to frame charge against him. The applicant has not signed any of the bills, Hundies, LC's, cheques or other documents involved in the alleged offence. Statement of two witnesses relied upon by the prosecution that the applicant and other accused had signed the aforesaid documents, are not supported by any corroborative evidence. Learned counsel pointed out several documents *viz.* Hundies/LC/s and submitted that bare perusal of documents does not indicate that the applicant has signed the said documents. Mere statements of two witnesses alleging that 70 bills/Hundies has been signed by the applicant as an authorized signatory without any corroborative documentary evidence is not enough to fasten liability against him. It is submitted that the Courts below has failed to appreciate that there is only one signature of authorized signatory on the alleged bogus bills/Hundis and the statements of the two witnesses relied upon by the prosecution indicate that the bills were signed by both the authorized signatories. It is

submitted that the signature on the specimen card purportedly appears to be signature of another person which is also appearing on several documents. However, prosecution has failed to justify that the applicant has signed the said documents. He also placed reliance on the decision of Apex Court in the case of ***Niranjan Singh Karam Singh Punjabi Vs. Jitendra Bhimraj Bijjaya & Ors.***[1]. Learned counsel also placed on record the compilation of documents which form the part of the charge–sheet to draw support to his submission that there is no evidence to prosecute the applicant in the said proceedings.

6 Whereas, learned counsel for respondent no.1 Ms.Khot submitted that there is sufficient evidence to proceed against the applicant. The prosecution is relying upon statements of two witnesses which are recorded during the course of investigation. She pointed out the statements of the said witnesses, namely, Vijay Kamat, recorded on 18th June,2002 and statement of Shri.M.S. Prabhu, recorded on 22nd December, 2001. They have stated that the Bills/Hundies on behalf of the company were signed and issued by accused Suresh John and S.Raghunath (applicant), in the capacity of authorized signatory of M/s.Blue

1 (1990) 4 SCC 76

Blends (India) Ltd. It is further stated by them that from the records available from the Bank, they can say as to who was the official who was authorized for discounting of above bills lodged by M/s.Blue Blends (India) Pvt. Ltd. It is submitted that the evidence of these two witnesses is required to be tested in evidence during the trial. This is not the stage to appreciate the evidence. At the stage of discharge, the Court is not required to enter into detailed inquiry and what is required to be seen is that there is *prima facie* evidence to proceed against the accused and frame charge against them. It is submitted that the applicant was internal auditor and considering the factual matrix of the case his involvement, is shown in commission of crime. She pointed out the Hundies/Bills and the specimen card and the signatures appearing therein. It is submitted that the witnesses has categorically stated that the applicant and the co-accursed has signed the said bills and therefore the prosecution has made out *prima facie* case against the applicant and thus no ground for discharge is made out. Reliance was placed on the decision of the Supreme Court in the case of ***Amit Kapoor Vs. Ramesh Chander & Anr.***[2].

2 (2012) 9 SCC 460

7 Having heard both the sides and on perusal of the documents, it appears that the prosecution case against the applicant is that his involvement in the case is reflected from the signature appearing on the documents *viz.* Bills/Hundies, which were allegedly bogus documents. Applicant is the authorized signatory. It is also the case of the prosecution that the statements of two witnesses referred to herein above categorically refers to the documents being signed by the authorized signatory and the signatures appearing on the said documents are of the applicant. It is pertinent to note that the documents are signed by one authorized signatory. Learned counsel for the petitioner drew my attention to the signature on specimen card and the signature of the authorized signatories appearing on the documents and submitted that the admitted signature of the applicant and that appearing on the disputed documents are completely distinct in nature. Prosecution has not collected any evidence in the form of handwriting expert's opinion to establish that the applicant is the author of the signatures appearing on the disputed documents. Apparently, the signature of the applicant appearing in specimen card and those appearing on the bogus documents are completely distinct in nature. Except the statement of the two witnesses that the

documents were signed by the applicant and the co-accused, who was the authorized signatory, there is no corroboration to the said fact. It is relevant to note that the documents are signed by one authorized signatory, whereas, the version of the witnesses is that both the authorized signatories had signed the said documents. By no stretch of imagination, it can be presumed that the signatures appearing therein are that of the applicant. The prosecution is,thus, trying to proceed against the applicant on the basis of surmises. It is pertinent to note that except the statement of two witnesses, there is no other evidence to establish that the applicant has participated in alleged crime in any manner. Merely being internal auditor, it cannot be assumed that the applicant has participated in the crime in the absence of any cogent evidence. In fact that was not the case of prosecution before trial Court and revisional Court. It is also pertinent to note that the case of the prosecution before the trial Court and before the Revisional Court, is based on the aforesaid witnesses and the purported signatures appearing on the disputed documents. There is no corroboration to the said statement of witnesses in any manner and on the contrary, the documents on record does not indicate even *prima facie* that the applicant is the author of the said signature. It is also necessary to note that the trial Court and the Sessions Court has proceeded only on the basis of the version of the two witnesses and accepting the prosecution case that the documents were signed by the applicant and the co-accused.

8 The prosecution is relying on document D-8, being the specimen signature cards and Resolution dated26th March, 1992, for authorised signatories of BBIL. The said Resolution does not mention applicant as authorised signatory. Document D-60, is the specimen signature card and Resolution dated 30th November, 1995, for authorised signatories of BBIL. The Resolution dated 30th November, 1997, is for opening and operating the account of BBIL with Bank of India, Shahibaug Branch, Ahmedabad. D-61 are the 70 Hundies. The documents viz. request for opening LCs, accompanying invoices and other documents do not bear signature of applicant. It is not the case of prosecution that the applicant has signed any of the documents or had any role to play in relation to LCs. The applicant was not a Director or person in charge of day to day management and affairs of BBIL. The respondent could not point out any documents bearing signature of applicant. The case rests entirely on allegations that, the applicant signed documents submitted by

accused no.2 company for discounting the Bills as authorised signatory.

9 In the case of ***Amit Kapoor (Supra)***, the Apex Court has observed that framing of a charge is an exercise of jurisdiction by the trial Court in terms of Section 228 of Cr.P.C. It is observed that at the initial stage of framing of charge, the Court is not concerned with proof but merely strong suspicion that accused has committed offence. Final test of guilt is not to be applied at this stage. Whereas in the decision in the case of ***Niranjan Singh Karam Singh Punjabi Vs. Jitendra Bhimraj Bijjaya & Ors. (Supra)***, has observed that the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face. value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

10 In the light of the principles enunciated in the aforesaid decision and taking into consideration the documents

on record, the statement of witnesses and in the light of the observations made herein above, I do not find that the prosecution has made out a case even *prima facie* to proceed against the applicant. In the circumstances, impugned orders deserves to be set aside and the applicant is required to be discharged in the said proceedings.

11 Hence, I pass the following order:

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

(i) Criminal Application No.710 of 2017, is allowed;

(ii) The impugned order dated 2nd December, 2016, passed by the learned Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai in C.C.No.721/PW/2009 and order dated 17th March, 2017, passed by the Special Judge for CBI, in Criminal Revision Application No.58 of 2017, are set aside and the applicant is discharged from the proceedings bearing CC No.721/PW/2009;

(iii) Criminal Application No.710 of 2017 stands disposed of.

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