IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2672 OF 2017

Natubhai Patel & Anr. ...Petitioners
Versus
Union of India & Anr. ...Respondents

Mr. Mahesh Jethmalani, Sr. Advocate I/b Ms. Gunjan Mangla for the Petitioners

Ms. Ameeta Kuttikrishnan for the Respondent No. 1-UOI

Mr. H. J. Dedhia, A.P.P for the Respondent No.2-State

CORAM : REVATI MOHITE DERE, J.
MONDAY, 15th JANUARY, 2018

ORAL ORDER :

1 Heard learned counsel for the parties.

2 Rule. Ms. Kuttikrishnan waives notice on behalf the respondent No.1-UOI. Learned A.P.P waives notice on behalf of respondent-State.

3 Rule is made returnable forthwith and is taken up for final disposal, with the consent of the learned counsel for the parties.

4 By this petition, the petitioners have impugned the order dated 13th May, 2016 passed below Exhibit 46; as well as the order dated 10th April, 2017 passed below Exhibit 28, in Special Case No. 1 of 2014, by the learned Sessions Judge, Dadra and Nagar Haveli, Silvassa.

5 Mr. Jethmalani, learned senior counsel for the petitioners submitted that the learned Special Judge was called upon to decide two issues; (i) on the point of sanction and (2) that there were no disproportionate assets as alleged by the CBI. He submitted that with the consent of the CBI, it was agreed that the Court would first decide the issue of sanction and thereafter, the second issue. According to the learned senior counsel, the learned Special Judge while deciding the first issue i.e. on the point of sanction, did not go into the merits of the same and observed in para 13 as under :

> *"131. …...... The provisions of Cr. P. C. are applicable to the trials under the P. C. Act. The Criminal Law does not provide for review of the order if passed after application of mind and falls*

> *under the judicial orders. Every judicial orders passed by the Criminal Court is either revisable or appealable as the case may be. Section 27 of the P. C. Act also provides for appeal and revision and the Hon'ble High Court may exercise those powers so far as they may be applicable as conferred by the Cr. P. C. 1973. Having regards to the provisions of law, this Court is of the considered view that once the order of issuing process passed in an order of taking cognizance and once the cognizance is taken nowhere it is provided that a Criminal Court can review its own order.......”* *(emphasis supplied)*

Learned senior counsel submitted that the said observation and finding of the learned Special Judge was perverse and unsustainable in law. He submits that the petitioner No. 1 is a sitting Member of Parliament and that he has been charged for an offence committed during the period 2001 to 2009, when he was the Municipal Councilor of Silvassa. He submitted that considering the same, it was incumbent on the CBI to obtain prior sanction to prosecute the petitioner No. 1. He submits that sanction was necessary, since the petitioner No. 1, as a Member of Parliament, is also an ex-officio member of the Municipal Council. According to Mr. Jethmalani, the issue of sanction goes to the root of the matter and that the learned Special Judge had not considered the same, on merits.

6 Learned counsel for the CBI Ms. Ameeta Kuttikrishnan fairly states, that there was no impediment for the learned Judge to decide the

issue of sanction on merits and accepts that the observations made in para 13 by the learned Judge were incorrect.

7 As far as the second issue is concerned, i.e. the issue of disproportionate assets, Mr. Jethmalani submitted that the learned Special Judge failed to consider the orders passed by the Income-tax Appellate Tribunal i.e. the Appellate Authority and instead observed, that the finding of the Income-Tax Department has no relevance with the trial under the Prevention of Corruption Act. He submitted that even the observations made by the learned Special Judge in para 9 are contrary to the material on record. Mr. Jethmalani submitted that considering the aforesaid, both the impugned orders be set-aside and the matter be remanded back to the Appellate Court, for fresh consideration. He further submitted that the CBI ought to have carried out further investigation under Section 173(8) of the Code of Criminal Procedure (`Cr.P.C'), however, the same has not been done. Learned senior counsel states that the applicant will take steps to file an appropriate application before the learned Special Judge and seek further investigation under Section 173(8).

8 Perused the papers. The petitioners are facing prosecution for the offences punishable under Sections 13(2) r/w 13(1)(e) of the Prevention of Corruption Act. After registration of the FIR and after investigation, charge-sheet was filed as against the petitioners. On 6th August, 2015, the petitioners filed a discharge application (Exhibit 28) under Section 227 Cr.P.C, in Special Case No. 1 of 2014, before the learned Special Judge, Silvassa, and sought discharge from the said case. On 2nd May, 2016, the petitioners filed another application (Exhibit 46) and sought their discharge on the ground that no prior sanction was obtained from the competent authority, to prosecute the petitioner No.1, as required under Section 19(1) of the Prevention of Corruption Act, the petitioner No.1 being a `public servant'. Admittedly, it was decided between the parties i.e. the petitioners' counsel and the counsel for the CBI, that the issue of sanction would be taken up first and thereafter, the second issue relating to disproportionate assets, i.e. on merits. The learned Special Judge after hearing application (Exhibit 46), on the point of sanction, observed in para 13 that there was no power to review the order issuing process which was passed by his predecessor, after going through the records and proceedings. The said

observation of the learned Special Judge is unsustainable. The learned Special Judge ought to have considered and decided the application (Exhibit 46), raising the preliminary question of sanction on merits and by deciding the said application, the learned Judge could not, by any stretch of imagination, be said to be reviewing the order of issue process. The application (Exhibit 46) seeking discharge was maintainable and the learned Judge ought to have decided the same on merits, i.e. whether prior sanction under Section 19 of the Prevention of Corruption Act was necessary to prosecute the petitioner No. 1 or not. As far as application (Exhibit 28) is concerned, i.e. on the point of disproportionate assets, the findings recorded in para 9 of the said order dated 10th April, 2017, show that some of the findings are incorrect and that the orders passed below ITAT appeals have not been considered by the learned Special Judge.

9 Considering the aforesaid, it would be appropriate to remand the matter back to the trial Court, for fresh consideration. Accordingly, the impugned orders dated 13th May, 2016 passed below Exhibit 46 and the order dated 10th April, 2017 passed below Exhibit 28, by the learned Sessions Judge, Dadra and Nagar Haveli, Silvassa, are quashed and set-

aside and the matter is remanded back to the trial Court, to decide the same afresh, on merits, in accordance with law, after hearing both the sides. Accordingly, the Application (Exhibit 46) and application (Exhibit 28) are restored back to their original file. All contentions of both the parties are kept open. It is made clear, that this petition has not been considered on merits.

10 Rule is made absolute in the aforesaid terms.

11 Petition is accordingly disposed of.

12 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.