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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.969 OF 2017

Tapan Kumar Chakroborty ..Applicant.
V/s.
CBI, ACB, Mumbai & Anr. ..Respondents.

Mr.Niteen Pradhan, Senior Advocate i/b. Aditya Lasaria for the applicant.

Mr.H.S.Venegaonkar for the respondent-CBI.

Mr.Y.Y. Dabke, APP for the respondent-State.

CORAM : NITIN W.SAMBRE, J.

RESERVED ON : MARCH 6, 2018

PRONOUNCED ON : MARCH 23, 2018

ORDER

Heard respective parties.

2. The applicant, a public servant, has questioned the order dated August 23, 2017 passed by the Special Judge, CBI, Greater Mumbai seeking discharge in an offence punishable under section 13(1)(e) read with section 13(2)(e) of the Prevention of Corruption Act, 1988 ('the P.C. Act' for short).

3. The facts necessary for deciding the present application are as under :-

a) It is the case of the prosecution that the applicant was appointed as appraiser on August 21, 1989 and promoted to the post of Assistant Commissioner in 2002.

b) During the period from August 23, 1989 to October 5, 2006, the applicant, a public servant, had acquired movable and immovable assets to the tune of Rs.3,22,87,237/- against his likely savings of Rs.1,20,99,615/-. As such, on October 5, 2006 the applicant and his family members were found in possession of assets worth Rs.2,02,87,622/- which was disproportionate to his known source of income and which were not satisfactorily accounted for. Investigation also disclose that on August 23, 1989 the applicant was in possession of assets in his own name or in the name of his family members.

c) The applicant and his wife were charge-sheeted and the wife of the applicant made an application Exhibit-29 in Special Case No.83/2009 for discharge which came to be allowed vide order dated August 5, 2017.

d) On the next date i.e. August 22, 2017, the applicant sought adjournment before the Special Judge which was strongly opposed and it came to be rejected as the trial was pending since 2009. The applicant then moved an application for discharge on August 23, 2017 vide Exhibit-67 which came to be rejected on the very same day and charge came to be framed against the applicant on August 24, 2017 for offences punishable under section 13(1)(e) read with 13(2)(e) of the P.C. Act. The present proceeding as such questions the prosecution of the applicant and prays for his discharge. The applicant has questioned the order dated August 23, 2012 refusing to discharge him from special case.

4. Heard Mr.Pradhan, the learned senior counsel for the applicant. He submits that it is not in dispute that accused No.2 i.e. wife of the present applicant came to be discharged vide order dated August 5, 2017 passed below Exhibit-29. He would urge that the income which came into the hands of accused No.2 i.e. the wife of the applicant needs to be considered while dealing with claim of the applicant for discharge as according to him, from record the extent of disproportionate assets cannot be made out once the income of his wife – accused No.2 is excluded. He would invite the attention of this Court to the judgment of the Apex

Court in the matter of *Satish Mehra V/s. State (NCT OF Delhi) and Another*[1] so as to claim that even if the charge is framed, the inherent powers of the High Court under section 482 of the Code of Criminal Procedure are wide enough to consider the case for quashing of the charge in the present proceedings. He would urge that since the allegations does not disclose *prima facie* case, the prosecution of the applicant would amount to abuse of process of law and as such prayed that such proceedings needs to be quashed.

5. *Per contra*, Mr.Venegaonkar, learned counsel for the C.B.I. and learned APP for the State would oppose the claim. Mr.Venegaonkar would urge that after the charge is framed against the accused, there is no question of considering the claim for discharge in view of the statutory embargo. He would add that the prosecution of the applicant is pending since 2009 and it is in 2017 the charge came to be framed against the accused. He would then urge that the defence in the application cannot be appreciated at this stage of the proceedings. According to him, there is sufficient material to connect the applicant to the crime in

1 **(2012) 13 Supreme Court Cases 614**

question. He would then urge that the case of the applicant, who is a public servant, cannot be considered and dealt with to be at par with that of accused No.2 – his wife, who is not a public servant. Hence, he sought dismissal of the present application.

6. Considered rival submissions.

7. This Court in Criminal Writ Petition No.845 of 2013 has quashed proceedings initiated against the applicant in connection with C.B.I. Special Case No.45/2010. The present case is somewhat different from the earlier case that was registered against the applicant. The investigation depicts that the applicant's assets are exceeding his known source of income by Rs.2,02,87,622/- after adjusting the savings by him and his family members of Rs.1,20,99,615/-. Substantial cash was found in the house of the applicant. Even if assets worth amount of Rs.1,44,51,459/- were held to be belonging to accused No.2, wife of the applicant and she is discharged by the trial Court on August 5, 2017, still there is sufficient material including disproportionate assets to infer that the applicant was holding assets disproportionate to his known source of income.

8. Apart from above, it is to be noted that though accused No.2, wife of the applicant is discharged from the same crime, however, perusal of the said order of discharge passed by the learned trial Court depicts that the learned trial Court while discharging accused No.2 has considered and appreciated the defence of the accused No.1, which is not permissible in law . It will be inappropriate at this stage of the proceedings to look into the defence of the accused.

9. Perusal of the material on record gives rise to serious suspicion i.e. existence of sufficient material constituting an offence against the present applicant. At the relevant time he was unable to explain his legal known source of income. In the case of *Shorah Singh Ahlawat and Ors. V/s. State of U.P.*[2]*,* the Apex Court has held that strong suspicion based on existence of facts constituting an offence is sufficient to frame charge against the accused persons. In the present case, there appears to be sufficient material to proceed against the accused. Apart from above, even if on the very same day of rejection of prayer for discharge, if charge is framed against the applicant. I hadly notice any illegality in the

2 **A.I.R. 2013 Supreme Court 52**

said approach in view of *prima facie* case demonstrated against the applicant.

10. Reliance placed by the learned counsel for the applicant, in the aforesaid backdrop, in the matter of Satish *Mehra* (cited supra) is wholly misplaced as it is not in dispute that the power under section 482 of the Code of Criminal Procedure are available to this Court even if the charge is framed. However, the material brought on record in the present case justifies non-existence of a case for quashing of the proceedings.

11. As such, the application fails and is dismissed.

(NITIN W.SAMBRE, J.)