Vidya Amin.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 504 OF 2017

Abdul Raizak Abdul Jabbar Khan & Anr. … Applicants
vs.
The State of Maharashtra … Respondent

Mr. Govind B. Pawar, Advocate for the applicants.
Mr. A.R. Patil, APP for the respondent-State.

CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 23rd October, 2018

P.C. :

This Revision Application is directed against the judgment and order dated 14th August, 2017 passed by the learned Special Judge under Prevention of Corruption Act, Greater Bombay in A.C.B. Sipecial Case No. 106 of 2015, rejecting the Application for discharge moved by the applicants/accused under section 227 of Cr. P.C.

2. The entire record and necessary proceedings are before this Court and it was argued that the Sessions Court is going to frame charge and so the matter is heard finally.

3. The applicant no. 1/accused was a public servant, who was

initially working as a Clerk in Sales tax Department and subsequently was promoted as Sales tax Inspector. The applicant no. 2 is shown as abettor. Both the applicants are facing prosecution for the offences punishable under sections 13(1)(e) r/w. 13(2) of the Prevention of Corruption Act, 1958 and under section 109 of Indian Penal Code. The case is pending before the learned Special Judge, Anti-Corruption Bureau, Mumbai in Special Case no. 106 of 2015.

4. The learned counsel for the applicants has submitted that the trial Court has not considered the income -tax returns filed by the accused and the learned Sessions Judge has subsequently observed that Income-tax return was not filed. He submitted that in the charge sheet there is no evidence to show that the applicant no.1 has a property disproportionate to his income. He relied on the report under section 173 which was presented by Anti-corruption Bureau, Mumbai. He has submitted that disproportionate amount collected by applicant no. 1, i.e., public servant is shown of hardly Rs.1,28,886/-. He submitted that applicant no. 2 was in the business and she was running a medical shop and, therefore, she was also earning hand in the family.

There is no disproportionate assets. The Investigation Agency have miscalculated the income and therefore, they are entitled to discharge.

5. Learned APP while opposing this Application has submitted that the Investigating Agency has specifically pointed out the income, expenditure, the property and value of the disproportionate assets. The said assets are shown as 4.86% of applicant no. 1, 74.74% shown towards applicant no. 2 and the amount is shown 10.44%. Learned APP submitted that in the report, the Anti-Corruption Bureau has given the details in a tabular form disclosing the disproportionate assets of the applicants. Hence, the learned Special Judge has rightly rejected the Discharge Application.

6. Considered the report and the documents placed before the Court. The submissions made by the learned counsel for the applicant that the income-tax returns are required to be considered by the Court can be taken into account by the learned Special Judge during the trial if produced by the accused. In case of disproportionate assets, the investigating agency has to give all

the details of the income, expenditure and the investment thereafter of the disproportionate assets, it is a matter of voluminous evidence. In the present case, in the report filed by the Anti-Corruption Bureau, the amount of disproportionate assets is calculated and shown specifically. Under such circumstances, it is not to be considered a fit case for discharge. Hence, on the basis of evidence, the Special Court may frame charge and proceed with the matter.

7. The learned Special Judge is requested to call upon the accused for admission under section 294 and thereafter, if the income and expenditure is admitted, then the prosecution may not tender evidence on those counts. Only on the disputed facts, the prosecution can lead evidence and thus, the evidence can be curtailed. The learned Special Judge to work speedily on the matter and expedite it within six months from today.

8. Criminal Revision Application is dismissed.

(MRIDULA BHATKAR, J.)