

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. REVISION APPLICATION NO.614 OF 2017

Harshit Vanraj Merchant

.. Applicant

Vs.

CBI Anti Corruption Branch & Anr.

.. Respondents

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Mr.Sudeep Pasbola a/w.Mr.Bhavesh Thakur, Mr.Karl Rustomkhan
i/b. Mr.Rahul Arote, Advocate for the Applicant.

Mr.H.s. Venegaonkar, Advocate for Respondent No.1 - CBI.

Ms.R.M. Gadhvi, APP for the Respondent - State.

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CORAM : PRAKASH D. NAIK, J.

DATED : JANUARY 18, 2018.

P.C. :

This is an application challenging the order dated 20th September, 2017, passed by the Special Judge (CBI) seeking to discharge the applicant from the prosecution.

2 The applicant is being prosecuted for the offences punishable under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 read with Sections 120-B, 420, 467, 468 and 41 of the Indian Penal Code (IPC).

3 The prosecution case is that at the relevant time the applicant was on the panel of Syndicate Bank Housing Finance Branch, Mumbai, as a valuer. He was the partner of M/s.Narendra & Company and arrayed as accused no.10 in the Special Case No.40 of 2007.

4 It is alleged that some persons had borrowed loan from Syndicate Bank by relying upon forged documents. The alleged amount was borrowed for the purposes of purchasing the premises. The valuation report in respect to the said premises viz. Flat No.102 was submitted by the applicant's firm. It is alleged that the flat did not exist as residential flat and actually there are rooms in the said premises. The accused conspired with each other in obtaining loan from the bank. It is alleged that the applicant was the valuer on the panel of the Syndicate Bank. He did not visit the site personally although it was his duty to inspect the premises and prepare the valuation report on the basis of information supplied by the other staff members and submitted the same to the Bank. It is, therefore, alleged that proper valuation report was not supplied with the view to help the accused in obtaining loan from the Bank. On completing the investigation, charge-sheet was filed before the Special Court.

The applicant had preferred an application for discharge vide Exhibit - 84 before the Special Court which was rejected on 17th July, 2012. The applicant thereafter filed writ petition no.3812 of 2012 before this Court which was dismissed vide order dated 7th December, 2015.

5 While the matter was pending for framing of charge, petitioner - accused contended that there is no *prima facie* evidence placed on record against him for framing the charge. Oral submissions were therefore made seeking discharge. The said application has been rejected vide order dated 20th September, 2017. Hence, the petitioner has approached this Court challenging the impugned orders dated 20th September, 2017 as well as the earlier order dated 17th July, 2012.

6 Learned counsel for the applicant submits that there was no evidence to frame charge against the applicant, and, therefore, the Court ordinarily rejected the prayer for discharge. It is submitted that to frame the charge, the prosecution is required to make out a case and in the absence of any material even, *prima facie*, the Court shall not compel the accused to undergo the trial. It is submitted that there is evidence to show

that the premises were in existence. It is submitted that prosecution had varied its stand *qua* the involvement of the applicant. The prosecution initially alleged that the premises were not in existence and, therefore, it was contended that the applicant did not visit the premises prior to issuing the valuation report and presently it was contended that the premises is not as per the specification. It is submitted that merely because the petitioner was the valuer, he cannot be attributed the charge of being conspirator in commission of the crime. The valuer is not required to verify the documents relied upon by the borrowers. Reliance was placed on the decision of the Madrass High Court delivered in the case of ***L.N. Rajgopalan Vs. Additional Superintendent of Police CBI, Chennai***¹. It is, therefore, submitted that in the absence of any evidence to frame the charge, the prosecution against the applicant-petitioner ought to have been dropped and he should have been discharged from the case. It is submitted that the definition of the term "Flat" would include the premises in the nature of premises which were subject matter of the prosecution and, therefore, there is no infirmity in the valuation report.

1 (2010) 1 Madrass Law Gernal (Cri.) 709

7 Learned counsel for the CBI / respondent no.1 submitted that at the stage of framing charge the Court is not required to enter into detailed inquiry and what is required is *prima facie* material for framing charge. It is submitted that the contentions of the applicant can be considered as probable defence which has to be agitated at the time of trial. There is sufficient material to prosecute the applicant. It is submitted that the applicant was the valuer of the Bank. He did not visit the premises of which the report of valuation was submitted and the report was not in accordance with the specifications/description of the premises. It is submitted that the report was issued in respect to a flat although it was not a flat but a room. It is submitted that the application for discharge preferred by the applicant was rejected by the trial Court which order was not challenged by the applicant before the higher Court. It is also submitted that the applicant then preferred a writ petition challenging the prosecution launched against him, which has been rejected by this Court. At the stage of framing charge, the applicant advanced his oral arguments that there is no material to frame the charge against the applicant. Hence, the application may be rejected.

8 I have perused the documents on record and the order passed by the trial Court. The applicant is being charged for the aforesaid offences on the ground that the applicant had conspired with the other accused to facilitate them in obtaining the loan on the basis of false documents. The prosecution case is that the applicant was appointed on the panel of the Bank as a valuer and the report was submitted to the Bank in respect to flat no.102. It is the prosecution case that the flat premises, as represented by the accused do not exist as residential flat and actually there was rooms in the premises. It is the prosecution case that the report was misleading. The applicant had preferred an application for discharge which was rejected by order dated 17th July, 2012. The said applicant had argued that the property in respect to which valuation report came to be submitted was very much in existence and even it has been sold with the approval of the Court. Similar submission has also advanced in the present application. The earlier application was rejected by the trial Court which order was not challenged at that point of time. However, the applicant had approached this Court by preferring Writ Petition No.3812 of 2012, challenging the charge-sheet filed against the applicant. The Court had noted in the order dated 7th December, 2015 that the applicant had not challenged the order

of rejection of application for discharge. Apart from the said observations, this Court had also observed that it is not desirable to invoke the jurisdiction under Article 226 of the Constitution of India. However, apart from the said observations, this Court had also observed that it is nowhere the case of the applicant that the entire case against him is based upon no evidence to proceed against him. The contention that the valuation report was issued without any *mens rea* on his part, cannot be considered at this stage. Only after assessment of evidence, the trial Court can reach to a conclusion as to whether the applicant had connived or not with the co-accused in securing the loan and he had any ill intention in issuing valuation report. In the light of the said observation, no ground is made out for discharging the applicant from the said prosecution. The applicant had tried to contend that the ground for discharge was presently raised on the basis of the variation in the stands adopted by the prosecution and accepting the valuation report as it is, no case for framing charge is made out. The Madras High Court in its decision which is relied upon by the learned counsel for the applicant had dealt with the case of the valuer. However, the observations are made in the facts and circumstance of the said case.

9 Considering the aforesaid circumstances, no ground is made out to set aside the impugned order and hence, the application deserves to be rejected.

10 Criminal Revision Application stands rejected.

(PRAKASH D. NAIK, J.)