IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 49 of 2018

Shivanand Fakkirappa Bachagundi ... Petitioner
Versus
Union of India (CBI/ACB/GOA),
Bambolim ... Respondent

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Petitioner in person.

Mr. Mahesh Amonkar, Special Standing Counsel for the Respondent.

Coram :- C. V. BHADANG, J.

Date :- 12th February, 2019

ORAL ORDER:

By this revision application, the petitioner is challenging the order dated 07.05.2018, passed by the learned Special Judge, in Special Case (Corruption) No. 1/2017. By the impugned order, the learned Special Judge has directed framing of charge against the petitioner, for the offences punishable under Section 120B, 409, 420, 468 and 471 of IPC and Section 13(3) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (Act, for short).

2. The brief facts necessary for the disposal of the application may be stated thus:

3. That in the year 2013, the petitioner was working as Assistant Director of Micro, Small and Medium Enterprises Development Institute, Margao (MSMEDI, for short). There was a National Vendor Development Programme (NVDP) organized, on 24.01.2013 and 25.01.2013 at Don Bosco, Panaji, for which the petitioner was appointed as a Coordinator. The gravamen of the allegations against the petitioner are that the petitioner dishonestly and fraudulently misappropriated Government funds, misusing his position, to the tune of Rs.12 lakhs while organizing the said function. It is alleged that the petitioner showed inflated expenditure on the two days function held on 24.01.2013 and 25.01.2013.

4. It appears that on the basis of a 'source information', which is claimed to be an oral information, an FIR was registered against the petitioner on 08.07.2014 and after investigation, chargesheet is filed before the learned Special Court. The learned Special Court after hearing the respondent and the petitioner has directed framing of charge as aforesaid.

5. I have heard the petitioner in person and Mr. Amonkar, the learned Special Standing Counsel for the respondent. With the assistance of the parties, I have gone through the copy of the chargesheet and the impugned order passed.

6. The petitioner has challenged the impugned order mainly on the following grounds:

(i) That the complaint/FIR was registered with a prejudicial mind and the investigation was not carried out in terms of the guidelines of the Chief Vigilance Commissioner (CVC) and the guidelines laid down by the Constitution Bench of the Supreme Court in the case of **Lalita Kumari Vs. Government of Uttar Pradesh & Others (2014) 2 SCC 1**.

(ii) That the sanction for prosecution was granted by an officer not competent to grant the same in as much as at the relevant time i.e. in January 2013, the petitioner was working in the office of MSMEDI which comes under the Ministry of Micro, Small & Medium Enterprises, while the sanction is granted by the concerned officer in the Ministry of Finance and the same is in violation of the guidelines of the

CVC vide circular dated 25.05.2015 and the decision of the Supreme Court in the case of **C.B.I. Vs. Ashok Kumar Aggarwal (2014) 14 SCC 295**. Thus, the sanction is bad in law.

(iii) The impugned order directing framing of charge is passed by circumventing the provisions of Section 19 of the Act.

7. While elaborating the grounds, it is submitted that on the receipt of the source information, the FIR was registered, without holding any preliminary inquiry and ascertaining the genuineness of the information and without following the guidelines of the CVC and the decision of the Supreme Court in the case of **Lalita Kumari** (supra). It is submitted that the information was allegedly furnished against the petitioner, by some unknown informant, which is inconceivable and there is no 'source information report' shown to be recorded.

8. It is submitted that at the relevant time, i.e. January, 2013, the petitioner was working under the Ministry

of Micro, Small & Medium Enterprises till 24.05.2014, on which date, he was transferred in the Department of Economic Affairs, under the Ministry of Finance and after 08.10.2015, he is working under the Ministry of Textiles. It is submitted that the Ministry of MSME is appointing authority and therefore, the sanction granted by the Government in Ministry of Finance is illegal. It is submitted that the inquiry report of Mr. G.R. Akadas, Director, dated 23.01.2015 was not brought to the notice of the sanctioning authority and there is no reference to the said report in the sanction order. It is submitted that in the said inquiry, the allegations were found to be not substantiated, which was a material aspect, which ought to have been looked into, by the sanctioning authority. It is submitted that the learned Special Judge has erroneously referred to the said inquiry as a departmental inquiry in para 6 of the impugned order, which was in fact not a departmental inquiry. It is submitted that the cognizance taken by the learned Special Court, in the absence of a valid sanction would be against the provisions of Section 19 of the Act. Lastly, it is submitted that the copy of the FIR was not furnished to the petitioner, depriving him the opportunity to challenge the same.

9. Mr. Amonkar, the learned Special Standing Counsel for the respondent has submitted that at the stage of framing of charge, the Court is only required to examine whether, a *prima facie* case showing involvement in the offences as alleged, is made out or not. It is submitted that threadbare consideration or appreciation of the evidence is neither necessary nor appropriate at this stage. It is submitted that sanction granted is in accordance with Section 19 of the Act and does not suffer from the vice of non application of mind. It is submitted that the name of the source informant cannot be made public and the FIR was registered on the basis of the source information.

10. The learned Standing Counsel pointed out the statement of Mr. Ganpati Naik, Mr. Hamza Khan and Mr. Olympio Sequeira in order to submit that these persons have disowned the bills/cash memos as having been issued by them. It is thus submitted that there is clear *prima facie* case made out. The learned Standing Counsel submitted that the

petitioner had transferred an amount of Rs.2,25,000/-, out of the sanctioned funds, in his own personal account, which is not permissible.

11. In reply, the petitioner has submitted that the total funds sanctioned for organizing the function were Rs.4,50,000/- by the office of the Director, out of which, 50% could be withdrawn by the Coordinator. On 05.12.2012, the Director, MSMEDI had sanctioned the drawal of sanctioned amount of Rs.2,25,000/-, which according to the petitioner was transferred in his account by the Pay and Accounts office. It is thus submitted that there is nothing wrong in the amount being transferred to the account of the petitioner. The petitioner was at pains to point out that there were separate committees namely, the organizing committee, and expenditure committee, which had sanctioned the expenditure incurred and all the cheques towards the payment were signed by the petitioner, alongwith Ms. Biju Naik, Assistant Director, DITC, who were authorized to operate the account jointly. It is submitted that the petitioner is singled out and there is no other person who has been arrayed in the

chargesheet as a co-accused.

12. The petitioner has placed reliance on the decision of the Supreme Court in the case of **Mansukhlal Vithaldas Chauhan Vs. State of Gujarat (1997) 7 SCC 622** and **Ashok Kumar Aggarwal** (supra) in support of his submissions.

13. I have given my anxious consideration to the rival circumstances and the submissions made.

14. It is now well settled that under Section 227 of the Cr.P.C., at the stage of framing charge, the Court has to *prima facie* examine the material and to find out whether, there is sufficient ground for proceeding against the accused. Section 227 of Cr.P.C. empowers the Trial Court to discharge the accused on being satisfied that there are no sufficient grounds for proceeding against the accused. In the case of **P. Vijayan Vs. State of Kerala (2010) 2 SCC 398**, the Hon'ble Supreme Court has held that in assessing this fact, it is not necessary for the Court to enter into the pros and cons of the

matter or weighing and balancing of the evidence and probabilities, which is really the function of the Court, after the trial starts. At the stage of Section 227 of Cr.P.C., the Court has merely to sift the evidence in order to find out whether, or not there are sufficient grounds for proceeding against the accused.

15. With this, let us now examine the contentions as raised by the petitioner. The FIR was registered in this case on 08.07.2014, on the basis of source information. The contention is that it is registered without any preliminary inquiry, which is against the law laid down by the Supreme Court in the case of **Lalita Kumari** (supra) and the Vigilance Manual 2017 of the CVC. Specific reliance is placed on clauses 6.5.1, 6.5.3 and 6.5.4, which read thus:

> *6.5 ENQUIRY/ INVESTIGATION BY CBI*
>
> *6.5.1 Enquiry or investigation into Complaints alleging corruption and related malpractices is taken up by CBI either after verification of information collected from its own sources [SIR-Source Information Report], or obtained from the members of the public or from public servants, or on the basis of complaints*

referred to them by the Commission, administrative authorities or the courts.

6.5.3 In cases, in which the information available appears to be authentic and definite so as to make out a clear cognizable offence or to have enough substance in it, the C.B.I. may register a regular case (R.C.) straightaway under Section 154 of the Code of Criminal Procedure, 1973.

6.5.4 If the available information appears to require verification before formal investigation is taken up, a Preliminary Enquiry (P.E.) may be made in the first instance. As soon as the preliminary enquiry reveals that there is substance in the allegations, a regular case may be registered.

However, detailed instructions laid down by the Constitution Bench of Hon'ble Supreme Court in 2013 in the case of Lalita Kumari Vs. Govt. of UP & Ors., listing out certain category of cases in which Preliminary Enquiry might be carried out, may be kept in view. Operative part of the judgment is reproduced below:

"In view of the aforesaid discussion, we hold:

(i) *Registration of FIR is mandatory under Section 154 of the Code, if the information discloses Commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.*

(ii) *If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.*

(iii) *If the inquiry discloses the Commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.*

(iv) *The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.*

(v) *The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain* *whether the information reveals any cognizable offence.*

(vi) *As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:*

(a) Matrimonial disputes / family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/ laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) *While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case, it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.*

(viii) Since the General Diary / Station Diary / Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

16. *Prima facie*, it can be seen that as per Clause 6.5.1, the inquiry or investigation into complaints can be conducted by the CBI, after the verification of information collected from its own sources or obtained from the members of the public or public servants, or on the basis of the complaints referred to them by the Commission, administrative authorities or the Court.

Clause 6.5.3 is significant, which provides that if the information available appears to be authentic and definite, so as to make out a clear cognizable offence or to have enough substance in it, the CBI may register a regular case, straightaway under Section 154 of Cr.P.C. Thus, *prima facie*, under the Vigilance Manual, there does not appear to be a total embargo on the registration of an FIR, on the basis of the source information.

17. Coming to the decision in the case of **Lalita Kumari** (supra), the following directions were issued in para 120 of the judgment:

> *120.1 The registration of FIR is mandatory under Section 154 of the Code, if the information discloses Commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.*
>
> *120.2 If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.*
>
> *120.3 If the inquiry discloses the Commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.*

120.4 The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5 The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6 As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes / family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/ laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may *warrant preliminary inquiry.*

120.7 While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case, it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8 Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

It can thus be seen that the registration of an FIR is mandatory under Section 154 of Cr.P.C., if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

18. Para 120.5 would show that the scope of preliminary inquiry, is not to verify the veracity or otherwise

of the information received, but only to ascertain whether, the information reveals any cognizable offence.

Thus, *prima facie*, it is not possible to accept that the action of the respondent in registering the FIR is in breach of CVC manual or the decision in the case of **Lalita Kumari** (supra).

19. This takes me to the ground based on the grant of sanction. It is a matter of record that at the time of alleged commission of the offence in January 2013, the petitioner was working under the Ministry of Micro, Small & Medium Enterprises and the sanction is granted by the Central Government in the Ministry of Finance. The contention of the petitioner is that the sanction should be granted by the same Department/Ministry. *Prima facie*, at this stage, it is not possible to accept the said contention. Section 19(1)(a) of the Act, which is relevant for the purpose reads thus:

> *"19. Previous sanction necessary for prosecution*
> *(1) No court shall take cognizance of an offence punishable under section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,-*

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;"

It can thus be seen that in case of a person, who is employed or as the case may be, at the time of commission of the alleged offence, was employed in connection with the affairs of the Union and is not removable from his office, save by or with the sanction of Central Government, the sanction is to be granted by that Government i.e. the Central Government. The Government can issue sanction through the various Ministries and Departments. It is not disputed that the petitioner is a public servant, employed under the Central Government and the sanction is granted by the Central Government in the Ministry of Finance. *Prima facie*, at this stage, I am unable to accept the contention as raised on behalf of the petitioner that the sanction order is granted by an authority, which was not competent to grant it. It was contended by the petitioner that Ministry of Micro, Small & Medium Enterprises is the appointing authority. It is well settled that the sanction can be granted by the authority competent to remove, which is also the appointing authority or any authority superior to it. A particular Ministry cannot be the appointing authority. It is the Central Government (which acts through various ministries) which is the appointing authority. If the sanction is *prima facie* shown to be granted by the Central Government in the Ministry of Finance, it is not possible to accept that it is in breach of Section 19 of the Act. That apart, Section 19(3)(a) of the Act provides that notwithstanding anything contained in Cr.P.C., no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby. Evidently, this is an exercise that can be done by the learned Special Judge at the trial. Even in the case of **Ashok Kumar Aggarwal** (supra) in para 47, the Hon'ble Supreme Court has held that the stage of examining the validity of sanction is during the trial and not at the stage of the inquiry or at pretrial stage.

20. It is true that the report of the Director dated 23.01.2015 does not find mention in the sanction order. However, *prima facie* that may not be decisive in view of the statement of the witnesses, namely, Mr. Ganpati Naik, Mr. Hamza Khan and Mr. Olympio Sequeira, which were before the Director. However, this Court has not expressed any opinion on the correctness of the inquiry report. The issue is only being examined to find out whether, absence of the said report would *prima facie* invalidate the sanction. This again, is an aspect, which the learned Special Judge can go into at the stage of trial. The petitioner has pointed out that the bills/invoices referable to the aforesaid witnesses were not obtained by the petitioner. I am afraid this aspect, which is again a disputed question of fact, cannot be examined at this stage. The petitioner submitted that the learned Special Judge has already recorded a finding about the validity of sanction, which will prejudice the petitioner. The contention in my considered view cannot be accepted for the reason that any opinion expressed and the finding recorded at the stage of framing of charge, would be a *prima facie* view and it would

always be open to the petitioner to show at the trial that the sanction granted is invalid.

21. Reliance placed on the decision of the Supreme Court in the case of **Mansukhlal Vithaldas Chauhan** (supra) to my mind is misplaced, for the reason that the said case arose out of a conviction recorded at the trial and not at the stage of framing of charge.

There cannot be any manner of dispute with the preposition that the grant of sanction is not an idle formality. The question about validity of sanction would depend upon facts and circumstances of each case and as noticed earlier, would be a matter which needs to be examined by the learned Special Judge at the trial. The contention of the petitioner that the sanction is in breach of provisions of Section 19 of the Act also, to my mind, cannot *prima facie* be accepted.

22. It is true that the learned Special Judge in para 6 of the judgment has recorded a finding that the petitioner has been exonerated, in the departmental inquiry, when in fact, it is not a departmental inquiry. However, this is not sufficient

to interfere with the impugned order, if otherwise *prima facie* case for framing of charge is found out.

23. I have carefully gone through the impugned order and I do not find that it suffers from any infirmity, so as to require interference, in the revisional jurisdiction of this Court. The criminal revision application is accordingly dismissed. The learned Trial Court shall proceed to conduct the trial as expeditiously as possible and preferably within a period of one year from the receipt hereof. Needless to mention that the Trial Court shall not be influenced by the observations made in the impugned order or the observations made herein, including the aspect of challenge to the sanction order, which is left open.

C. V. BHADANG, J.

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