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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.18 OF 2017

Central Bureau of Investigation … Applicant
V/s.
Rangrao Vithoba Pawar and anr … Respondents

Mr. Sandesh D. Patil, for the Applicant.
Mr. N. B. Patil, APP for respondent State.

CORAM : N. J. JAMADAR, J.

DATE : 8th November, 2019.

P.C. :

1] Heard the learned counsels for the parties.

2] The challenge in this Revision Application is to the order dated 8th May, 2015, in Revision Application No.1422 of 2014, passed by the learned Additional Sessions Judge, Sessions Court, Mumbai, whereby the Revision was allowed and the respondent No.1- accused No.5 in C.C.No.1041/PW/2008, came to be discharged of the offences punishable under Section 120(B) and 420 of the Indian Penal Code, registered at the instance of EOW, Mumbai vide FIR RCBE 12008E001/2008.

3] Respondent No.1 was arraigned along with the other accused for having committed the offences of conspiracy and cheating the United

Bank of India, to provide cash credit facility to accused No.3 Mr. Harish Choudhary on the strength of the security of property bearing gala No.104, which was owned by respondent No.1. Respondent No.1 had filed discharge application (Exh.32) in C.C.No.1041/PW/2008, which the learned Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai was persuaded to reject, on the premise that the material on record if unrebuttable would warrant the conviction of accused No.5 and there was prima facie material against accused No.5 to frame the charge under Section 120(B) and 420 read with Section 34 of the Indian Penal Code.

4] The charge against respondent No.1 as alleged by the prosecution is as under :-

> " That in pursuance of the said criminal conspiracy, (A-3) Sh. Harish Kumar Choudhary, Proprietor M/s Everest Trading availed loan from Kalabadei Branch of United Bank of India of Cash Credit of Rs.30 lacs. He mortgaged the property namely Gala No.104, Vill – Khoni, Taluka: Bhiwandi, Distt. Thane, Survey No.61 which was shown to be in the name of late Raj Kumar Patodia, however, no actual business transaction ever took place regarding sale of this Gala and actually this Gala was sold to some other person by the builder A-5 Sh. Rangrao Vithoba Pawar.
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> That in pursuance of the said criminal conspiracy, (A-5) Sh. Rangrao Vithoba (Director M/s Sainath Builders Pvt. Ltd.),

> executed the sale deed for the Gala No.104, Vill Khoni Taluka : Bhiwandi, Distt. Thane, Survey No.61 favoring late Raj Kumar Patodia only to induce United Bank of India. No business transaction in this regards ever took place. Despite this fact, he issued FAX letter to United Bank of India stating therein that they had received full and final payment of the said Gala and that they had no objection for mortgaging the said Gala".

5] In the backdrop of aforesaid charge, the learned Magistrate observed that the title in the property had passed with the execution of the sale deed on 18th April, 2006 though the cheque drawn by the accused No.1 Raj Kumar Patodia by way of consideration, was not honoured and the consideration could not be realised. The learned Magistrate was also of the view that respondent No.1 despite being aware of the fact that Rajkumar Patodia was in the process of mortgaging the said property for availing loan from the bank, allowed the transaction to be completed and in fact conveyed no objection for mortgaging the said property to the bank by addressing a letter, by fax, dated 24th April, 2006.

6] On the basis of aforesaid material, the learned Magistrate concluded that there was an element of criminality which, prima facie, indicated the involvement of respondent No.1 in conspiracy to cheat the bank.

7] When respondent No.1 carried the matter in Revision, learned Sessions Judge, was persuaded to allow the Revision observing that respondent No.1 had neither availed loan nor offered guarantee for extending the cash credit facility to accused No.3. The learned Sessions Judge, observed that the statement of the officials of the bank, ex-facie, show that the "no objection" communicated by the respondent No.1 for mortgaging the said property or, for that matter, even the sale deed executed by respondent No.5 in favour of accused No.1 Rajkumar Patodia, did not constitute the inducement as the cash credit facility was already extended. The said extension of limit was to cover the excess drawn, by the borrower, without any deception and inducement on the part of respondent No.1.

8] Learned counsel for the applicant assailed the impugned order on the premise that the learned Sessions Judge committed a grave error in interfering with the order passed by the learned Magistrate when it was recorded that there was prima facie material to frame the charge against respondent/accused No.5. In the face of the said finding, the learned Sessions Judge committed a jurisdictional error in reappreciating the material. The revisional jurisdiction being, by it's very nature, limited and discretionary and respondent No.1 having failed to point out any procedural defect or perversity in the view recorded by the learned Magistrate, the learned Sessions Judge should not have interfered with the impugned order, urged the learned counsel for the applicant.

9] Having considered the material on record and the impugned order as well as the order passed by the learned Magistrate, it becomes evident that two facts are of material significance. One, the respondent No.1 was neither a borrower nor a guarantor. Second, respondent No.1 was arraigned on the allegation of conspiracy and cheating in extending the cash credit facility to accused No.3 Mr. Harish Choudhary, on the strength of security of property of which respondent No.1 was the original borrower.

10] It is interesting to note that even the learned Magistrate had recorded that the the title in the property had passed to respondent No.1 Rajkumar Patodia, despite the fact that the cheque dated 18th April,2006 was dishonoured. In view of the provisions contained under Section 54 of the Transfer of Property Act, sale can be for consideration paid or promised. It is undisputed that the respondent No.1 had given no objection for mortgaging the said property by letter dated 24th April, 2006. Evidently, on the date when the said no objection was given, the cheque was not presented for enachment. The cheque was dishonoured at a much later date. The learned Sessions Judge has recorded that the statement of witnesses, especially the officers of the bank, would reveal that the limit of cash credit was extended to adjust excess drawing and the said limit was extended on 22nd April, 2006, couple of days before the respondent No.1 had given no objection.

11] The consideration of the statements of bank witness, by the learned Sessions Judge, which the learned Magistrate had not taken into account, cannot be said to be in excess of revisional jurisdiction. Non consideration of the relevant material, which has a bearing on the sufficiency or otherwise of the material warranting framing of the charge, is a facet which can be legitimately considered while exercising the revisional jurisdiction.

12] In the totality of the circumstances the indictment against respondent No.1 appears to be too remote. The respondent No.1 may have his remedies against accused No.1 Rajkumar Patodia on account of failure of consideration. The subsequent conduct of respondent No.1 in taking action consequent to dishonour of the cheque does not justify the indictment that on the date of execution of conveyance, the respondent No.1 had the dishonest intention to deceive the bank. To put it in other words, on the date United Bank of India was allegedly induced to extend the limit of cash credit, the respondent No.1 had already executed sale deed in favour of accused No.1 Rajkumar Patodia and at that moment there was no element criminality.

13] In the aforesaid view of the matter, I am not persuaded to entertain the Revision Application as no fault can be found with the impugned order, passed by the learned Sessions Judge.

14] The Revision Application stands rejected.

[N. J. JAMADAR, J.]