IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.662 of 2018

Dhananjay Murlidhar Gore & Anr .. Petitioners
Versus
Central Bureau of Investigation Anti-
Corruption Bureau, Mumbai & Anr .. Respondents

…

Mr. A.P. Mundargi, Sr. Advocate i/b S.P. Dighe for the applicant.
Mr.Shamrao Patole for CBI.
Mr.Deepak Thakare, P.P with Mr.S.R. Shinde, APP for the State.

CORAM: RANJIT V. MORE &
SMT. BHARATI H.DANGRE, JJ.
DATED : 8th APRIL 2019

P.C

1 By the present application, the applicants who are the office bearers of M/s.Reliable Auto Tech Pvt.Ltd have approached this Court by invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, praying for quashing and setting aside the Special Case (ACB) No.20 of 2017 pending before the learned Adhoc District Judge-1 and Assistant Sessions Judge, Nashik.

2 The fact adumbrate that the applicant no.1 is the Senior Manager, (Finance) of M/s.Reliable Autotech Pvt.Ltd and the applicant no.2 is the Director of the said Company. It is the claim of the applicants that the said Company has gained a reputation throughout the country for their services and it is widely appreciated for its ethical business practice.

An FIR came to be registered on 13th January 2017 at the instance of the respondent no.1 on “Source Information” received from the Senior Superintendent of Police, CBI, ACB Mumbai. The complaint narrated that the information has been received that in State Bank of India, Satpur Industrial Branch, Nashik, an illegal payment of cash of Rs.37,25,000/- in form of exchange of old currency notes of Rs.500/-and Rs.1000/- with new currency and withdrawal of excess money in violation of RBI guidelines was noticed after the demonetization was declared on 8th November 2016. Reference was made to RBI circular dated 10th November 2016 which contained instructions to all the banks to the effect that by a decision, Government of India had withdrawn the legal tendered status to Rs.500/- and Rs.1000/- currency notes and in the wake of it, deposits of such notes into the bank accounts and withdrawal of money therein was only permitted to the limit of Rs.4,000/- per person per day. The circular had also permitted withdrawal to the tune of Rs.10,000/- over the counter per account per day subject to an overall limit of Rs.20,000/- per week till 24th November 2016.

The complaint alleged that one Shri Sanjay Pathak, Deputy Manager, (Cash) State Bank of India, Satpur Industrial Area Branch, Nashik, flouted the instructions by allowing withdrawal of more than Rs.10,000/- per day from one Savings bank account and Eight current accounts and permitted the transaction of Rs.13.5 lakhs on a single day on 10th November 2016. The complaint further gave the details of the said withdrawal. This included the withdrawals from the account of Reliable Autotech Pvt.Ltd. The said complaint, therefore, alleges that Shri Patil, Deputy Manager of the State Bank of India, despite being fully aware of the guidelines and instructions has violated the guidelines issued by RBI subsequent to demonetization and permitted withdrawal of currency notes of the amount of Rs.37,25,000/- and thus favoured private persons/companies. The offence came to be registered under Section 409 of the Indian Penal Code and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act.

3 We have heard learned Senior counsel Shri Mundargi along with Shri S.P. Dighe, appearing for the applicant. Mr. Mundargi would submit that the applicants are arrayed as accused nos.3 and 4 in the subject case (ACB) No.20 of 2017 pending before the Adhoc District Judge-I and Addl. Sessions Judge, Nashik in pursuance of FIR registered with CBI, ACB, Mumbai dated 13th October 2017. The FIR was registered on the basis of source information and during the course of investigation, it is revealed that the exchange of currency was allowed without collecting any request letter or KYC documents.

Mr.Mundargi would submit that during the course of investigation, documents were recovered by the Investigating Officer – respondent no.1 from the SBI Bank along with the self cheques submitted by the applicants vide cheque Nos. 864782, 864781 and 864780 dated 10th November 2016 for the sum of Rs.50,000/-, Rs.50,000/- and Rs.20,000/- respectively on behalf of Reliable Autotech Pvt.Ltd for encashment. Further, the applicants were also called by respondent no.1 at their office and they have co-operated with the investigation. A charge-sheet came to be filed on completion of investigation and the Special Case vide number mentioned above was registered on 30th June 2017. It is the case of the applicants that RBI had issued a notification declaring that Rs.500/- and Rs.1,000/- currency notes have ceased to be valid and a legal tender was issued on 8th November 2016. However, the notification restricting withdrawal of the amount exceeding Rs.10,000/- per day and subject to the maximum of Rs.20,000/- per week came to be issued on 10th November 2016. The applicants were unaware of the said notification dated 10th November 2016 and they had submitted self-cheques on the said date in the normal course of business as a bonafide step. The RBI, according to the applicants, had issued a notification dated 10th November 2016 and this was circulated to the respective bank and its branches. However, it was not given wide publicity and the public at large was not informed of the said notification and it was never circulated before the said transaction of the applicants. In these peculiar circumstances, the applicants, as a matter of routine business, submitted the cheques without any intention to breach the RBI notification, they being unaware of the existence of any such circular/notification dated 10th November 2016. The notification issued instructions to the Bank and therefore, at the most, the bank officials were bound by it or they were duty bound to bring it to the notice of the applicants. In this peculiar situation, an amount of Rs.1,20,000/- was withdrawn by the applicants by way of self-cheque from the cash credit account operated by them with SBI bank. The applicants, therefore, claim that they cannot be penalized and the charge against them under Section 406 and 409 must fail.

4 We have considered the submissions of the learned senior counsel and also heard Shri Deepak Thakare, learned Public Prosecutor with Mr.S.R. Shinde, learned APP for the

State. From the facts placed before us, it appears that the applicants were running a factory and therefore, in the normal routine course, they were required to make payment of daily wages and meet day-to-day expenditure. The demonetization was declared on 8th November 2016 and the notification of RBI putting a restriction on withdrawal of amount was issued on 10th November 2016. The applicants withdrew a sum of Rs.1,20,000/- on 10th November 2016. Nonetheless, the purpose of the RBI notification issued on 10th November 2016 was to ensure that in light of the shortage of new currency, the withdrawal should be restricted to a limit, until sufficient new currency comes into circulation. It is a fact which is not disputed by the applicants that they were permitted to withdraw the amount by self cheques and this amount is over and above the limit prescribed by RBI in its notification. However, we do not find that it has resulted into any financial loss to the bank as the amounts came to be withdrawn by cheques. The applicants have been arrayed as accused because they are signatories to the cheques. We do not find any specific allegation meeting the ingredients of Section 420 of the IPC or the allegation for criminal breach of trust under Section 409 attracted against the present applicants. Perusal of the complaint/FIR as well as the charge-sheet is bereft of any specific allegation or material suggesting commission of offence under Section 409 or 420 of the IPC against the applicants. A plain reading of the complaint based on which the FIR is registered and charge-sheet is filed at the most would lead to an inference that there was a breach of the circular issued by the RBI restricting the withdrawals. The applicants, however cannot be held liable for the offence alleged against them. The charge-sheet also do not attribute any specific role which would lead the prosecution to establish the ingredients of offence under Section 409 and 420 of the IPC against the applicants.

The allegations in the FIR as well as the material placed in form of charge-sheet, if taken at its face value, do not, in our opinion, constitute the alleged offence against the applicants. The allegation made in the FIR and the material in the charge-sheet can merely be referred to as 'absurd' and would not lead to an inference that the accused persons could be held guilty for the offence of cheating or criminal breach of trust. Since the allegations made against the applicants are not based on any factual foundation or would not finally result in establishing the guilt since the basic ingredient of both the offences alleged is the dishonest intention, we are of the firm view that the continuation of proceeding against the present applicants would amount to traversity of justice.

We are thus inclined to exercise the jurisdiction conferred on us to secure the ends of justice and in exercise of the said powers, we quash and set aside the Special Case (ACB) No.20 of 2017 pending before the Ld.Adhoc District Judge-1 and Assistant Sessions Judge Nashik in view of FIR bearing No.RCBA1/2017/A0001 registered with CBI, ACB against the present applicants. According to us, this is the only way by which we can prevent the abuse of process of Court and justice can be achieved.

For the aforesaid reasons, Criminal Application is allowed in terms of prayer clause (a). No order as to costs.

(SMT. BHARATI H. DANGRE, J.) (RANJIT V. MORE J.)

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