IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.309 OF 2013

Sanjay Manikrao Mahajan, Age 51 years,
Occ.Agriculturist, R/o.At & Post Zada,
Tal.Dhamangaon (Railway), Dist.Amarawati ... Applicant
versus
The State of Maharashtra, through ACB, BMU ... Respondent

WITH
CRIMINAL REVISION APPLICATION NO.310 OF 2013

Subhash Keshavrao Gaynar, Age 46 years,
Occ.Agriculturist, R/o.At & Post Waghovli,
Post Parsodi, Tal.Chandur Railway,
District Amarawati ... Applicant
versus
The State of Maharashtra, through ACB, BMU ... Respondent

WITH
CRIMINAL REVISION APPLICATION NO.311 OF 2013

Smt.Sumati Arun Mahajan, Age 43 years,
Occ.Agriculturist, R/o.At & Post Zada,
Tal.Dhamangaon (Railway), Dist.Amarawati ... Applicant
versus
The State of Maharashtra, through ACB, BMU ... Respondent

WITH
CRIMINAL REVISION APPLICATION NO.312 OF 2013

Smt.Sunita Subhashrao Gaynar, Age 36 years,
Occ.Agriculturist, R/o.At & Post Waghovli,
Post Parsodi, Tal.Chandur Railway,
District Amarawati ... Applicant
versus
The State of Maharashtra, through ACB, BMU ... Respondent

WITH
CRIMINAL REVISION APPLICATION NO.313 OF 2013

Miss Nilaxi J. Augad @ Mrs.Nilaxi Shyam Lohi,
Ae 33 years, Occ.presently housewife,
R/o.11, Bhalchandra, Near Weldone Saloon,
Sharanpur Road, Canada Corner,
Nashik. Applicant
versus
The State of Maharashtra, through ACB, BMU Respondent

WITH
CRIMINAL REVISION APPLICATION NO.366 OF 2013

Pradip Manikrao Mahajan, Age 48 years,
Occ.Agriculturist, R/o.At & Post Zada,
Tal.Dhamangaon (Railway), Dist.Amarawati Applicant
versus
The State of Maharashtra, through ACB, BMU Respondent

WITH
CRIMINAL REVISION APPLICATION NO.367 OF 2013

Arun Manikrao Mahajan, Age 55 years,
Occ.Agriculturist, Business and Director of
Tuljabhavani Motels Pvt.Ltd;
R/o.At & Post Zada,
Tal.Dhamangaon (Railway), Dist.Amarawati Applicant
versus
The State of Maharashtra, through ACB, BMU Respondent

Mr.Niteen Pradhan with Mr.Aditya Lasaria, Mr.J.G.Bhanushali and Vinay Bhanushali for applicants.

Ms.V.S.Mhaispurkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

Date of Reserving the Judgment : 6th August 2018
Date of Pronouncing the Judgment : 7th June 2019

JUDGMENT :-

1. The applicants in these revisions applications have taken exception to the orders passed by the Special Judge under Prevention of Corruption Act, 1988, rejecting their applications for discharge. The applicants are arraigned as accused in Special Case No.49 of 2007 pending before the Special Judge for ACB, Mumbai. The prosecution has filed charge sheet against accused nos.1 and 2 for the offences punishable under Section 13(1)(e) r/w Section 13(2) of Prevention of Corruption Act, 1988 (`P.C.Act') and other accused were charge sheeted for the offences punishable under Sections 13(1)(e) of P.C.Act and under Sections 109, 465, 467, 471, 474, 420 r/w 120B of Indian Penal Code.

2. The case of prosecution is that the accused nos.2 to 12 have aided and abetted the accused no.1 to acquire wealth of Rs.2,66,28,628/- disproportionate to his known source of income.

3. The gist of the prosecution case is that the accused no.1 while working as Inspector in State Excise Department, Flying Squad, Government of Maharashtra, amassed wealth of Rs.2,66,28,628/- which is disproportionate to his known source of income. Accused no.2 is wife of accused no.1. Their relatives are arrayed as accused nos.2 to 12 having aided and abetted allowing accused no.1 to purchase various properties in their names. The FIR was registered and on completing investigation charge sheet was filed.

4. Criminal Revision Application No.309 of 2013 is preferred by accused no.4. It is contended by the said applicant that he has

ancestral agricultural land in the joint name with his mother and brothers. The family has irrigated the agricultural land of 17 acres. He has legal source of income derived from the agricultural land. He has business of painting contract. He filed income tax returns from 1993-94 till 2004-05. The copies of income tax returns from the year 1988 till 2005 are annexed to the application. The case of prosecution against the said applicant is that he is younger brother of accused no.2 Mrs.Rekha Augad. It is alleged that the applicant has helped accused no.1 Janrao Augad to acquire flat valued at Rs.7.92 lakhs bearing Flat No.E-101 situated at Goregaon Link Palace Co-operative Housing Society, Goregaon (East), Mumbai in his name. It is further alleged that his main source of income is derived from agriculture. However, in the year 1992-93 and in 2002, his name was included in the list of persons falling under below poverty line. It is alleged that aforesaid property is a benami transaction for the benefit of accused no.1.

5. On behalf of above applicant it is contended that there is no material against him to show his complicity in the alleged offence and there is no material to frame the charges against him. He is not concerned with the properties of accused nos.1 and 2 as he has own independent source of income. He has taken loan from Tuljabhavani Motels Private Limited and part of amount was paid by his mother directly to the builder. The applicant from his independent source of income purchased the aforesaid flat for Rs.7.92 lakhs. The Trial Court has erroneously rejected his application for discharge. He has not committed any offence u/s 13(1)(e) of P.C.Act r/w Section 109 of IPC or under any provisions of IPC and Benami Transactions (Prohibition) Act, 1988. The applicant has his own source of income

from agricultural land, which is jointly held by the applicant, his mother and other brothers. At the time of investigation the applicant has given his statement as to how he has acquired the aforesaid flat premises. However, the explanation has not been considered by the investigating officer. The applicant and his family members are residing at Dhamangaon, Amarawati. He has agricultural land at Zada, Amarawati in his name, which appears in 7/12 extract. He has agricultural lands at various places and he has received income from the same. He received agricultural income of Rs.44,000/- in the year 1999-2000 which was subsequently increased. However, the said fact is not considered by the investigating officer while assessing his income. The applicant, his mother and brothers have ancestral agricultural land of 7 hectors 80 R. He has agricultural land at Zada of about 3 hectors and 83 R along with his mother and brothers. The agricultural land along with his mother and brothers at Zada is admeasuring 4 hectors and 34 R. It is submitted that the accused no.1 has not attributed any amount for purchase of the said property nor the said property was purchased for and on behalf of accused no.1. In the charge sheet the applicant's agricultural income for 1999-2000 for one property was shown to be Rs.44,000/- per annum. The other properties jointly held by other brothers are also looked by him. These properties are capable of generating sufficient income. His wife has also sufficient agricultural income from her parents side. The name of the applicant was included in list of below poverty line in the year 1992-93 for getting benefits in terms of loans from the banks and for other facilities. Flat No.E-001 was purchased for consideration of Rs.7.92 lakhs. As per the charge sheet he has obtained Rs.4.50 lakhs from Tuljabhavani Motels Private Limited vide cheque No.685212 dated 29th July 2003 of Maharashtra State

Co-operative Bank Limited. This fact is disclosed in the bank account of Tuljabhavani Motels Private Limited. The said cheque was deposited by the applicant in Saraswat Co-operative Bank Limited, Kalyan and it was credited to his account on 2nd August 2003. After receipt of the said amount, he withdrew cash of Rs.4.50 lakhs on 7th August 2003 and deposited the said cash in HDFC Bank, Fort Branch, Mumbai on 13th August 2003. The applicant issued two cheques of Rs.2 lakh and Rs.3 lakh each and paid Rs.5 lakh to the builder for purchasing the aforesaid flat. He deposited Rs.50,000/- by cash on 24th June 2004 which is reflected in his bank statement of HDFC Bank. The said amount paid by him was from his own income. The balance amount of Rs.2.92 lakh was taken by him from his mother by cheque of Rs.2.92 lakh from her bank account. His mother used to deposit her income in her bank account, which was acquired by her from agricultural land. The documents in the charge sheet clearly indicate that the amounts were paid by the applicant to the builder from his legitimate source of income and loan was obtained from Tuljabhavani Motels Pvt.Ltd. The applicant is the owner of the said flat. There is no evidence that any amount has come from accused no.1. The explanation offered by applicant regarding purchase of the said flat is on the basis of documents collected by prosecution which is part of charge sheet. It is submitted that Tuljabhavani Motels Private Limited is a company incorporated and has a separate existence and entity. The said company is registered with Registrar of Companies. The company has purchased agricultural land and had agricultural income from sale of agricultural produce for which company has received larger amount. The property acquired by applicant cannot be treated as benami property. There is no material to indicate that payment was made by accused no.1 and on the contrary, the evidence shows that the property was acquired by applicant out of his own lawful source of income. The impugned order of Trial Court is unsustainable as the income of the applicant is not considered and the applicant not being public servant, cannot be charged of abetment in respect of disproportionate assets of public servant and no explanation was sought. His statement is not admissible in evidence. The below poverty line register is of 1992-93 and not of 2003-04 when the flat was purchased. No adverse inference can be drawn on such register as such status is kept for obtaining advantage of government schemes for taking loan with low interest. There is no material to show that any amount has come from the account of public servant or from public servant for purchase of property. The said flat is continuously in his possession and he is the owner.

6. Learned APP submitted that there is sufficient evidence against applicant in Revision Application No.309 of 2013. The arguments advanced at the instance of applicant is in the form of his defence which cannot be appreciated at this stage and the submissions will have to be considered at the time of trial. The applicant was not financially capable to purchase the flat out of his own income in the year 2004. The contention of raising loan is not convincing. While recording statement he has not stated anything about purchasing of alleged flat and he has tried to explain through his discharge application as to how he was capable of purchasing the flat. According to the prosecution, the company Tuljabhavani Motels Pvt.Ltd is not in existence and no business activity is being conducted. The accused no.2 and relatives of accused nos.1 and 2 are directors of said company. This company has extended loan to

all the purchasers to purchase flats in Goregaon Link Palace Co-op. Housing Society in the same year. It is further submitted that the said accused was not financially capable to purchase the premises in Mumbai. While recording the statement during investigation the applicant has not explained as to how he has purchased the said flat and he maintained silence. Learned APP pointed out several documents which are part of charge sheet to submit that the applicant is involved in crime. Learned APP pointed out the statement of Bhagwandas Mohanlal Agarwal recorded on 7th December 2006. He is the builder. He constructed Link Palace Complex consisting of five wings having 127 flats. He stated that in December-2002 to 2004 accused nos.1 and 2 had approached him for purchasing the flats. The flats were booked in the names of daughter and relatives and the cheques towards booking amount were handed over. The accused no.1 had booked four flats in the said complex. The flats were bearing No.E-602 purchased in the name of Sahebrao Mahajan (bother of accused no.2), Flat No.E-603 purchased in the name of Arun Mahajan (brother of accused no.2), Flat No.D-303 purchased in the name of Nilaxi Augad (daughter of accused nos.1 and 2), Flat No.E-001 purchased in the name of Sanjay Mahajan (brother of accused no.2). Learned APP also pointed out the statement of Smt.Sonu Das dated 9th June 2007 in which it was stated that accused no.1 is not member of Goregaon Link Palace Co-operative Housing Society, however, he is occupying Flat Nos.602 and 603 in `E' wing. There is no divider wall to Flat Nos.602 and 603 and the same arrangement was made while constructing the building. It is further stated that Flat No.E-602 and E-603 were purchased in the name of Sahebrao Mahajan and Arun Mahajan who are relatives of accused no.1 and Flat No.D-303 was purchased in the name of his daughter. Learned APP also pointed out statement of Kishor Sarvankar who is also member of Goregaon Link Palace Co-op. Housing Society and has also stated similar version. Learned APP also pointed out the search panchanama dated 1st April 2006 which reflects the location of Flat Nos.603 and 602 and non existence of dividing wall. It is thus submitted that the Trial Court has rightly rejected the application for discharge preferred by said applicant (accused no.4.).

7. The applicant in Criminal Revision Application No.310 of 2013 contends that he was appointed as Police Patil since 2001. He has ancestral agricultural land in his name and also in the name of his wife, father and son. The family of applicant has irrigated the land. Revision Application No.312 of 2013 is preferred by Sunita Subhash Gainar. She is the wife of applicant in Revision Application No.310 of 2013. On behalf of both the applicants it is contended that the case of the prosecution is that applicant Subhash (accused no.10) has helped accused no.1 to acquire flat bearing No.A-3 situated at Suvarnajyoti Co-op. Housing Society at Kalyan. The said flat was purchased by said applicant for a consideration of Rs.2,48,400/- in 1994 and he had rented out the same to accused nos.1 and 2 till May-2005. Except this, there is no other allegation against him. The said property is in the name of applicant. There is no evidence to involve both the applicants in the alleged offence. The applicant-accused no.10 had purchased the aforesaid flat out of his own assets and legitimate source of income. He has income derived from agricultural land properties from joint family. He had tendered explanation while recording his statement to the investigating officer. By letter dated 4th November 2006 he has clearly stated that

the aforesaid flat was purchased with his own money. He has rented out the said flat to accused nos.1 and 2 temporarily. It is contended that the said revision applicant and his wife Sunita Gainar and father are residing at Amarawati and they have agricultural land at village Nimboli at Amarawati admeasuring 1 hector 61 R. He is receiving income from various sources. The charge sheet shows joint bank account in the name of both the applicants. The said account indicate that they used to deposit the amount earned from agricultural income. There is another account in Saraswat Co-operative Bank Limited at Kalyan which is operated since 1995. The flat was purchased at Kalyan vide agreement dated 10th May 1994. While the flat was booked Rs.25,000/- was paid by demand draft. The rest of the amount was paid by installments till 1995. Thus, applicant was capable of making payment of Rs.2,48,400/-. There is letter dated 28th February 2005 issued by secretary of society, which shows that accused no.1 was residing in the flat prior to three years, however,he has not been residing in flat. No material to show that any amount has come from account of public servant i.e. accused no.1. The flat is in possession of applicant except for the period it was given on leave and licence basis. He is the owner of flat and accused no.1 is not connected with the said flat.

8. It is further submitted that revision applicant in Revision Application No.312 of 2013 has been falsely implicated in this case. It is alleged that she is the elder sister of accused no.2. She has helped accused no.2 to acquire house at Amarawati which was purchased in joint name of the said applicant and her mother Kamlabai Mahajan (accused no.9) in 1997. It is alleged that the said applicant had paid Rs.3,65,500/- and accused no.9 had paid

Rs.3,62,500/- to purchase the said house jointly in 1997 and subsequently the house was sold to accused no.2 for Rs.7 lakhs in 2000. It is submitted that there is no allegation against her. The said property was jointly in the name of applicant and her mother. There is no evidence to involve her in the crime. From independent source of income she had purchased house bearing No.62, Ganediwal Lay Out Camp, Amarawati in joint name with her mother. She paid Rs.3,62,500/- by demand draft of Rs.3 lakh and cash of Rs.62,500/- and the balance amount of Rs.3,62,500/- was paid by accused no.9. She has agricultural land at village Nimboli admeasuring 1 hector 61 R. She had agricultural income for the year 2003-04 of Rs.49,000/- which is reflected in the charge sheet. It is also mentioned that from 1995-96 to 2006-07, she received Rs.1,24,400/- from agricultural land. According to charge sheet she has received agricultural income. Rs.3,62,500/- was her personal amount which was accumulated from agricultural income. It is further submitted that she received Rs.3.50 lakhs by cheque by selling aforesaid house which amount was deposited in her bank account. She invested Rs.3.50 lakh with M/s.Tuljabhavani Motels Pvt.Ltd from her joint account as she was one of the directors of the said company. Accused nos.1 or 2 have not contributed any amount for the purchase of said house property. The house property was purchased by accused no.2 for Rs.7 lakh. The said amount was paid by two cheques. There is no material to show that any amount has come from accused no.1 and hence no question of abetment by applicant for acquiring property on behalf of public servant. The Trial Court has erroneously rejected her application for discharge.

9. Learned APP submitted that there is sufficient evidence against both the applicants. Accused no.10 was not financially capable to purchase flat at Kalyan in 1994. The said flat along with adjacent flat stands in the name of accused Sahebrao and it is in possession of accused nos.1 and 2. During investigation it was transpired that internal wall of both the flats was demolished and the accused nos.1 and 2 were using the same. There is sufficient evidence to frame the charge against accused. Accused no.10 failed to disclose the source of income. Learned APP filed a compilation of documents to assert that there is sufficient evidence against accused no.10 (applicant in CRA No.310 of 2013). Learned APP pointed out the bank statement of Saraswat Co-op. Bank Limited, Kalyan Branch, operated by accused no.10. She also pointed out how such panchanama drawn on 10th April 2006 at Suvarnajyoti Apartment, Rambag Lane, Kalyan. The said panchanama indicate that there are two entrance doors to the premises and names of S.S.Mahajan and S.K.Gainar are mentioned on the name plates. It also indicates that dividing walls of flat nos.2 and 3 were removed. Learned APP pointed out the statement of Balaram Kene dated 6th April 2006 wherein he has stated that he is in construction business. He knows accused no.1. He constructed three storey building namely Suvarnajyoti Apartment and sold the flats. Accused no.1 was residing on rental basis with him and he had informed him that he intends to purchase two flats in the name of his relatives in Suvarnajyoti Apartment. In view of that flat no.2 in `A' wing admeasuring 600 sq.ft was allocated in the name of Sahebrao Mahajan for Rs.2.40 lakhs and flat no.3 admeasuring 600 sq.ft was sold to S.K.Gainar for Rs.2.40 lakhs. The said transaction was executed by accused no.1 in the name of his

relatives. Accused no.1 has also stated to him that premises would be used by him and while constructing he had indicated removal of dividing wall and to construct one kitchen or both the flats and hence the said arrangement was done while constructing the building. Learned APP also pointed the statement of Satish Malpure dated 8th July 2007. He is from Suvarnajyoti Apartment Co-op Housing Society. The said witness has stated that the accused nos.1 and 2 were occupying flat nos.2 and 3 in the said building since beginning. The premises are in the name of Sahebrao Mahajan and Subhash Gainar and they are not permanently occupying the said premises. Learned APP further submitted that there is sufficient evidence against accused no.11 Smt.Sunita Gainar (Revision Application No.313 of 2013). Opportunity was given during investigation to accused no.11 to explain her source of income. After purchase of house by accused no.11 and her mother, the same was sold to accused no.2 within three years for a lesser consideration and the amount paid by accused no.2 to accused no.11 and her mother was transferred in the company namely Tuljabhavani Motels Pvt.Ltd. She is the sister of accused no.2. Learned APP also pointed out the compilation of documents which is part of charge sheet. My attention was drawn to the statement of Gunwant Bansod dated 29th May 2007. In the said statement it is stated that Kamlabai Mahajan, Sahebrao Mahajan, Ramesh Augad and Baban Augad were holding joint account with Bank of Maharashtra, Dhamangaon Branch. The witness furnished details as to how the account was operated. It is, therefore, submitted that the application preferred by the said accused was rightly rejected by Trial Court.

10. The contention of the applicant in Criminal Revision

Application No.311 of 2013 is that there is no evidence against her. She has been implicated being related to accused no.2. She is wife of Arun Mahajan who had preferred Revision Application No.367 of 2013. It is submitted that she has ancestral agricultural land. The family of the said applicant had irrigated agricultural land of 70 acres and about 30 acres of land which was jointly purchased by her family members. Her husband has agricultural land in his own name at Zada of about 2.73 R which was purchased in 2001. He has also purchased agricultural land at village Nimboli of about 1 hector 86 R in 2003 and agricultural land of 1 hector 63 R at Astha, Amarawati purchased in the year 2000. Her husband has also purchased land at Vagholi in the year 2004 admeasuring 1 hector 85 R. The applicant was receiving agricultural income from joint inherited property with her family members. It is submitted that the case of prosecution against her is that her husband Arun Mahajan is elder brother of accused no.2. The applicant has purchased open plot of land from Jemini Infratech Pvt.Ltd. At Nashik on 16th July 2003 along with accused no.2. The said plot is in the joint name of applicant and accused no.2. The applicant paid Rs.2,48,210/- and other amount was paid by accused no.2. It is alleged that applicant helped accused no.1 to acquire the said property which is benami transaction and aided and abetted him. It is submitted that applicant is not concerned with properties of accused nos.1 and 2. Only on account of joint purchase of the said property no adverse inference could be drawn against the applicant. The applicant had her own source of income. The investigating officer has recorded statement of one Vinod Tidke from State Bank of India, Amarawati Branch, who has stated that one R.S.Tembhre has taken demand draft by depositing cash and there is reflection of the said demand draft in the deed of assignment. However, the statement of Mr.Tembhre has not been recorded. There is no material that the amount was paid by accused no.1. The revision applicant in Criminal Revision Application No.367 of 2013 who is the husband of applicant in Revision Applicant No.311 of 2013 contends that there is no material to frame the charge against applicant. He has agricultural land in his own name at Zada, Nimboli and Astha in Amarawati District. The applicant was working in Glaxo Laboratories Limited at Gujarat. He was getting regular salary. He retired from the service and received Rs.10 lakhs. He relied upon income tax returns from the year 1988 till date. He has disclosed the source of income to the investigating officer. He is director of M/s.Tuljabhavani Motels Pvt.Ltd. The said company has nothing to do with earnings of accused no.1. The prosecution case is that his name was included in the list of below poverty line for the year 1993-93 and for the year 2002. It is alleged that the applicant had acquired flat No.E-603 Goregaon Link Palace Co-op. Housing Society, Goregaon on behalf of accused no.1. The accused no.2 is his sister and accused no.1 is brother-in-law. Merely because he is related to accused nos.1 and 2, prosecution cannot be launched against him for aiding and abetting the said accused. The applicant has his own source of income to purchase the said property. There is no material to show that any amount has come from accused no.1. the independent transaction by applicant Arun in his business and with his brother and other known person cannot be suspected. He is not public servant and not expected to give explanation. It is the duty of prosecution to show that he received money from public servant and purchased the property in his name on behalf of the public servant. Mere taking loan from his business or from his brother or from any other person, to acquire the property cannot be called as abetment to acquire property on behalf of public servant. The Trial Court has erred in rejecting his application for discharge.

11. Learned APP, however, submitted that there is sufficient evidence against both these applicants. It is submitted that Special Court has rightly rejected the application for discharge. The defence is required to be adjudicated at the time of trial. At the relevant time the applicant Arun Mahajan (accused no.5) was not financially capable to purchase the flat. At the time of recording of statement he did not refer to loan being obtained by him. However, while he preferred application for discharge, it is contended that he has obtained loan of Rs.10 lakh for the purchase of said flat. Learned APP also relied upon compilation of documents which forms part of the charge sheet. She pointed out the statement of witness Shekhar Shirgaonkar who was working with Maharashtra State Co-operative Bank Limited. He furnished details of the bank account of Tuljabhavani Motels Private Limited and stated that Arun Mahajan, Baban Augad, Sunita Gainar, Rekha Augad and Nilaxi Augad are directors of said company. He produced the documents furnished for obtaining bank account. He has also furnished the details about transactions in the bank account and the cheques issued in the name of Subhash, Sanjay, Sahebrao and Nilaxi. She also pointed out further statement of Shekhar Shirgaonkar dated 16th October 2007 wherein he has furnished details of the bank transaction with regards to Tuljabhavani Motels Pvt.Ltd. It is thus submitted that there is sufficient evidence to prosecute the said applicant and prosecution should be given an opportunity to lead evidence at the time of trial. It is, therefore, submitted that the application be rejected.

12. The applicant in Criminal Revision Application No.366 of 2013 is arrayed as accused no.7. On behalf of said applicant it is submitted that he has ancestral agricultural land. He has irrigated the agricultural land of about 70 acres and 30 acres purchased jointly by his family. He was also cultivating 10 acres of agricultural land since twenty years on contract basis. He has legal source of income derived from the agricultural land. The case of prosecution is that accused no.1 started "P.Manekji & Co." in the name of applicant and financed for property bearing Flat No.E-602 situated at Goregaon Link Palace Co-operative Housing Society which was purchased by Sahebrao Mahajan. It is alleged that huge amount was deposited with M/s.Tuljabhavani Motels Pvt.Ltd and helped accused no.1 in purchasing benami property. It is submitted that there is no evidence to frame charge against him. Merely because he is relative of accused no.1, he cannot be prosecuted for abetting him. There are no circumstances to indicate that applicant is in any way concerned with disproportionate assets of accused no.1. He had the means and source of income and he was financially in position to give Rs.11.10 lakhs to his elder brother to purchase Flat No.E-602. The applicant wanted to purchase flat at Goregaon and hence he initially booked the flat in his name. However, since his brother was interested in the said flat he has paid the amount to the builder. Though payment of Rs.11.10 lakh was made by applicant, the flat was purchased by his elder brother which was family arrangement between them. He has his own source of income from agricultural land. The investigating officer has collected documentary evidence as to how he has financed for the purchase of flat. The accused no.1 has not attributed any amount for the purchase of property nor the property

was purchase for and on behalf of accused no.1. The applicant had received a sum of Rs.10 lakh from Harikant Bhat by three cheques in November-2002. The said fact is reflected in the bank account. The amount of Rs.10 lakh was paid to Link Housing Society Pvt.Ltd by four cheques of Rs.11.10 lakh. The amount of Rs.10 lakh received from Mr.Bhat was used in making payment to the builder. The provisions of P.C.Act and the penal provisions are not attracted against applicant. It is further submitted that the applicant is income tax payee from A.Y.1988 till 2005. He has agricultural land income. He has agricultural land. Sufficient income is shown by investment in P.Manikji & Co. There is no material to show that any money has come from accused no.1. The applicant is not a public servant and not required to explain his income to discharge the duty of prosecution to show that he has received money from public servant and purchased property in his name on behalf of public servant. Mere giving loan to brother to acquire property cannot referred to as abetment to public servant. There is no material to show that money has come from public servant. Independent transaction cannot besuspected. Applicant is not a public servant and not required to explain his income. It is the duty of prosecution to show that applicant has received money from public servant and purchased the property in his name on behalf of public servant. Mere giving loan to brother to acquire the property cannot be called as abetment to acquire. Hence, no case is made out to frame charge against the applicant. Learned APP submitted that while while entertaining the application for discharge the Court is not required to conduct roving inquiry. The documents on record are sufficient to frame charge against applicant. It is further submitted that accused no.1 established two firms namely P.Manikji & Co. and M/s.Tuljabhavani

Motels Pvt.Ltd in order to convert ill-gotten money into white. These two companies are not doing any business. The companies are used for depositing money to show that transactions are genuine. During investigation it was revealed that the offices of these two firms are situated in the same premises in Mumbai. The directors of the said two companies are from the family members of accused persons. The accused no.1 initially deposited ill-gotten money in the accounts of these two firms and tried to demonstrate that these two firms have finances of relatives of accused nos.1 and 2 for purchase of flats in Goregaon, Mumbai. In the statement recorded by the investigating officer, the applicant has not stated anything about business of P.Manikji & Co or payment for purchase of flat. Learned APP also relied upon compilation of documents in support of her submissions. She pointed out the statement of Sadashiv Shirodkar dated 5th June 2007 and other documents. The said witness has submitted the bank statement, account opening form of P.Manikji & Co. with Bank of Maharashtra, Boribunder Branch, Mumbai. The statement indicate that amount was withdrawn from the account of applicant on 19th December 2002, 21-12-2002, 24-12-2002, 28-12-2002 etc. Learned APP submitted that the amount given by accused no.1 in the name of Kamlabai Mahajan on 24th July 2000 in the sum of Rs.3.50 lakh, was credited in the account of Kamlabai Mahajan and the said amount thereafter was transferred from the account of Kamlabai Mahajan on 12th September 2000 into the account of P.Manikji & Co.. It is, therefore, submitted that the application be rejected.

13. The applicant in Criminal Revision Application No.313 of 2013 was impleaded as accused no.3. She is daughter of accused nos.1 and 2. She is married. According to her, she had her own source of

income through tuition classes from 1997 till she got married in 2004. She had been paying income tax regularly from 1998 till 2005. According to her, she has explained source of her income. Her application for discharge has been rejected by Trial Court erroneously. There is no evidence to prosecute her. The income tax assessment papers are part of charge sheet. She has a bank account maintained at Saraswat Co-operative Bank Ltd, Kalyan in which all entries are reflected. The flat was purchased for Rs.14.08 lakhs from builder Link Estate Private Limited. She paid the amount to the builder by cheque from her account. The bank statement reflected that she paid Rs.3 lakh by cheque dated 14th April 2004, Rs.2 lakh by cheque dated 7th July 2004, Rs.2 lakh by cheque of Rs.3 lakh by cheque dated 8th July 2004. The cheque dated 8th July 2004 of Rs.1.58 lakh was directly paid from account of Sahebrao Mahajan to the builder. Rs.2.50 lakh have been paid from the account of Mr.Arun Mahajan as loan which was paid directly to the builder. The documents indicate that she has taken loan from various persons. She had independent source of income. The accused no.1 had given Rs.2.30 lakh by cheque dated 14th April 2004. The said amount was received by way of medical reimbursement by accused no.1. Applicant had paid Rs.10 lakh on different dates by cheque from her account. It is submitted that Rs.2.30 lakh was given by her father by cheque, Rs.2.46 lakh was returned to father by cheque dated 28th May 2005, Rs.2 lakh was taken as loan from her cousin who has been discharged by this Court, Rs.2.50 lakh was taken as loan from M/s.Tuljabhavani Motels Pvt.Ltd. Which was repaid after her marriage. She deposited cash of Rs.2.10 lakh on different dates which she had received from tuition income which is reflected in income tax returns. There is no material to show that any amount has come from public servant which has not been explained by her and the independent transaction entered into by applicant and her relatives, cannot be suspected and no case is made out for framing charge against her.

14. Per contra, learned APP submitted that there is sufficient evidence to proceed against the applicant. The contentions of the applicant are to be appreciated during trial. The defence of the applicant cannot be considered at this stage. It is further submitted that opportunity was given to the applicant to explain as to how she raised amount to purchase the flat. While recording statement, she failed to give proper explanation. In the statement she stated that she was taking private tuitions from 1998 till 2001. Whereas, in the application for discharge ti was contended that she was taken private tuitions till 2005. Her maternal uncles had purchased flats adjacent to the flats purchased in the name of applicant. There is sufficient evidence to frame charge against applicant. Learned APP also relied upon the documents by tendering compilation. She pointed out the bank statement of Kalyan Janata Sahakari Bank Limited to show entries with regards to the transactions in the said account. It is submitted that there is evidence to proceed with the trial against applicant.

15. In support of the submission that requirement of Section 13(1)(e) of P.C.Act is not is not only for the prosecution to prove that assets are acquired by accused are disproportionate to his known source of income but that accused has failed to explain the same and it is necessary to call upon the accused to satisfactorily account for his alleged disproportionate assets, reliance was placed on the

following decisions :

(i) Krishnanand Agnihotri Vs. State of M.P[1];

(ii) State of Haryana Vs. Bhajanlal[2];

(iii) M.Krishna Reddy Vs. Dy.Commissioner of Police, Hyderabad[3];

(iv) N.P.Lotlikar Vs. CBI[4];

(v) D.S.P.Chennai Vs. Ibasagaran[5];

(vi) State Vs. K.Ponmudi[6].

Learned counsel for applicants further relied upon the decision in the case of Akhilesh Yadav Vs. Vishwanath Chaturvedi and others[7] to contend that the assets of the wife of public servant cannot be subject matter of the preliminary inquiry under P.C.Act for assessment of assets disproportionate to the known source of income, if she holds no public office and is having independent source of income for which she is assessed under the Income Tax Act. Learned counsel relied upon following decisions to contend that mandate of Section 19 of P.C.Act is restricted to the office under P.C.Act and the commission of offence under any other enactment during the course of official duty needs to be dealt with u/s 197 and separate sanction is necessary for a valid joint trial before the Court. The decisions are :

(vii) Shreekantiah Ramayya Munipalli Vs. The State of Bombay[8];

1 (1977)1-SCC-816
2 1992 (Supp.1)-SCC-335
3 (1992)4-SCC-45
4 1993(2)-BCR-537
5 (2006)1-scc-420
6 2007(1)-mlj-100
7 (2013)2-SCC-1
8 1954-SCR-1177

(viii) Matajog Dobey Vs. H.C.Bhari[9];

(ix) Abdul Waheb Ansari Vs. State of Bihar & Anr.[10];

(x) P.K.Pradhan Vs. State of Sikkim[11];

(xi) Romesh Lal Jain Vs. Naginder Singh Rana and others[12].

Learned APP relied upon the decision of Supreme Court in case of State of Tamil Nadu Vs. N.Suresh Rajan and others[13] and submitted that no money trial is contemplated at the stage of considering discharge application.

16. I have perused the documents on record. The accused no.1 is the public servant. Accused no.2 is wife of accused no.1. The other accused are related to accused nos.1 and 2. The applicants before this Court are primarily prosecuted for aiding and abetting accused no.1 in commission of offence u/s 13(1)(e) of P.C.Act. During investigation the investigating machinery has collected several documents which according to prosecution establishes the connivance of the applicants with accused no.1. On going through these documents it is apparent that the prosecution has prima facie made out case against applicants. While adjudicating the application for discharge the Court is not required to appreciate the evidence or conduct a roving inquiry. The accused will be entitled to put forth their defence during trial. The application of applicant in Criminal Revision Application No.308 of 2013 was allowed by this Court considering the nature of evidence against him. However, there is sufficient material to frame the charges against applicants. The

9 AIR-1956-SC-44
10 (2000)8-SCC-500
11 (2001)6-SCC-704
12 (2006)1-SCC-294
13 (2014)11-SCC-709

application for discharge preferred by these applicants were rejected by Trial Court. Initially the offence was registered against accused nos.1 and 2 and after conducting investigation accused nos.3 to 13 were impleaded. It appears that they were called upon to submit their explanation. Some of them have tendered explanation. While considering the discharge application the Court has to consider the material produced by prosecution in un-rebuttable form and if from the said material it appears that the evidence is not sufficient to proceed against them, the accused can be discharged. The charge sheet indicate that applicants were related to accused nos.1 and 2 and have entered into transactions which are referred to hereinabove. The defence that the accused have not abetted in commission of crime on the basis of contentions raised by the applicants, will have to be adjudicated during trial. The bank statement of accused no.4 shows that no other transactions were made through his account, except purchase of flat. He raised loan of Rs.7.50 lakhs for purchasing the flat. At the time of purchase of flat he was having Rs.50,000/- and Rs.4.50 lakh was obtained from M/s.Tuljabhavani Motels Pvt.Ltd for purchasing the flat. The amount was paid to the builder after one year. The bank statement of Kamlabai Mahajan shows that Rs.2.92 lakh was deposited in her account on 10th September 2004 and she issued cheque of Rs.2.92 lakh to the said applicant on 1st October 2004. According to the prosecution, M/s.Tuljabhavani Motels Pvt.Ltd is not in existence. Accused no.2 and her relatives were directors of the said company. This company had extended loan to all purchasers to purchase flats in Goregaon Link Palace Co-operative Housing Society Limited. Prosecution has pointed out nature of evidence against him, which is referred to hereinabove.

17. The accused no.10 Subhash Gaynar had a flat in his name in Suvarnajyot Co-operative Housing Society, at Kalyan. The flat adjacent to it was purchased by the brother-in-law of accused no.1. This applicant is husband of sister of accused no.2. The statements of witnesses Satish Malpure, Shakuntala Shirsekar, Aatmaram Patil, Rejendra Petkar as well as panchanama of the said premises show that the accused nos.1 and 2 were residing in these flats and the internal walls have been demolished and flats were amalgamated. The extract of bank account of accused no.10 collected during investigation does not show that sufficient balance was available in the said account when the flat was purchased by him. Material available on record does not suggest that he has been falsely implicated in this case.

18. The accused no.8 Smt.Sumati Mahajan is wife of co-accused Arun Mahajan. Material available on record shows that when the investigating officer had been to the house of accused no.8, she was not found present. Notice was put up on the house of accused no.8. She forwarded letter to investigating officer on 26th March 2007 stating that she has purchased the flat out of her own income. She did not disclose the source of income. The husband of accused had purchased flat for consideration of Rs.14,57,500/- for which he raised loan of Rs.13.75 lakh. It is not disputed by accused no.8 that she had purchased flat no.8 situated at M.E.Sector, CIDCO, Nashik. It is not disputed that accused no.2 is her sister-in-law. It is also not disputed that plot was purchased in 2003 and she had paid Rs.2,48,210/- for its purchase. Considering evidence pointed by learned APP, at this stage, prima facie evidence is there to proceed against the said accused. The documentary evidence relied upon by the prosecution cannot be

brushed aside at this stage.

19. The accused no.11 Sunita Gainar is wife of Subhash Gainar. According to her, she purchased house at Amarawati with her mother by making payment of Rs.3,62,600/- to the previous owner. After a period of three years the house was sold to accused no.2 for a consideration of Rs.7 lakh although it was purchased for Rs.7.25 lakh. It is not disputed that the amount received from accused no.2 was transferred to M/s.Tuljabhavani Motels Pvt.Ltd and M/s.P.Manikji & Co.. The accused no.2 was Managing Director of M/s.Tuljabhavani Motels Pvt.Ltd. According to the prosecution, these firms are not conducting any business. Accused no.1 has shown his relatives as directors of these firms and transferred tainted money in the accounts of these firms and used it for various transactions of properties.

20. Accused no.3 Neelaxi Augad is daughter of accused nos.1 and 2. Learned APP has pointed out the evidence against her. The flat was purchased in her name at Link Palace Co-operative Housing Society at Goregaon for consideration of Rs.14.50 lakhs. The flats were purchased in the names of other accused in the same building. The statements of witnesses recorded during investigation show that the accused no.1 was instrumental in purchasing the said flats in the names of co-accused. The contentions of applicant that she had source of income, will have to be decided during trial. The evidence on record cannot be overlooked which indicate that it was handy work of accused no.1 to purchase the said flat premises. According to her, she obtained loan of Rs.1.58 lakh from Sahebrao, Rs.2.10 lakh from Arun and Rs.2.30 lakh from accused no.1, Rs.2 lakh from

accused no.12 and Rs.2.50 lakh from Tuljabhavani Motels Pvt.Ltd.. Accused no.5 Sahebrao is maternal uncle of applicant. Ramesh Augad is cousin of the applicant. The charge sheet shows that Arun obtained loan of Rs.10 lakh to purchase the flat adjacent to the flat of applicant during the said period. The investigating officer has also submitted statements of residents of building which show that the accused was residing from the year 1998 till 2004. This statement shows that the applicant was not taking any private tuitions. By way of explanation during investigation the applicant has failed to produce any record to fortify her contention. The income tax returns show that the applicant had not earned more than Rs.40,000/- p.a.

21. The accused no.7 Pradip Mahajan has also contended that there is lack of evidence against him. Learned APP pointed out the evidence collected against him during the course of investigation. Since 2001 the applicant is residing in village Zada, Amarawati. Five acres of agricultural land has been given to him by his mother for cultivation. His land is not sufficient to meet his daily needs. He has not stated anything at the time of recording his statement that he made payment for purchase of flat by his brother. He had not referred to the companies viz M/s.P.Manik & Co and M/s.Tuljabhavani Motels Pvt.Ltd. The account opening forms of the bank in respect of brothers of accused no.2 shows that they have given their address where accused nos.1 and 2 were residing at the relevant time. It is difficult to understand as to why these accused have chosen to open accounts in Mumbai when they were not doing any business or residing at Mumbai. The statements show that the flats were joined by removing the internal walls and accused nos.1 and 2 are residing in it.

22. The accused no.5 Arun Mahajan has also taken a similar stand and contended that there is no evidence to frame charge against him. However, considering the evidence against him collected during investigation and pointed out by the prosecution, I find that the contentions are devoid of merits. Accused no.5 purchased flat at Mumbai for Rs.13.70 lakh in 2003. He raised loan of Rs.5 lakh from Ms.Aasha Patil and Rs.5 lakh from Tulzabavani Motels Pvt.Ltd. Rs.3.75 lakh were paid by Sahebrao Mahajan. Out of his own income he did not make any payment. The residents of society where the applicant has purchased flat have stated that the accused nos.1 and 2 are residing in the same flat. The internal walls were removed. The explanation tendered by the applicant and the other accused cannot be accepted at this stage. In the light of the evidence I do not find that case for discharge of the applicants is made out.

23. Most of the decisions relied upon by learned counsel for applicants were delivered after the trial was conducted and there was scope for appreciation of the evidence. In case of Krishnanand Agnihotri Vs. State of M.P. (supra), The Court was dealing with the appeal against conviction. It was observed that presumption u/3 5(3) can be rebutted and it would be open to the accused to establish that despite disproportion of his pecuniary resources or property to his known income, he is not guilty of criminal misconduct in discharge of his official duty. In the case of State of Haryana Vs. Bhajanlal (supra), it was observed that mere possession of any pecuniary resources of property is by itself not an offence but it is the failure to satisfactorily account for such possession of the pecuniary resources of the property that makes possession objectionable and

constitutes offence within the ambit of Section 5(1)(e) of the Act. The investigating officer shall not proceed with preconceived idea of guilt of that person. In the case of M.Krishna Reddy Vs. Dy.Commissioner of Police (supra), the Supreme Court has observed that initial burden of proof is on prosecution and after the burden is discharged, the onus shifts on the accused. In the case of N.P.Lotlikar Vs. CBI (supra), this Court has observed that it is the failure to satisfactorily account for such possession of pecuniary resources or property which is disproportionate to the known sources of income that is objectionable. It is not merely acquisition that constitutes the offence. In D.S.P.Chennai Vs. Ibasagaran (supra), the Supreme Court has observed that in an appeal against the order of acquittal the question is when the accused has provided satisfactory explanation that all the money belonged to his wife and she has owned it and the Income Tax Department has assessed it in her hand, then, in that case, whether he could be charged under the Prevention of Corruption Act. Similar view was taken in other decisions. In the case of Akhilesh Yadav Vs. Vishwanath Chaturvedi & others (supra), the Court was dealing with review petition in respect to earlier order passed by Supreme Court issuing directions by CBI to inquire against disproportionate assets of petitioner. The Supreme Court felt that there is absolutely no evidence to hold such an inquiry against wife of accused who is not a public servant. The ratio in the said decision is not applicable in the present case. The other decisions relied upon by learned counsel are in relation to applicability of Section 19 of P.C.Act. In the facts and circumstances of present case, the ratio laid down in the said decisions are not applicable. Prima facie case is made out to frame charges against applicants and proceed with the trial. It would be relevant to advert to the observations of Supreme Court in the decision cited by learned APP in the case of State of Tamil Nadu by Inspector of Police Vigilance and Anti-Corruption Vs. N.Suresh Rajan and others (supra) wherein it was observed that the Court is not expected to go deep into the matter and hold that material would not warrant conviction. If Court on basis of material finds that accused prima facie might have committed offence, it can frame the charge. No mini trial is contemplated at the stage of considering discharge application. The Court to proceed with the assumption that materials brought on record by prosecution are true and only probable value of the material has to be gone into to see if there is a prima facie case for proceeding against the accused.

24. In the light of aforesaid observations, the revision applications preferred by the applicants are devoid of merits and the same are required to be dismissed.

25. Hence, I pass following order :

ORDER

(i) Criminal Revision Application Nos.309/2013, 310/2013, 311/2013, 312/2013, 313/2013, 366/2013 and 367/2013 stand rejected;

(ii) The observations made in this order are prima facie for considering these applications and the Trial Court shall not be influenced by same at the time of trial.

(PRAKASH D. NAIK, J.)

26. At this stage, learned counsel for the applicants submits that this Court has by order dated 12th December 2014 directed that the prosecution will not press for hearing of the case before the Trial Court. It is submitted that the applications were thereafter adjourned from time to time and by order dated 3rd March 2017 interim order was further continued. Learned counsel, on instructions, further submits that the Trial Court has not proceeded further with the impugned proceedings against the applicants. It is submitted that the Supreme Court is on vacation and applicants propose to challenge this order before Supreme Court. It is submitted that the next date before the Trial Court is 13th June 2019, and, hence, the interim order be continued for a period of eight weeks. Considering the submissions, the interim protection granted by this Court is continued for a period of eight weeks.

(PRAKASH D. NAIK, J.)

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