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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.583 OF 2018

Somyajyoti Satyajit Das … Applicant
V/s.
The State of Maharashtra & Anr. … Respondents

Mr. Peiyal Sarda,for the applicant.
Ms. Ameeta Kuttikrishnan, for respondent No.2.
Mr. N. B. Patil, APP for respondent State.

CORAM : N. J. JAMADAR, J.

DATE : 29th November, 2019.

ORAL JUDGMENT :

1] With the consent of learned counsels for the parties, heard finally at the stage of admission.

2] This Revision Application is filed assailing the legality, propriety and correctness of the order passed by the learned Special Judge, (CBI-ACB), Pune, dated 19th September, 2018, in Special Case No.68 of 2016; whereby the application preferred by applicant accused No.3, for discharge from the prosecution for the offences punishable under Section 13(1) (e) read with Section13(2) of the Prevention of Corruption Act, 1988 and Section 109 of the Indian Penal Code, came to be rejected.

3] The background facts can be stated in brief as under:-

(a) Satyajit Das -accused No.1 is a public servant, accused No.2 Smt. Dipti is wife accused No.1 and applicant Somyajyoti Satyajit Das is his son. The accused No.1 is alleged to have amassed assets disproportionate to his known source of income to the tune of Rs.39,35,l538.40. The percentage of disproportionate assets comes to 51.37%, which the accused failed to explain. It is alleged that the applicant and his mother Dipti abetted the public servant in amassing huge disproportionate assets.

B] The applicant preferred application for discharge (Exhibit 12), asserting that the applicant had multiple sources of independent income and there was no material to demonstrate that the applicant had abetted the accused No.1 in the commission of the offences under the Act, 1988. The various occupations, which the applicant was independently pursuing, which according to applicant generated substantial income, were pressed into service to demonstrate that the applicant has no concern with the assets which were allegedly amassed by accused No.1.

c] The prosecution resisted the application.

d] By the impugned order, the learned Special judge was persuaded to reject the application. The learned Judge was of the view that, prima facie, though the applicant had various sources of income, yet the amount which stood to the credit of the applicant was disproportionate to those sources of income. It was further noted that certain amounts were credited in the account of applicant from M/s Mahabadi Construction and there was no justifiable explanation for the same. The learned Special Judge found a prima facie case in support of the charge that the applicant abetted the public servant.

4] Heard the learned counsel for the applicant and learned counsel for respondent No.2, at some length.

5] Mr. Sarda, assailed the impugned order by mounting a two fold challenge, to the impugned order. It was submitted that the mere fact that some amount was credited in the account of the applicant by M/s Mahabadi Construction, was not sufficient to rope in the applicant as an abettor, as the transaction between the accused No.1 and M/s Mahabadi Construct regarding purchase of immovable property could not materialise and, therefore, M/s Mahabadi Construction had returned the said amount which was subsequently utilized by the accused No.1 to purchase another property. Thus, the applicant cannot be arraigned as an abettor. Secondly, even if the prosecution case is taken at par the fact that the applicant had assets disproportionate to his known source's income, was not germane to prosecute the applicant as an abettor.

6] Per contra, the learned counsel for respondent No.2 urged that there is sufficient material to frame charge against the applicant. The attention of the Court was invited to the statement of Shri. Bhaskar Sadashiv Niphade, recorded during the course of investigation, which reveals that an amount of Rs.5,00,047/- lakhs was credited from the account of M/s Mahabadi Construction, in the account of applicant and, in turn, payments were made to M/s Nilesh Construction, amounting to Rs.12,35,000/- from the account of applicant. It was further pointed out that during the period, 25th February 2013 to 27th October 2013, a sum of Rs.5,37,500/- came to be deposited in the account of applicant by cash, in small amounts. In the backdrop of these facts, according to learned counsel for respondent No.2, the learned Special Judge cannot be said to have committed any error in rejecting the prayer for discharge.

7] Two considerations are of determinative significance. One, the nature of enquiry warranted while deciding the aspect of framing the charge. The limited enquiry permissible at the stage of framing charge is to ascertain whether the material on record makes out a prima facie case. The test is whether there is sufficient material to presume that the accused has committed the offence. Conversely, if the charge appears to be totally groundless then the Court would be justified in discharging the accused. It is trite that a strong suspicion is sufficient at the stage of framing of the charge. The Court is not expected to weigh the material to ascertain whether it would entail the conviction of the accused. Two, the limitation on the exercise of revisional jurisdiction by this Court, when the learned Special Judge has recorded a finding that there is a prima facie case to frame charge against the applicant.

8] Reverting to the facts of the case, on the aforesaid touchstone, the circumstances which the learned counsel for respondent No.2 has pressed into service, at this stage, appear to be sufficient to raise a strong suspicion against the applicant of having nexus with the accused No.1, in allegedly amassing disproportionate asset. If the transaction with M/s Mahabadi Construction was entered into by accused No.1, there was no plausible reason in not seeking refund of the amount which was allegedly paid by way of part consideration, in the account of the accused No.1, after the transaction did not materialise.

9] What further accentuates the situation, is the fact that during the relevant period, huge amount was credited in the account of the applicant, in cash, in addition to the amount credited by M/s Mahabadi Constructions and, thereafter, the payments were made from the account of the applicant for purchasing the property, in the name of accused No.1. The situation which, thus, emerges is that there is adequate material to raise a strong suspicion that the applicant intentionally aided accused No.1 in allegedly amassing the disproportionate assets. In the least, the applicant can be stated to have abetted the offence by accused No.1 by consciously being a conduit for the transfer of the funds and acquisition of the assets, which are alleged to be disproportionate to the known sources of income of accused No.1

10] The upshot of aforesaid consideration is that when the learned Special Judge has recorded a well merited finding that there is prima facie material to frame the charge, there is no justifiable reason for this Court to interfere with the said order in exercise of limited revisional jurisdiction.

11] Hence, the application stands rejected.

[N. J. JAMADAR, J.]