IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.759 OF 2019

Prajakta w/o Ashish Marwah
Age: 39 Yrs., ocu. Household,
Flt No.H/201, Marvel Ritz,
Hadapsar, Pune = **PETITIONER**

VERSUS

The Union of India
Central Bureau of Investigation,
BS and FC,Mumbai,
MAHARASHTRA = **RESPONDENT**

Mr.R. R. Deshpande,Advocate h/for Mrs.Priyanka R.Deshpande,Advocate for Petitioner;

Mr. SB Deshpande, Asstt. Solicitor General for Union of India;

Mr.PK Lakhotiya,APP for State.

CORAM : SMT.VIBHA KANKANWADI,J.

RESERVED ON : 3rd JANUARY,2020
PRONOUNCED ON : 5th MARCH,2020

JUDGMENT

1. Present petition has been filed by original accused No.3, invoking the constitutional powers of this Court under Article 227 of the Constitution of India to challenge the order dated 2.3.2019 passed by the learned Additional Sessions Judge, Latur below Exhibit-126 in Special Case (ACB) No.12/2015, whereby her application under

Section 227 and 239 of Code of Criminal Procedure (for short, Cr.P.C.), for discharge, came to be rejected.

2. Heard learned Advocate Shri RR Deshpande holding for Advocate Mrs. Priyanka R. Deshpande, for petitioner; learned Assistant Solicitor General Shri SB Deshpande for Union of India and learned APP Shri PK Lakhotiya for Respondent-State.

3. Learned Advocate for petitioner submitted that the learned Trial Judge did not appreciate the facts of the case properly. In fact, there is no evidence against the accused No.3 for framing the charge. The various authorities relied on by the advocate for the petitioner were not considered. There was no common intention or conspiracy between the petitioner and the other accused. She has been arrayed only because she is a sister of accused No.4 (presently an MLA) and is wife of accused No.2, the Managing Director of accused No.1 company. Though she is also a Managing Director of accused No.1-company, but she had not actively participated in any proceedings of the company. It

was further submitted that, initially, FIR dated 25.3.2014 was filed alleging offences punishable under Sections 420, read 120-B of IPC, however, investigation was handed over to Central Bureau of Investigation and then charge sheet was filed on 29.6/2015 for the offences punishable under Sections 420, 468, 469, 471, 120-B of IPC and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act and, therefore, Special Case was registered before the Special Court. It is the prosecution case that the complainant and another bank had sanctioned loan of Rs.33.53 crores and cash credit of Rs.6.46 crores in favour of accused No.1 between 10.9.2009 to 29.12.2009 for the purpose of an unit. Accused No.4 had executed a registered mortgage-deed in favour of the bank on 30.7.2009 before Sub-Registrar, Shirur Anantpal as security for the loan. Accused No.5 had given consent to the said deed being brother of accused No.4. The present petitioner had executed independent consent deed in favour of the Bank on 14.1.2010 as she was not a party to the mortgage-deed. Thereafter, proceedings were initiated under The Secularization and Reconstruction of Financial

Assets and Enforcement of Securities Interest *Act*, 2002 Act (for short, the Securitization Act)before the Collector and two certified copies of the documents were found containing different details of the property as mortgage. The bank suspected tampering in the deed of mortgage and, therefore, the complaint was filed. In fact, the parties to the said deed of mortgage settled the dispute and under one time settlement scheme, the borrower had deposited the entire amount of the loan and the loan file is closed. Under such circumstance, effect of the mortgage deed had come to an end. The investigating Officer/prosecution contends that the mortgagor was not owner of the mortgaged property and page Nos.17 and 19 of the mortgage deed were tampered by the accused persons in collusion with accused No.6, who was then serving as Sub-Registrar. The learned Judge of the Special Court failed to consider that the bank itself had come with contrary case. It ought to have been the responsibility of the bank to investigate the title of the property before disbursement of the loan and then enter into the mortgage-deed. The prosecution has arrived at a conclusion that one Sambhaji Patil is owner of the property, which has been mortgaged. However, no such person has claimed the title over the said property. The CBI cannot decide title of the property, that too, under investigation in a criminal matter. As regards tampering of the pages of the mortgage-deed is concerned, no active role is attributed to the present petitioner. The charges under the Prevention of Corruption Act cannot be attributed to the present petitioner as she is not a public servant. Therefore, framing of the charge against the accused would be groundless and, therefore, the application under Section 239 of Cr.P.C. ought to have been allowed and the petitioner ought to have been discharged.

4. Per contra, on behalf of the respondent an affidavit in reply has been filed by one Dharambir Rana, Inspector of Police, CBI, BSFB, Mumbai, wherein it has been stated that the present petitioner and accused No.2 are the Directors of the accused No.1- M/s Victoria Agro Food Processing Pvt.Ltd.. Sambhaji Diliprao Patil (accused No.4) and Arvind Diliprao Patil (Accused No.5) are the guarantors. Accused No.7 Satyavan Tatyarao Dhumal

was working with Sambhaji, who is an MLA from Nilanga constituency during 2009 to 2012. All of them had hatched up the criminal conspiracy to cheat the Union Bank of India and Bank of Maharashtra, Latur branches by diverting the funds disbursed for working capital as well as term loan. Accused No.6 – Ganesh S.Kawale was the then Sub-Registrar, Shirur Anantpal was also part of the conspiracy to cheat the banks and then the accused persons tampered page Nos.17 and 29 of the original Deed of Mortgage registered on 30.7.2009 with office of Sub-Registrar Shirur Anantpal, District Latur. The property involved was Survey No.289/A, situated at village Nilanga, admesuring 8 hectares (valued at Rs.20.42 crores) and illegally substituted the same by forging the pages to show that the property bearing 5A, admeasuring 740 sq.ft. having meager value, is mortgaged. That property is situated at village Chincholi Bungar. Further, it is stated that there is criminal conspiracy between accused Nos.4, 5 and 7 and thereby submitted 7/12 extract, property card; building commencement certificate of Survey No. 289/A in the name of Sambhaji Diliprao Patil (accused No.4). As a result, rightful and legal claim of the consortium banks have been impaired and there was wrongful loss to the tune of Rs. 49.30 crores to both the banks, rendering those accounts as Non-performing assets (NPA). He has given the details as to what actions have been done by the present petitioner and what evidence has been collected against her. It is reproduced for the sake of convenience, thus, -

> "(a) Applicant (A-3) has acknowledged sanctioned letter dated 23.6.2009 of Union Bank of India, Latur Branch, sanctioning total credit facilities of Rs.20 crores to the accused company (A-1) wherein she is the Director. One of the terms and conditions was Mortgage of land & Building at Sr.No.289 and 290, Ward No.1-1, MCH No.265 (old 7 New) near Shivaji Chowk, Nilanga owned by Shri Sambhaji Diliprao Patil (D-302 and 303-page Nos.1504 to 1506)
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> (b) Applicant (A-3) has acknowledged the sanction letter dated 3.7.2009, of Bank of Maharashtra Latur addressed to Victoria Agro Food Processing Pvt. Ltd., regarding sanction of Term loan and Cash Credit facilities as a token of acceptance of terms and conditions which include Mortgage of Land & building at Sr.No.289 & 290, Ward No.1-1, MCH No.265 (old 7 New) near Shivaji Chowk, Nilanga owned by Shri Sambhaji Diliprao Patil (D-121) page No.660).

(c) The applicant (A-3) has signed letter dated 28.7.2009 in the capacity of Director of Accused Company (A-1) addressed to Union Bank of India, Latur branch regarding submission of clarification on the collateral security of property relating to survey No.289(D-221).

(d) Applicant (A-3) has singed security/loan documents with regard to sanctioning of term loan and cash credit facilities of Rs.40 crores to accused company (A-1) in the capacity of Director of the company (D-306 & 308 to 312).

(e) Applicant (A-3) has singed original Mortgage Deed registered on 30.7.2009 (D-12) which includes one of the property bearing survey No.289/A shown in the name of Shri Sambhaji Diliprao Patil (A-4).

(f) The applicant (A-3) has signed Input Form (D-30) before the registration of Mortgage Deed which contains the details of one of the property mortgaged as survey No.289/A (D-30, page 218).

(g) The Applicant (A-3) has signed letter dated 28.7.2009 as a Director of the accused company (A-1) addressed to Bank of Maharashtra informing the Bank that valuation report of two evaluators had already submitted to Union Bank of India and Valuation Report from Khagendra Shelke of Bank’s panel list approved evaluator was submitted. The Mortgage Deed is ready for the formalities.

(h) The Applicant (A-3) has signed

letter dated 18.2.2009 as a Director of accused company (A-1) addressed to Union Bank of India, Latur branch submitting security documents along with the valuation report.

(i) The valuation reports of collateral securities mortgaged to the Bank of property situated at Nilanga showing in the name of Shri Sambhaji Diliprao Patil are as under, -

(i) Valuation report dated 28.7.2009 of M/s Sai Datt Vastu Consultant (Khangendra V. Shelke), Bank's Panel evaluator on immovable property bearing survey No.289/1 (D-44 page No.48).

(ii) Valuation report dtd. 14.2.2009 of Shri Atul Tumbare approved evaluator in respect of valuation of property bearing survey No.290 & 289 (ward No.1-1 MCH No.265-old 7-New) (D-208)

(iii)Original Valuation report dated 11.7.2009 of Shri S.V.Barbade related to immovable property bearing Survey No. 289/A (D-441). The Applicant (A-3) made payment of Rs.1,34,550.00 to the evaluator through Cheque dt.14.7.2009 (D-156) of the accused company (A-1).

(iv) Original valuation report dated 2.4.2010 of Mr.Diliip Dudhankar related to immovable property bearing Survey No. 289/A (D-55).

(j) The following forged supporting documents were submitted either to the evaluator or to the consortium banks in support of mortgaged property bearing survey No.289/A showing in the name of

Shri Sambhaji Diliprao Patil (A-4):

(i) 7/12 extract dtd.10.7.2009 (D-12), 31.7.2009 (D-69), 31.7.2009 (D-100) and 29.3.2010 (D-59) purported to be issued by Talathi, Nilanga.

(ii) Property Card dt. 3.2.2009 (D-208), 10.7.2009 (D-468) & 29.3.2010 (D-60) purported to be issued by Nagar Parishad, Nilanga.

(iii) Commencement Certificate dtd. 16.12.2002 (D-70) and 7.11.2007 (D-71) purported to be issued by Nagar Parishad, Nilanga.

(k) The Applicant (A-3) has signed Consent Deed on 14.1.2010 confirming the Mortgage Deed registered on 30.7.2009 relating to property bearing survey No. 289/A in the name of Shri Sambhaji Diliprao Patil (D-23 page 200).

(l) The CFSL report shows that pages no.17 and page No.29 were not written by Shri Ganesh S.Kawale (A-6), thereby it proves that original Mortgage Deed was tampered relating to page Nos.17 and 29 (D-541 & PW-77).

(m) The CFSL report shows that original 2 sets of 7/12 Extract dtd. 31.7.2009 submitted to Bank are forged and these are prepared by Shri Satyawan Tatyarao Dhumal (A-7) (D-No.69 & D-100, PW-18, PW-19 & PW-77), showing owner of the mortgaged property bearing survey No. 289/A as Shri Sambhaji Diliprao Patil (A-4).

(n) It is on record that mortgage

> deed was tampered on 31.7.2009 when Shri Satyawan Tatyarao Dhumal visited the Sub-Registrar office, Shirur Anantpal and collected certified copy of Mortgage Deed dated 30.7.2009 (D-12, D-35, D-40, D-303 and D-541, PW-4, PW-5, PW-9 & PW-77)."

It is then said that the learned trial judge was justified in rejecting the application as there is sufficient evidence on record to frame the charge against the present petitioner.

5. Learned Assistant Solicitor General has made submissions supporting the prosecution and the contents of the Affidavit in reply. He submitted that various authorities were produced before the learned trial judge on behalf of the prosecution in respect of those decisions of this court or by the Hon'ble Apex court wherein it is held that meticulous consideration of evidence and material before the court is not required at the time of framing the charge. What is required to be seen is that is there sufficient material to frame the charge. Active involvement of the petitioner can be seen from series of documents and actions done by the petitioner and it is definitely in conspiracy with the other accused. The petitioner has still a

chance to make submissions before the learned trial Judge as to which offences are not made out against her. However, since there is sufficient material, this court cannot go into the aspect as to which offence has been made out and which is not. It is further required to be seen as to whether charge can be framed or not. The learned trial judge was justified in rejecting the application.

6. At the outset, it is clarified that in view of section 226 of Cr.P.C., the prosecution has to open the case and the prosecutor would present the case of the prosecution and then there is a chance for the accused to put-forth as to which offence is not made out from the material along with the charge sheet. Definitely, when the present petitioner is not a public servant, the relevant sections of Prevention of Corruption Act may not be charged or made applicable against her. However, when she has been charged with Section 120-B of IPC with accused No.6, who is a public servant, and it is alleged that certain acts have been done by him in conspiracy with other accused persons, attracting the provisions of the

Prevention of Corruption Act, then, case will have to be tried by the Special Court under the Prevention of Corruption Act. Those accused persons, who are not public servants, may be charged with other offences under IPC and for that purpose, their trial cannot be separated and it cannot be made over to Chief Judicial Magistrate or JMFC, as the case may be. When it comes to criminal conspiracy, all the accused will have to be tried in one trial before one Court.

7. Hon'ble Apex Court has laid down in various decisions, viz.,*Radhe Shyam Vs. Kunjbihari and Ors. AIR 1990 SC 121; the State of Maharashtra Vs. Priya Sharan Maharaj - AIR 1997 SC 2041; Rajendra Kumar Jain Vs. State of Rajastan – 2003 ALL MR(Cri).Journal 16,* that it is not required to go into all the details and meticulously assess the evidence to see as to whether there is any evidence against other persons. Further, in *State Anti-Corruption Bureau, Hyderabad and Anr. Vs. P. Suryaprakasam - (2008)14 SCC 13,* wherein it is held that, at the stage of framing of the charge, the Court is required to consider only police report

referred under Section 173 of Cr.P.C. and the documents with it and the accused has only right of being heard and not beyond that. In the present case, the petitioner has executed an independent consent deed in favour of the bank on 14.1.2010. Though it is stated that there was one time settlement between the borrower and the bank that does not wipe out the offence which was already committed, merely because the loan amount is paid. Further it is not in dispute that action under Secularization Act has been initiated; which denotes *prima facie* that the loan is not completely mitigated. At the most, from some of the offences relief may be claimed by the accused, as not attributable to them. But that does not do away with the forgery and criminal conspiracy.

8. Taking into consideration the list of the acts alleged to be against petitioner, as aforesaid in Para No.4, there is material before the trial court to frame the charge against the present petitioner. No illegality or error can be said to have committed by the learned trial court; so also the trial court has passed a detailed and correct

order while rejecting the application of the petitioner under section 239 of Cr.P.C. No case is made out to exercise the constitutional powers of this court under Articles 226 or 227 of the Constitution of India to interfere in the said order of rejection of the application for discharge.

9. In the result, the writ petition stands dismissed. Interim relief granted earlier, if any, stands vacated.

(SMT. VIBHA KANKANWADI,J.)

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