IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 124 OF 2014

Anil Laxman Korgaonkar,
Aged 54 years, Indian citizen.
r/o bngalow No. 99/125,
Road No. Rse-35, Sector-4,
behind Charkop Bus Depot,
Kandivali (West),
Mumbai - 400 067. ....Applicant
(Original Accused No.4)

Versus

1. C.B.I. (A.C.B.), Mumbai.

2. The State of Maharashtra ....Respondents

Mr. Girish Kulkarni a/w. Ms. Mrunmai Kulkarni i/b M.G. Shukla for applicant.
Mr.Hiten S. Venegaonkar, Spl. P.P. a/w. Mr. Kunal Nawale for respondent No.1-CBI.
Mrs. Madhavi Mhatre, APP for respondent No.2-State.

CORAM : N.J. JAMADAR, J.
Reserved for Judgment on : 21st September 2020.
Judgment Pronounced on : 07th December 2020.

JUDGMENT :

1. The legality, propriety and correctness of an order passed by learned Special Judge (CBI) dated 20.12.2013 on an application for discharge (Exh.50), in Special CBI Case No. 36 of 2009, whereby the learned Special Judge was persuaded to reject the prayer of the applicant-Accused No.4 for discharge is assailed in this revision

application.

2. Shorn of superflueities, the background facts leading to this revision application can be stated as under :-

(a) The applicant (Accused No.4) is an Architect by profession. He is empanelled as 'Architect and Valuer' by various organizations including Oriental Bank of Commerce ('the Bank'). Pursuant to a requisition by Mr.Chacko Verghase (not sent for trial for want of sanction), the then Branch Manager of Oriental Bank of Commerce, Borivali (West), Mumbai, the applicant had inspected the commercial premises situated at Vasundhara Co-operative Housing Society Limited, stated to be owned by Dr.K.M. Shah (Accused No.2) and Mrs. P.K.Shah and submitted a valuation report on 7.10.1998 assessing the value of the property at Rs.3,48,00,000/-. Eventually, the said property was offered for sale to the Bank by Dr. K.M. Shah (Accused No.2) for a consideration of Rs. 3,50,00,000/-. It is the case of prosecution that on the strength of the valuation report, dated 7.10.1998 furnished by the applicant, the Bank decided to purchase the said property for a consideration of Rs. 3,35,00,000/-.

(b) Conveyances were executed on 23.01.1999. A sum of Rs. 2,60,00,000/- was paid to Dr. K.M. Shah-Accused No.2 towards the consideration. An amount of Rs.75,00,000/- was, however, withheld as the vendor could not deliver possession of a portion of the basement and the terrace.

(c) It transpired that a criminal conspiracy was hatched by Mr. Surendra Kumar Arora, (Accused No.1), the then Regional Manager of the Bank and Mr.Chacko Verghase, the then Branch Manager of the Oriental Bank with the vendor Dr.K.M. Shah to cheat the Bank and thereby caused a wrongful loss of about Rs.65,00,000/-. The documents were forged and valuation reports, including the one from the applicant (Accused No.4), and Title Search report were fraudulently obtained to show that vendors were the owners of the property which they offered to sell, despite being fully aware that the vendors were not the owners of the part of the property which was be sold to the Bank.

3. The prosecution formulated the charge against the applicant (Accused No.4) as under :

> *"………*
> ***That Shri Anil Korgaonkar, Architect*** *Valuer, Private Person did not measure the area properly and gave a valuation report. The actual available area is much less. According to the norms of the bank, he has to give his report based on the procedure framed. In connivance with K.M. Shah he fraudulently gave a valuation certificate for area not owned by K.M. Shah and over valued the property with the intention of cheating the bank….."*

4. The applicant preferred application (Exh.50) seeking discharge on the count that the charge against him was totally groundless. The substance of the application was that the applicant never claimed to have actually measured the premises which was sold by Accused No.2 to the Bank. In fact, the valuation report was sought from the applicant by way of second opinion as the Bank had already obtained valuation certificate from Shri Anmol Sekhri, another empanelled valuer. In the valuation report itself, the applicant had made it abundantly clear that the valuation was made on the basis of the record, which was made available to him, and the claim of the Accused No.2 that he was the owner of the property, especially the open space and terrace portion. There was no element of deceit coupled with injury. There is absolutely no material to show that the applicant had conspired with the vendors. The material on record, according to the applicant, did not *prima-facie* make out a case of either cheating or forgery against the applicant. Even if the case of the prosecution is taken at par, according to the applicant, no offence can be stated to have been made out qua the applicant.

5. The CBI, respondent No.1, resisted the said application by filing objection. It was asserted that the applicant deliberately did not measure the area of the property in respect of which valuation report was submitted. The actual area admeasured much less than the area reckoned by the applicant in the valuation report. The applicant, thus, fraudulently gave a valuation report so as to facilitate the fraud and cause wrongful gain to Accused No.2 and corresponding wrongful loss to the Bank. The area of the property considerably varies in various valuation reports. This points to a deep rooted conspiracy to defraud the Bank. Since a strong *prima-facie* case is made out against the applicant, the respondent No.2 prayed for rejection of the application.

6. After perusal of the material on record and hearing the learned counsels, the learned Special Judge was persuaded to reject the prayer for discharge. The learned Special Judge was of the view that there were three sets of allegations against the applicant. One, the applicant

did not measure the property which he professed to value, and this was in violation of the valuation process. Two, for the purpose of valuation, the applicant took into account the area not owned by the vendors (Accused No. 2). Three, the applicant overvalued the property of the vendors taking into account excess area. In fact, second count of allegation subsumes the third count.

7. The learned Special Judge was of the view that the applicant gave a declaration that he had 'surveyed' the premises in question. This implied that the applicant had determined the boundaries and measured the area. Yet, in the application, the applicant asserted that he had not actually measured the area. In the opinion of the learned Special Judge, this constituted a gross violation of duty as valuer. Though the learned Special Judge found that the second count of the allegations that the applicant did not satisfy himself about the title of the vendors to the property in question was not sustainable, even *prima-facie*, yet, it was observed that the question as to whether the applicant had correctly calculated the area and arrived at valuation, was the matter for trial. Hence, the prayer for discharge was rejected.

8. I have heard Shri Girish Kulkarni, the learned counsel for the applicant and Mr.Hiten Venegaonkar, the learned Special P.P. for respondent No.1-CBI at some length. Perused the material on record including the statements of the witnesses which bear upon the prayer of the applicant for discharge.

9. Mr. Girish Kulkarni strenuously urged that the material on record, even if taken at par, does not make out a *prima-facie* case against the applicant. The learned Special Judge committed a grave error in construing the word 'surveyed' to mean 'actually measured'. The applicant nowhere claimed that he had actually measured the property in question. The report dated 7.10.1998 makes it abundantly clear that it was based on the record furnished for the perusal of the applicant and the statements made by the vendors. Moreover, the area shown in the valuation report of Bhavsar Design Consultants dated 21.01.1999 almost matches with the area indicated by the applicant. In the circumstances, the charge of conspiracy and cheating qua the applicant is wholly unsustainable, urged Mr. Kulkarni.

10. Per contra, Mr. Venegaonkar submitted that the declaration by the applicant that he had surveyed the property in question implies that he had measured the said property. A proper valuation of the property cannot be arrived at without ascertaining its area as value was computed by applying rate per square feet. Taking the Court

through the other valuation reports, especially that of Bhavsar Design Consultants, to point out the inconsistency, Mr. Venegaonkar would urge that the question as to whether the applicant was a confederate in the conspiracy to cheat the Bank is a matter for trial. At this stage, there is a strong *prima facie* case against the applicant.

11. Before adverting to deal with the aforesaid rival submissions, it may be apposite to note that at the stage of determining an application under section 239 of the Code, the Court is not supposed to delve deep into the merits of the case. Meticulous evaluation of the material on record, which is necessary to arrive at the conclusion of guilt or otherwise, is not warranted. A detail scrutiny of the material relied upon by the prosecution, as if to weigh it in golden scale, is impermissible. The Court has to consider whether the charge against the accused is "groundless". A true test to determine whether the charge is groundless is to consider whether the material, even if unrebuted, makes out no offence whatsoever against the accused.

12. To begin with, it may be apposite to extract the relevant part of the valuation report dated 7.10.1998 furnished by the applicant :

> *"Keeping in view the above factors any by local enquiry the Valuation is as follows :*

Ground Floor (Super Built up) :	*2900 s. ft. x Rs. 8000/- per s. ft.*	*Rs.2,32,00,000/-*
Basement Floor :	*1700 s. ft. x Rs. 4000/- per s.ft.*	*Rs.68,00,000/-*
Land in front (Open Space), (Carpet) :	*1200 s.ft. X Rs. 1500/- per s.ft.*	*Rs.18,00,000/-*
Terrace on top and Stilt Parking :	*Approximately*	*Rs.30,00,000/-*
Total valuation of the property :	*Rs. 2,32,00,000/- + Rs.68,00,000/- + Rs.18,00,000/- + Rs.30,00,000/- = Rs.3,48,00,000/- (Rupees Three Crore Forty Eight Lac Only)*	

Sd/- Anil L. Korgaonkar
B.Arch.
CA/83/7525

** As state by Dr. K.M. Shah independent terrace on top and open space on Ground Floor is for his exclusive use.......”*

13. In the accompanying certificate of even date, the applicant had declared that he has examined the papers with regard to the said property and had ‘surveyed’ the abovesaid premises along with its surrounding land/soil and arrived at its approximate value of Rs.3,48,00,000/- as per the then prevailing market rate.

14. From a bare perusal of the aforesaid part of the valuation report, it becomes evidently clear that area of the ground floor and the basement was mentioned as “super built up area”. And the area of the land in front (open space) and terrace was mentioned as

"carpet". The applicant had further clarified that it was claimed by the vendor Dr. K.M. Shah that the terrace on the top and open space on the ground floor were available for his exclusive use.

15. In the aforesaid backdrop, the charge against the applicant of having shown an area, over which the vendor Dr. K.M. Shah had no proprietary title, cannot be legitimately sustained. The learned Special Judge was justified in arriving at the conclusion that the title to the said open space and exclusive right to use the terrace (claimed by the vendor) was a matter to be independently ascertained by the prospective purchaser. In fact, the prosecution has arraigned Shri Bharat R. Chinchkar, the Panel Advocate, for having incorrectly certified the title of the vendor to the portion of the property purchased by the Bank.

16. In the aforesaid view of the matter, the question which comes to the fore is whether there exists an element of criminality in indicating an excess area in the valuation report (even if the case of the prosecution is taken at par) attributable to the applicant? Evidently, the applicant did not claim to have measured the area of the property. Undoubtedly, the applicant certified that he had 'surveyed' the property. Whether the failure to carry out actual measurement of the property would fall within the dragnet of the offences of criminal conspiracy, forgery and cheating, as alleged by the prosecution?

17. For an answer, recourse to the valuation report relied upon by the prosecution and the statement of the valuer Shri Ashit Bhavsar (P.W.34) becomes necessary. In the report dated 21.01.1999, the Architect - 'Bhavsar Design Consultants' has computed the area as under :

> *"...*
>
> *We come to understand that, in this case we have to give the <u>Super Built-up area</u> of the said premises. Hence, our observations are as follows :*
>
> | | | |
> |---|---|---|
> | *(A)* | *Carpet Area of Ground Floor (Including semicovered open spaces proposed to be covered)* | *2,085.00 Sq.ft.* |
> | *(B)* | *Carpet area of Basement Floor* | *1,260.00 Sq.ft.* |
> | | | *-----------------------* |
> | | *Total Carpet Area :* | *3,345.00 Sq.ft.* |
>
> *(i.e. Total Carpet Area is Three Thousand Three hundred Forty Five Sq. ft. only)*
>
> *Further, we have observed that the open space in front of the ground floor will be in exclusive use of the bank, for the purpose of car and scooter parking. Hence, considering the above facts, and as per prevailing market practice, the difference between carpet area and super built-up area can be considered as 35% for ground floor and 30% for basement floor.*
>
> | | | |
> |---|---|---|
> | *(C)* | *Super Built-up area of Ground Floor (Including semicovered open spaces proposed to be covered) :* | *2,815.00 Sq.ft.* |

(D) Super Built-up Area of Basement Floor : 1,638.00 Sq.ft.

Total Super Built-up Area : 4,453.00 Sq.ft.”

18. The aforesaid report makes it abundantly clear that the area was calculated on two parameters, carpet area and super built-up area. The carpet area of the ground floor was found to be 2,085.00 Sq.ft. and that of basement is 1260 sq. ft. Thereafter, the super built-up area was computed by adding a specified percentage to the carpet area. The super built up area of ground floor was computed as 2815 Sq. ft. and of the basement at 1638 Sq. ft.

19. Shri Ashit Bhavsar (P.W.34), in his statement dated 22.11.2007, confirmed, and clarified the manner in which the aforesaid computation was arrived at. It does not appear that Shri Ashit Bhavsar (P.W.34) disowned the aforesaid report dated 21.01.1999, even remotely.

20. If the aforesaid report dated 21.01.1999 of Bhavsar Design Consultants is compared and contrasted with the valuation report of the applicant, the super built-up area of the ground floor and the basement falls short by 185 Sq.ft. and 62 Sq. ft., respectively. Evidently, the premises was built-up and not an open land. It had semicovered spaces also. In the circumstances, the difference between the areas calculated by the applicant (on the basis of the record) and the area computed by Bhavsar Design Consultants (post actual measurement), cannot be said to be huge, much less of such proportion as to draw an inference that the area was inflated with a dishonest intention to cause wrongful loss to the Bank.

21. Mr. Venegaonkar attempted to salvage the position by inviting the attention of the Court to the statement of Mr.Pratap Balkrishna Kashalkar (P.W.34), another Architect, who had calculated the ground floor and the basement area on an even lower side. It is interesting to note that, in the case at hand, the prosecution itself has claimed that there were as many as five reports, each indicating a different area of the property in question (Annexure 'A' to the reply on behalf of respondent No.1 to the application for discharge).

22. In my considered view, the mere variation in the area of the property in question, in the valuation report of the applicant, if compared with the reports submitted by the other Architects, without anything more, would not bring the conduct of the applicant within the mischief of the offences arrayed against the applicant. The report of Bhavsar Design Consultants, which the prosecution does not

disown, indicates that the super built up area mentioned by the applicant is not completely unrealistic and far off the mark.

23. The failure to actually measure the property in question may amount to a professional irregularity. However, in the absence of any other material which betrays the necessary animus to deceive the bank and/or cause wrongful gain to the vendor, no element of criminality can be attributed to the applicant. The learned Special Judge did not advert to this aspect of the matter adequately. An inference of criminality was drawn for the mere reason that the applicant did not actually measure the property in question. Thus, the charge against the applicant appears to be totally groundless. The applicant is, thus, entitled to be discharged.

24. The upshot of the aforesaid consideration is that the impugned order is liable to be set aside and the revision application deserves to be allowed. Hence, the following order :

O R D E R

(i) The Criminal Revision Application stands allowed.

(ii) The impugned order dated 20.12.2013 passed by the learned Special Judge, on application (Exh.50) in Special Case No. 36/2009 stands set aside.

(iii) The applicant Anil Laxman Korgaonkar, Accused No.4, stands discharged of the offences punishable under sections 120B, 420 and 471 of the Indian Penal Code, 1860 and sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 in Special CBI Case No. 36 of 2009.

(iv) Bail bonds stand cancelled and surety, if any, stands discharged.

(N.J. JAMADAR, J.)