IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 251 OF 2015

K.K. Khandelwal … Applicant
V/s.
CBI, (BS)(EOW) and Anr. … Respondents

Mr. P.R. Moses for the applicant in REVN/43/2015

Mr. Raja Thakare, Senior Counsel a/w. Mr. Siddharth jagushte I.by Mr Amol J. Phoujdar for applicant in REVN/251/2015

Ms. Ameeta Kuttikrishnan for the respondent nos. 1 and 2.

Ms. Anamika Malhotra – APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J
DATED : 5th MARCH 2020.

P.C. :

. The applicant herein takes an exception to the order passed by the Special Court, Greater Bombay, thereby rejecting the application filed by the applicant seeking discharge in Special Case No. 78 of 2002, wherein the applicant is alleged to have committed offences under sections 420, 465, 467, 468, 471 read with section 120(B) of Indian Penal Code as well as section 13(2) read with 13(a)(d) of Prevention of Corruption Act of 1988. The original accused nos. 1 to 8 are office bearers of M/s. Hamco whereas, the original accused no. 9 i.e. the present applicant herein was officiating as a Managing Director of State Bank of Patiala, whereas accused no.2 was working as an officer being posted at Dadar Branch of State Bank of Patiala.

2. It is pertinent to note that all the transactions have taken place at Dadar Branch. It is submitted that the bank had sanctioned credit facilities, including Foreign Letters of Credit limits to M/s. Hamco. That State Bank of Patiala was one of the bank in consortium, of various banks. The State Bank of Patiala was a lead bank.

3. It is the case of the prosecution that the State Bank of Patiala had sanctioned credit facilities to M/s. Hamco which were disproportionate not only to their requirement but were based on misleading accounts showing enhanced production when there was none.

4. It is also alleged that there was no physical verification of the stocks and other materials to verify as to whether the sanctioned credit facilities would be used for production of raw material or for the purpose for which the loan was being taken.

5. The learned Senior Counsel for the applicant submits as follows:-

a) that in fact, while sanctioning the credit facilities, the applicant herein had not committed breach of any Reserve Bank of India norms and that loans were sanctioned in accordance with law and banking regulations. The accused no. 9 had retired on superannuation on 31st May 1997. He was officiating as a Managing Director from the year 1995.

b) That M/s. Hamco had availed all the credit facilities from consortium of the banks in the year 1989 to the extent of Rs. 5.5 Crores, at the time of sanctioning of the loan. At the first instance State Bank of Patiala was not a lead bank in the consortium. That, they had started functioning as a lead bank only in the year 1991 as they had 40% share in the consortium.

c) That the applicant herein was working on executive post and that the verification of the factual position i.e. physical verification of the stocks of the company and their production capacity etc. were done by the other officers and that it was not physically verified by the present applicant. However, none of the officers or the staff members of the State Bank of Patiala who had filed the physical verification reports are arraigned as an accused in the present case.

6. As against this, it is the case of the prosecution that in November 1992 accused K.K. Khandelwal i.e. accused no. 9 was the Chief General Manager of the Bank. He had noted, that during January 1993 at the time of renewal of the limits, the accounts of M/s. Hamco were becoming irregular, due to default of the Letters of Credit and crystallization of the export bills. However, he had expressed an opinion that the bank had no option but to continue with the facilities. It appears that the executive committee had taken into consideration the wisdom of the Chief General Manager and had sanctioned the facility.

7. It is also the case of the prosecution that without actually verifying the CMA data, the accused no.9, had in the capacity of the Managing Director, sanctioned the working capital of fund based limits of Rs.100 Crores and non fund limits of Rs. 215 Crores in favour of M/s. Hamco and these funds were disproportionately high compared to the end products and requirements of the company. No doubt the administrative clearance was given by the executive committee but it needs to be appreciated that at that relevant time the accused no. 9 was the head of the executive committee.

8. The learned counsel for the respondent no. 1 submits that based upon the recommendations of the State Bank of Patiala the other members of consortium had also formally sanctioned respective portion of their limits in favour of M/s Hamco.

9. It is the case of the prosecution that the applicant had sanctioned the credits in favour of M/s. Hamco as he had subsequently got his son employed with Hamco Group of Company.

10. The learned senior counsel submits that the Special court has taken this aspect into consideration and has observed that no *mala fides* could be attributed to the applicant only because his son had got employment with one of the sister concern of Hamco.

11. It needs to be observed that there was irregular maintenance of accounts by M/s. Hamco, However, the credit capital facility was increased from Rs. 20.98 Crores to Rs. 33.60 Crores.

12. It is pertinent to note that the credit facility was enhanced from Rs.5.5 Crores to Rs.20.98 Crores for the financial year 1991-1992 i.e. when State Bank of Patiala was a lead bank in the consortium.

13. In response to the submissions of the respondent, the learned senior counsel submits that the applicant had placed reliance upon the Joint Wisdom of banks in consortium.

14. That, the sanction and disbursement were not done by the present applicant but the applicant had only recommended and on the basis of the recommendation it was the executive committee of the State Bank of Patiala which had sanctioned and permitted M/s. Hamco to get the sanction loans disbursed.

15. That when M/s. Hamco had sent a proposal for enhancement in January 1999, the applicant, in the capacity of Managing Director of the State Bank of Patiala had only recommended, but was not responsible for sanction and disbursement and hence does not deserve to be prosecuted.

16. That the State Bank of Patiala had suffered a loss of Rs. 64 Crores not because of enhancement of credit facility but because there was default in payment of Foreign Letters of Credit and that the said default was only, after the applicant had retired in May 1997.

17. It is submitted that the applicant was working, only in the interest of Bank. That, since the credit facilities were not being utilised properly and accounts were irregular, it was in the interest of the bank that loan facility was further extended in order to strengthen the company to maintain the accounts regularly. That the applicant has not cheated the Bank and had no *mens rea* while recommending grant of loan facility. That the said loans were further renewed and enhanced after the year 1992.

18. As far as issue of *mala fides* is concerned, the same can be elicited and decided only after recording of substantive evidence at the time of trial. It is not expected from the Court to make roving enquiry at the stage of considering an application for discharge. All that needs to be considered is whether a *prima facie* case is made out against the accused in order to enable the prosecution to proceed with the trial.

19. To hold a person guilty of the offence of cheating. It has to be shown that his intention was dishonest at the time of committing the Act. Such a dishonest intention cannot be inferred on the basis of documents and statements under section 161 of Code of Criminal Procedure.

20. As has been held in the catena of decisions by Apex Court that *mens rea* is one of the essential ingredient of the offence of cheating that *mens rea* or intention to cheat or *mala fide* of accused need to be proved by adducing substantive evidence. The possibility that the CBI would be able to establish the element of cheating, *mens*

rea, conspiracy with the other accused etc. at the time of trial need to be taken into consideration.

21. Under Section 14 of the Evidence Act, facts showing existence of state of mind are relevant. It is true that there cannot be direct evidence in respect of conspiracy. Section 14 of the Evidence Act reads thus:-

> *Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or goodwill towards any particular person.... is in issue or relevant.*
>
> *A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question".*

The mental condition of which a person is conscious is a fact, the expression of which a person is conscious signifies that simple mental phenomena which could be inferred from relevant acts.

22. The onus to prove that the accused had a guilty intention at the time when fraudulent recommendations were made lies principally on the prosecution and the prosecution deserves an opportunity to establish the allegation, more particularly since the applicant is being tried for an offence under the provisions of Prevention of Corruption Act 1988 as well as Indian Penal Code.

23. An economic offence is a well planned act for gaining personal profit from vulnerable faction of society. White collar crime cannot be viewed, with permissive lenient and sympathetic vision as an economic offence causes irreparable damage to national economy. The fraudulent banking transactions affect the economy as well as vulnerable factions of society.

24. The magnitude of an offence needs to be taken into consideration. The question whether the bank has suffered losses because of irregular loan sanction and disbursement of loan in favour of M/s. Hamco or because of default in payment of foreign letters of credit can be established only after full fledged trial is conducted. In fact, the submission that physical verification was done by junior officers cannot be taken into consideration since it is suggestive of a deep rooted apathy and that it was incumbent upon applicant to do everything to prevent fraud and loss to consumers of bank. It would also be necessary as a deterrent to deter re-currence of such fraudulent transaction by any bank.

25. The Court cannot be oblivious of fact that in present day situation, the citizens are apprehensive of keeping their hard earned money in the bank. Irregular grant of loans to undeserving borrowers and further default in repayment of loans has affected the health of National Economy. In such circumstances, it is easy to say that the documents do not cull out any criminal act but the said allegations need to be proved at the stage of trial as there are serious charges

against the applicant.

26. The learned Special court has considered the allegations of fabrication and forgery by the present applicant. It is the submission of the learned senior counsel that the fabrication and forgery if any, was not committed by the present applicants who was working as executives but by those who had filed a report in favour of M/s Hamco. However, none of them has in fact considered the statements of prosecution witnesses no. 1 to 3, 6 and 10 in order to consider as to whether a *prima facie* case is made out. However it is pertinent to note that all these witnesses are officials of the same bank.

27. This Court cannot be oblivious of the fact that, it is an economic offence which has far fetched ramifications and more particularly not only on an individual but on the economy of the country as a whole. These are well manipulated offences and a prayer for discharge cannot be considered only on the basis of the statement of the witnesses and the statement of the accounts placed before the court at the opening of the trial. The findings recorded by the Special Court call for no interference.

28. In the case of **Parbatbhai Aahir @ Parbhatbhai Bhimsinhbhai Karmur and Others vs. The State of Gujarat and Anr.** (Criminal Appeal No. 1723 of 2017), the Hon'ble Apex Court has held as follows:-

> "*Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance".*

29. In view of the above discussion, the application seeking discharge stands rejected. Needless to say that ad interim relief granted by this Court vide order dated 26th June 2015 stands vacated. The Special Court shall not be influenced by any of the observations hereinabove at the time of trial. Criminal Revision Application is dismissed and disposed of.

30. At this stage the learned senior counsel seeks a stay by this order for a period of 8 weeks. It needs to be appreciated that charge-sheet is filed in the year 2002 and that the case is pending before the Special Judge for more than 18 years. Hence, this Court is not inclined to stay this order.

(SMT. SADHANA S. JADHAV, J)