IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 436 OF 2019

Satish Dubey .. Applicant

v/s.
The Union of India and Anr. .. Respondents

Mr. Kripashankar Pandey for the applicant
Mr. Hiten Venegaonkar, Special Public Prosecutor for respondent no.1 – CBI
Ms. M.H. Mhatre, APP for the respondent State

CORAM : PRITHVIRAJ K. CHAVAN, J.

RESERVED ON : 15th JANUARY, 2020
PRONOUNCED ON : 5th FEBRUARY, 2020

P.C.

1. Heard finally with the consent of the learned Counsel for the parties.

2. Legality, proprietary and correctness of an impugned order dated 23.08.2019 passed by the Special Judge (CBI), City Civil Court, Greater Bombay has been questioned by way of this Revision Application since the learned Special Judge rejected an application for discharge preferred by the applicant.

3. The facts absolutely germane for deciding the application can be summarized thus :-

4. The applicant is an original accused no.7 in Special Case No. 69 of 2012, in which he along with the other accused have been chargesheted under Section 109 of the Indian Penal Code r/w Sections 13(2), 13(1)(e) of the Prevention of Corruption Act, 1988. The original accused no.1 is a public servant working in Railway Protection Force as an Inspector. During the period commencing from 16th January, 1996 to 22nd October, 2010, he acquired immovable and movable assets to the tune of Rs.98,67,558/- in his name as well as in the name of his family members and relatives against the likely saving of Rs. 26,28,132/-.

5. The applicant is said to have aided and abetted the offence qua accused no.1 in amassing the wealth disproportionate to his known sources of income. The applicant is said to be the friend of accused no.1. It is the case of the prosecution that as on 22.10.2010 accused no.1 was found in possession of assets worth Rs.72,39,426/- which are disproportionate to his known source of income and for

which he did not give satisfactory account. Thus, during the check period, the accused no.1 had arranged cheques and demand drafts in the name of other accused, through private persons, after giving equivalent amount of cash and commission to them.

6. It has been alleged that the applicant had issued cheques of Rs. 5,00,000/- and Rs. 4,00,000/- in the name of accused no.2 – Sushma Yadav and accused no.4 – Amit Kumar Yadav respectively within a few days after depositing equivalent cash in his account. The said act of the applicant amounts to an offence of abetting.

7. On an application for discharge moved by the applicant before the Special Judge, the same came to be rejected on 23rd August, 2019 by the impugned order and, therefore, the applicant has invoked revisional jurisdiction of this Court by contending that the money had not gone to the account of the public servant and he being not a public servant, the provisions under the Prevention of Corruption Act are inapplicable to him. No offence as alleged has been made out against him nor there is sufficient material to frame a charge of abetment and, therefore, it is contended that the order impugned is

ex facie erroneous and has been passed on a wrong footing without considering the scope of Section 227 of the Criminal Procedure Code. The learned Counsel for the applicant vehemently urged that Section 13(1)(e) envisages that the public servant is required to satisfactorily account for the disproportionate assets to his known source of income. The onus is upon the public servant to explain and not on a private person. Merely because the applicant did not produce income tax returns showing his income details, would not *ipso facto* mean that he abetted the offences alleged. The applicant has raised several grounds in the application which are *per se* tantamount to going into a roving inquiry on the merits of the case and, therefore, it is needless to reiterate all the grounds raised in the application.

8. The learned Counsel however, has drawn my attention to an order passed by this Court in respect of one of the accused (Kaushalya Devi) in Criminal Revision Application No. 214 of 2018 by which this Court (Coram :- P.D. Naik, J.) by an order dated 10th August, 2018 allowed the Criminal Revision Application by setting aside the impugned order dated 3rd April, 2018 passed by the Special Judge in the same case and consequently she came to be discharged.

My attention has been drawn to the observations made by this Court in paragraph 11 of the said order, which shall be dealt with at an appropriate stage.

9. On the other hand, Mr. Venegaonkar, Special Public Prosecutor appearing for respondent no.1 – CBI emphasized on the scope of Section 109 of the Indian Penal Code r/w 13(1)(d) and 13(2) of the Prevention of Corruption Act. He demonstrated as to how, with a peculiar *modus operandi,* the prime accused namely accused no.1 channelized the amount through the applicant for which he drew my attention to the statement of PW-57 Ragavendra S. Purohit, who works as a Clerk in Veerashaiva Co-operative Bank Ltd., Vashi Branch. It would be apposite to reproduce the relevant portion from his statement which is at paper book, page no.119 :-

> *"I state that CA A/c No. 688 has been opened on 17.01.2005 in the name of M/s. S.J. Couriers, Plot No. 66/5, Flat No. 102, Sector – 28, Vashi. Shri. Satish Dubey is the Proprietor of M/s. S.J. Couriers. I further state that Shri Satish Dubey issued Cheque nos. 287524 and 287525 both dt. 23.04.2008 of Rs.3,00,000/- and Rs. 2,00,000/- in the name of Ms. Sushma Yadav. These two cheques had been debited on 25.04.2008. He had also issued cheque no. 287529 dt. 08.08.2008 of Rs.4,00,000/- in the name of Shri Amit Kumar Yadav from his CA A/c No. 688. This cheque had been debited on 12.08.2008.*
>
> *On being asked I further state that on 24.04.2008, cash*

amounting to Rs.5,00,000/- was deposited in the aforesaid CA A/c No. 688 and the very next day the entries shows that cheque bearing nos. 28725 for Rs. 2,00,000/- and 287524 for Rs.3,00,000/- had been debited in the aforesaid account of M/s. S.J. Couriers. Two cheques issued from CA A/c 362 in the name of Smt. Geeta M. Dubey, Proprietor, N.N. Roadways were credited in the A/c no. 688 and the same day vide Cheque no, 287529 an amount of Rs.4,00,000/- had been debited from the said account."

10. *Prima facie,* from a bare look at the aforesaid statement of an independent witness, which speaks for itself, would indicate as to how in a very clandestine and tricky manner, the applicant channelized the amount of the accused no.1 through his account.

11. It is pertinent to note that the accused Smt. Sushma Devi is the wife of accused no.1 Arvind Kumar Yadav, who was then Inspector of Railway Protection Force, Central Railway. Accused Kaushalaya Devi is his mother. Accused Amit Kumar Yadav is the cousin of accused no.1 – Arvind Kumar Yadav. Accused Brahmdev Yadav is the uncle of accused no.1 and Smt. Asha Devi is mother-in-law of accused no.1.

12. The present applicant is the only private person probably not related with the family of the accused no.1, who is being prosecuted

under Section 109 of the Indian Penal Code r/w Sections 13(2), 13(1)(e) of the Prevention of Corruption Act, 1988. It is apparent from the statement of Ragavendra Purohit that the applicant had issued cheques of Rs. 5,00,000/- and Rs.4,00,000/- in the name of Smt. Sushma Yadav and Amit Kumar Yadav within a very few days after depositing equivalent amount of cash in his account of which he could not satisfactorily account for.

13. There is an account bearing no. 688 in the name of M/s. S.J. Courier, maintained with the Veerashaiva Co-op. Bank Ltd., Vashi Branch, which was being operated by the applicant. Cheque No. 287525 dated 23.04.2008 for Rs.2,00,000/- and Cheque No. 287524 dated 23.04.2008 for Rs.3,00,000/- were issued in the name of Smt. Sushma Yadav, wife of accused no.1 - Arvind Kumar Yadav on 24.04.2008. Amount of Rs.5,00,000/- in cash was deposited in the said account and the said amounts were debited on the very next day i.e. on 25.04.2008. As on 31.03.2008, the balance in the account of the applicant was just Rs.1,688/-.

14. The record reveals that Cheque No. 287529 dated 08.08.2008

for Rs. 4,00,000/- was issued by the applicant in favour of Amit Kumar Yadav. A cash amount of Rs. 2,90,000/- was deposited in the account of the applicant A/c no. 688 in the name of M/s. S.J. Couriers on 12.08.2008 and the said amount was debited on the same day.

15. As already stated, despite demand by the respondent, the applicant did not produce his income tax returns showing details of his income as to how he arranged for Rs. 9,00,000/- and issued cheques in favour of accused Amit Kumar Yadav, who is the cousin of accused no.1 and accused Smt. Sushma Yadav, who is the wife of accused no.1.

16. As can be seen, the peculiar *modus operandi* in this case which is quite sufficient and give rise to a very grave and strong as well as serious suspicion about the complicity of the applicant in the instant crime for which a charge needs to be framed against him. The law on the point of framing a charge is no more *res integra* as it has been held by catena of decisions that at the time of framing of charge, the trial Court would require to consider the police report

under Section 173 of the Criminal Procedure Code and documents sent with it. A roving and fishing inquiry is impermissible and even the defense of the accused cannot be put forth.

17. The learned Counsel for the respondent has drawn my attention to an order passed by this Court in Criminal Revision Application No. 214 of 2018 which would not be of any assistance to him since the role of the present applicant is quite different and distinct than that of the role of the Kaushalya Devi Yadav. At the time of framing charge, it is not obligatory for the trial Judge to consider in detail and weigh a sensitive balance whether a fact, if proved, would be incompatible with the innocence of the accused or not. It is equally important to note that the Court is not required to see that the matter would result in conviction or acquittal. It is pertinent to note that it is not the case of the applicant that he had any business transaction with the public servant or his family members. Needless to state that the ingredients of Section 11 of the Prevention of Corruption Act are precisely attracted. What has been observed by this Court in paragraph no. 6 of the Criminal Application No. 214 of 2018 is as regards the role of accused Kaushalya Devi

Yadav i.e. there is no cogent and satisfactory material to show that she had purchased a property at Kalyan by utilizing the amount of original accused no.1. There is a detailed explanation as to how some amount came to be transferred in the account of the applicant (Kaushalya Devi) from the account of accused no.1 for purchasing the said flat.

18. Thus, the case of Kaushalya Devi Yadav is altogether on a different footing than that of the case of the applicant.

19. Upshot of the aforesaid discussion is that the order impugned is legal, proper and correct which warrants no interference in Revision and, therefore, the application needs to be rejected and as such it stands rejected.

(PRITHVIRAJ K. CHAVAN, J.)