IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Criminal Revision Application (REVN) No. 44 of 2020

Chandan s/o Tulshiram Jibhakate Vs. The State of Maharashtra Through Police Station Officer, Police Station Sadar, Nagpur.

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. P.D. Randive, Advocate for the applicant.
Mr. Amit Chutke, APP for the respondent - State

CORAM : MANISH PITALE, J.

DATED : DECEMBER 15, 2020

By this application, the applicant has challenged order dated 20th September, 2019, passed by the Court of Special Judge (CBI), Nagpur, whereby an application for discharge filed by the applicant (original accused No.3) was rejected.

2. The applicant is one of the accused along with others in an FIR registered against them for alleged offences under Sections 13(1)(c), 13(1)(d), 13(2) r/w 15 of the Prevention of Corruption Act and Sections 420, 468, 421, 109, 120-B of the Indian Penal Code.

3. The registration of the offences pertains to an alleged scam, which had occurred concerning irrigation projects being implemented by the Vidarbha

Irrigation Development Corporation. The applicant was working as Divisional Accounts Officer and he was posted at the Ambhora Lift Irrigation Division, Bhiwapur, during the relevant period when the illegalities are said to have been committed. It is alleged against the applicant that he along with the other accused persons connived to cause wrongful loss to the State exchequer and to assist private contractors in illegally making financial gains at the cost of public exchequer. It is alleged that the tender costs were illegally updated in collusion with the directors of the successful tenderer company, thereby allegedly causing financial burden on the State exchequer to the tune of Rs.56,57,32,680/-.

4. The allegations against the applicant appear to be that being the Divisional Accountant at the relevant time, the said illegalities were committed under his watch, as every proposal was to be submitted by the Executive Engineer concerned after clearance from the applicant. It was further alleged that the applicant caused publication of a tender notice even before technical sanction was received from the Chief Engineer. The other allegation against the applicant was that he violated the established procedure by failing to deposit the EMD amount in the account of the Corporation that was submitted by the bidders along with their tenders. It was also alleged that the applicant being the Divisional Accountant was actively

involved in misdemeanors, leading to registration of the aforesaid offences.

5. The applicant filed application for discharge at Exh.114 and sought to submit before the Court below that there was not even an *iota* of material to connect the applicant with the offences and that, therefore, he deserved to be discharged. The Court below has passed a detailed order dealing with the contentions raised on behalf of the applicant and after disagreeing with the submissions made, the application has been rejected.

6. The learned counsel for the applicant vehemently submitted that for each of the allegations made against the applicant, there was total absence of material on record with the chargesheet. It was submitted that there was no document to connect the applicant with the incidents, leading to registration of FIR and that the role of the applicant as a Divisional Accountant was not appreciated by the Court below in the correct perspective while passing the impugned order. It was submitted that the applicant had, in fact, acted in accordance with the established procedure and that, therefore, the errors committed by the Court below were evident from the material on record.

7. On the other hand, the learned APP submitted that the impugned order was passed on

proper appreciation of material on record and application of the correct position of law regarding the manner in which discharge applications were to be considered and disposed of. It was submitted that enough material was on record to make out a *prima facie* case for framing of charges against the applicant and other accused persons and that, therefore, the Revision Application deserved to be dismissed, so that the trial could proceed expeditiously.

8. Heard learned counsel for the rival parties and perused the material on record.

9. The main plank of the contentions raised on behalf of the applicant is that there is nothing to connect the applicant with the incidents in question and, therefore, the application for discharge ought to have been allowed. Attention of this Court was invited to the observations made by the Court below in the impugned order to contend that the documents were not appreciated in the correct perspective and that if the view taken by the Court below was accepted, the applicant would have been expected to act against the established procedure, to be able to succeed in demonstrating that no charge could be framed against him. According to learned counsel for the applicant, the entire contents of the impugned order demonstrate non-application of mind to the available material and that, therefore, the impugned order deserved to be set

aside.

10. This Court has perused the material on record. There is no dispute about the fact that the applicant was working as Divisional Accountant at the relevant time. There is no dispute about the fact that sanction has been obtained from the competent Authority for prosecution of the applicant herein and that the sanction holds good even today. The contention raised on behalf of the applicant seems to suggest that a Divisional Accountant or a Divisional Accounts Officer working in the relevant Irrigation Division would have had nothing to do with the process of issuing tender notices, inviting tenders and awarding them for implementation of the irrigation projects. This is clearly a farfetched argument because there can be no doubt about the fact that a person who was working as Divisional Accountant in such an office would have to play an active role to play during the aforesaid process. Office of the Irrigation Development Corporation is obviously expected to work on the basis of the inputs given by the technical staff, as also the Accounts Office working in tandem with the technical staff. It is evident that as a Divisional Accountant at the relevant time matters pertaining to issuance of tender notices and inviting of bids would necessarily have to go through the office of the petitioner. It is for this reason that the Court below in the impugned order had observed that no proposal could have been

submitted by the Executive Engineer, without obtaining clearance from the Divisional Accountant. Whether such procedure was in fact followed or not and what were its consequences would clearly be a matter of trial.

11. In so far as the allegations against the applicant regarding publication of tenders in newspapers, without even obtaining technical sanction from the Chief Engineer is concerned, the contentions raised on behalf of the applicant that there is nothing to show that he was responsible for such publication, would also be a matter of trial. The allegations regarding illegality on the part of the applicant in failing to deposit EMD amount in the account of the Corporation, would also have to be proved at the trial, because the contentions of the applicant regarding the manner in which the procedure was to be followed would depend upon interpretation of the Government Resolutions and Circulars that are brought on record. At this stage, it cannot be said that the documents on record indicate that the applicant can be given a clean-chit without going through the rigor of trial. The office of the Divisional Accountant is obviously not a bystander regarding the manner in which the process of tender is required to be undertaken by the Irrigation Department of the Corporation. Merely referring to provisions of Vidarbha Irrigation Development Corporation Act, 1997 and inviting attention of this

Court to the constitution of the Executive Committee of the Corporation, cannot enure to the benefit of applicant because this Court is of the opinion that a case for trial is clearly made out on the basis of material available on record.

12. The learned counsel for the applicant sought to rely upon certain letters, issued by the Deputy Accountant General informing the Chief Secretary of the Government of Maharashtra that in his opinion the Divisional Accounts Officer could not be held responsible and that prosecution of such officials could lead to lowering of morale of the Officers. Such communications can certainly not be binding on the Court, considering the aforesaid criminal offences registered against the applicant and other accused persons. In any case, the material on record does indicate that the allegations levelled against the applicant cannot be said to be frivolous. There is sufficient material at this stage to proceed against the applicant and the impugned order is certainly in accord with the position of law laid down by the Hon'ble Supreme Court and this Court in judgments pertaining to the approach to be adopted by Courts while considering applications for discharge. This can be ascertained from the discussion in the impugned order from para 34 onwards.

13. This Court is in agreement with the findings

rendered by the Court below on the aspect of the vital role that the applicant played during the process of issuance of tenders and accepting bid amounts, etc. for the relevant period in respect of which the offences have been registered. The position of law has been properly followed by the Court below and that, therefore, there is no merit in the present application.

14. In view of the above, the application is dismissed.

JUDGE

MP Deshpande