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

Criminal Revision Application (REVN) No. 92 of 2020

Rohidas s/o Maruti Landge
Vs.
State of Maharashtra Through Superintendent of Police, Anti Corruption Bureau, Nagpur.

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

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Mr. B.W. Patil, Advocate for the applicant.
Mr. Amit Chutake, APP for the respondent – State.

CORAM : MANISH PITALE, J.

DATED : DECEMBER 21, 2020

Heard learned counsel for the applicant and the learned APP for the respondent – State.

2. This is a Revision Application, challenging an order dated 16/09/2019, passed by the Court of Special Judge (CBI), Nagpur, whereby an application for discharge (Exh.84), filed on behalf of the applicant was rejected.

3. The applicant was an Executive Director of the Vidarbha Irrigation Development Corporation, who retired in August, 2007. An FIR was registered in respect of certain alleged wrongdoings and actions on the part of various Officers of the said Corporation, which led to huge financial loss to the Corporation and

the State. It has been alleged in the FIR that certain private contractors were also involved in implementation of irrigation projects and that such contractors in connivance with the officials of the Corporation caused huge financial loss to the State exchequer.

4. It was contended on behalf of the applicant before the Court below that the name of the applicant did not initially find mention in the FIR. It was contended that the name of the applicant was subsequently added. An attempt was made before the Court below to suggest that even though the applicant was an Executive Director of the said Corporation, there was no material on record, pursuant to the investigation and filing of chargesheet, to indicate any involvement of the applicant in the said alleged offences. The learned counsel appearing for the applicant before this Court placed much emphasis on one aspect of the matter i.e. the alleged absence of sanction to proceed against the applicant, thereby showing that the applicant was entitled for discharge in the present case. It was submitted that even if the material on record was to be accepted as it is, there was nothing to indicate that sanction had been obtained in accordance with law against the applicant and that, therefore, the Court below had erred in rejecting the application for discharge.

5. On the other hand, the learned APP appearing for the respondent – State submitted that

the Court below had taken specific note of the sequence of events, leading to deemed sanction against the applicant and since the present case could not be said to be a case of absence of sanction, the Court below had correctly rejected the application for discharge. It was submitted that the contention of the applicant that sanction in the present case was defective, was a matter of trial as per the latest position of law. Attention of this Court was also invited to Section 19(3) of the Prevention of Corruption Act, 1988, to emphasize that mere absence, error, omission or irregularity in the sanction would not enure to the benefit of the applicant, unless the Court came to a conclusion that failure of justice had been occasioned. On merits of the matter, the learned counsel for the applicant submitted that there was sufficient material on record to proceed for trial and that, therefore, no interference was warranted in the impugned order. The learned APP also relied upon **order dated 15/12/2020, passed by this Court in Criminal Revision Application No. 44 of 2020 (Chandan s/o Tulshiram Jibhakate Vs. The State of Maharashtra Through Police Station Officer, Police Station Sadar, Nagpur.)**, pertaining to the very same FIR, wherein the Revision Application against rejection of discharge was dismissed by this Court in the case of a Divisional Accountant of the said Corporation.

6. Heard learned counsel for the rival parties. This Court has perused the impugned order passed by the Court below and the documents placed on record.

The main contention raised on behalf of the applicant in the present case pertains to alleged absence of sanction to proceed against the applicant and it is claimed that, therefore, the applicant is entitled for discharge. The Court below has considered the aforesaid contention in paragraphs 32 and 33 of the impugned order. The entire sequence of events has been adverted to and the Court below has come to a conclusion that the present case is a case of deemed sanction by operation of the relevant provisions of law. This Court does not find any error in the aforesaid findings rendered by the Court below. At one place, in the impugned order, the Court below has held that the Investigating Officer had complied with the requirement of valid sanction. This appears to be a sweeping observation made by the Court below while passing the impugned order rejecting the application for discharge. But, this can be clarified by holding that since the applicant can claim in the present case that the sanction was defective, subject to what the prosecution may have to say, this aspect can certainly be examined by the concerned Court at the stage of the trial. There is substance in the contention raised on behalf of the respondent – State, by referring to Section 19(3) of the Prevention of Corruption Act, 1988, that because failure of justice is an aspect significant in the context of any error, omission or irregularity in the matter of grant of sanction, this aspect would also be a matter for trial. Therefore, this Court is not impressed with the specific contention raised on behalf of the applicant concerning the question of sanction in the present case.

7. As regards absence of the name of the applicant initially when the FIR was registered, the Court below has correctly dealt with the same by holding that the FIR is not supposed to be an encyclopedia of a criminal case. During the course of investigation as material comes on record, names of accused can certainly be added. In the present case, there is nothing to show that merely because the name of the applicant was not stated in the FIR, the applicant would be entitled to claim discharge.

8. The material on record also shows that the applicant, as the Executive Director of the Corporation, was member of the Executive Committee of the Corporation. The Committee also looked into the manner in which the Government funds were to be utilized for achieving the aims and objects of the Corporation and implementation of its projects. Therefore, the applicant as the Executive Director of the Corporation was actively involved in examination of tender documents, supervision work, scrutiny of tender forms and entitlement of bidders for grant of works for the irrigation projects. The Court below has referred to these aspects in detail and upon perusal of the chargesheet and material placed on record, a considered conclusion has been arrived at, to the effect that the applicant cannot claim that he was in no manner connected with the process that led to registration of offences against the other accused

persons and the applicant. There is reference made to alleged forgery and other serious matters, thereby showing that the present case, in the context of the applicant also, deserves to go to trial. There is nothing on record to show either that the allegations made against the applicant are farfetched or frivolous or that there is absence of material to show that charges can be framed against the applicant. The Court below has referred extensively to the position of law and various judgments pertaining to the question of the manner in which the Court is to deal with the applications for discharge. The position of law has been applied correctly to the facts of the present case to arrive at the conclusion that there is no substance in the application for discharge. This Court is not convinced to take any other view in the matter and, therefore, the present application is found to be without any merit and accordingly, it is dismissed.

JUDGE

MP Deshpande