IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 189 OF 2018
IN
STAMP NUMBER (MAIN) NO. 1123 OF 2018

Central Bureau of Investigation,
Anti Corruption Branch, Bambolim .... Applicant

Versus

Shri Menino D'Souza & Another .... Respondents

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Mr. Mahesh Amonkar, Special Public Prosecutor for the Applicant.

Mr. Nitin Sardessai, Senior Advocate with Mr. Shivam Fadte, Advocate for the Respondents.

Coram:- M.S. JAWALKAR, J.

Reserved on:- 1st March 2021.

Pronounced on:- 16th March 2021.

ORDER:

This is an application for Special Leave to Appeal under Section 378(3) of the Code of Criminal Procedure, 1973 (Cr.P.C.) to file a Criminal Appeal against the judgment dated 29.09.2017, passed by the learned Special Judge, North Goa, Panaji in Special Case No. 2/2013/D.

2. The applicant states that CBI, ACB, Goa is the complainant in Special Case No. 2/2013/D on the file of the

learned Special Judge, North Goa, Panaji and vide judgment dated 29.09.2017, the learned Special Judge acquitted both the respondents (accused nos. 1 and 2). Respondent No. 1 was acquitted in Disproportionate Assets Case from the charge of offences punishable under Section 13(2) and 13(1)(e) of the Prevention of Corruption Act, 1988 and respondent no. 2 was acquitted from the charge of the offence punishable under Section 109 of IPC read with Section 13(2) and 13(1)(e) of the Prevention of Corruption Act, 1988 holding that the prosecution has failed to prove beyond reasonable doubt that the respondents have committed the offences for which they were charged.

3. The applicant states that the respondent no. 1 is charged for the offence punishable under Section 13(1)(e) of the Prevention of Corruption Act, 1988. The allegation of the applicant is that respondent no. 1 being a public servant during his tenure in the Customs Department has amassed huge assets, which were disproportionate to the extent of Rs.74,00,000/- to his known sources of income for which he could not satisfactorily account. The charge against the respondents is that between 01.01.1985 to 09.08.2002,

respondent no. 1, who was a public servant acquired movable and immovable assets to the tune of Rs.61,14,260.87 in his name and in the name of his family members. His savings during the said period was to the tune of Rs.28,87,698.76 and he was found in possession of assets worth Rs.32,26,562.11, which was disproportionate to his known sources of income and respondent no. 2 aided and abetted respondent no. 1, who was employed as Superintendent of Customs, Commissionerate of Central Excise and Customs, Goa in committing the offence of acquiring assets disproportionate to his known sources of income. The chargesheet was filed against both the accused person/respondents.

4. It is submitted by the learned Special Public Prosecutor, Mr. Mahesh Amonkar for the applicant that the learned Special Judge failed to appreciate the evidence and has not taken into consideration the facts proved and arrived at wrong findings and failed to consider the case of the prosecution. It is submitted that the applicant has a very good case to succeed in Appeal against the judgment dated 29.09.2017 and as such, leave may be granted to file an Appeal against acquittal.

5. The learned Senior Counsel, Mr. Sardessai for the respondents submitted that the scope is limited when there is an appeal against acquittal. If view taken by the Trial Court is plausible view, there is no ground to interfere with the order passed by the learned Sessions Court. In support of his contention, the learned Senior Counsel has relied on the decision of the Hon'ble Apex Court in the case of **Chandrappa & Others Vs. State of Karnataka, (2007) 4 SCC 415**, wherein it is held that when two views are possible, the view taken by the Trial Court, should not be disturbed by the Appellate Court.

6. It is next submitted that it can be seen that the documents, which were produced by the Authority were not proved. The Department failed to take into account that the whole property is not in the name of respondent no. 1. The assets approximately of Rs.10 lakhs belong to the family members. The income of Rs.3,31,812/- from the business of respondent no. 2 has not been taken into consideration. Similarly, income of Rs.8,58,436/- from the year 2000 to 2003 is not considered. Many other receipts shown in the returns amounting to Rs.2,73,380/- are not considered. Income from

rentals amounting to Rs.7,66,000/- is also not considered. As such, around Rs.22,29,631/- is not considered properly by the Department/Investigating Agency. The jewellery, bank balance, national saving certificates purchased by respondent no. 2 before marriage are in fact, prior to check period and all these assets are neglected by the Investigating Agency. It is submitted that respondent no. 2 was a successful business woman and was making profit of around Rs.5,50,000/-. All these aspects are not duly considered by the Investigating Agency.

7. I have heard the learned Special Public Prosecutor, Mr. Amonkar for the applicant and the learned Senior Counsel, Mr. Sardessai for the respondents. After considering the evidence on record, it appears that the learned Sessions Judge held that the prosecution, though, produced number of documents, failed to prove the same. It is also observed by the learned Trial Court that much of the income, alleged by the prosecution to be disproportionate, does not belong to respondent no. 1 and it is found that the said amount is accounted before the Income Tax Authority.

8. What is not considered by the Investigating Agency is that assets approximately of Rs.10 lakhs, which belong to the family members, is wrongly attributed as income of respondent no. 1. Income of Rs.3,31,812/- which is the income of business of respondent no. 2, so also, income of Rs.8,58,436/- from the year 2000 to 2003 is also not considered. If other receipts and rentals would have been taken into account by the Investigating Agency, amount of Rs.22,29,631/- would not have been shown as assets of respondent no. 1. The assets of respondent no. 2 prior to her marriage cannot be considered as assets of respondent no. 1. Various shares and debentures were not exclusively in the name of respondent no. 1. Thus, there is satisfactory account given by the respondents of the disproportionate assets.

9. PW-17 Income Tax Officer furnished some income tax papers concerning bank deposits, income from private tuition and cost paid for purchase of shop premises in Navelcar Arcade, Panaji. He admitted that no demand was made in respect of the said returns of respondent no. 2.

10. Respondent no. 1. examined himself as well as sister of the accused (DW-1). She deposed that as some amount is invested in construction of the house at Porvorim and therefore, 25% of the rent is permitted to be retained by respondent no. 1. She stated that they owned 12 fields/orchards in Mangalore and kiosk at Miramar. It is stated that at the time of marriage, number of national saving certificates were gifted by the parents of respondent no. 2 and cash of Rs.45,000/- was received during the time of marriage.

11. Through the witnesses examined by the prosecution, the prosecution could not prove that the share certificates in the name of respondent no. 2 and Mrs. Tereza D'Souza, were purchased by respondent no. 1. It is also revealed that all correspondence with respect to shop no. 7 was in the name of the owner of the shop, Ms. Lena D'Souza in 1991 and the stamp duty towards the deed was also paid by Ms. Lena D'Souza. So also, all the receipts were in the name of Ms. Lena D'Souza and the entire transactions were routed through bank. The learned Trial Judge rightly appreciated the fact that citations relied on by the prosecution were under the old Act and not under the new Act.

12. It is rightly observed by the learned Trial Court that the prosecution has to prove beyond reasonable doubt that the accused is guilty and there is no scope for any kind of presumption. In the background of the evidence brought before the Trial Court, the view taken by the Trial Court cannot be faulted with. Keeping in mind the guiding principles laid down in **Chandrappa's** case (supra), I have to deal with the application.

13. The Hon'ble Apex Court in **Chandrappa's** case (supra) while laying down general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal has held thus:

> *"An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*

If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

14. After going through the evidence on record and the impugned judgment, I am satisfied that the learned Trial Judge has reasons to arrive at a conclusion that respondent no. 1 had not committed any offence of possessing disproportionate assets to his known sources of income or there is any case of abetment under Section 109 of IPC.

15. Accordingly, there is no case made out to grant leave to appeal. The Criminal Miscellaneous Application for leave to appeal is dismissed.

M.S. JAWALKAR, J.

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