IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPEAL NO. 16 OF 2002

Union of India
(At the instance of Central
Bureau of Investigation, SIU-IX,
Block No.3, 5th Floor, CGO
Complex, Lodhi Road, New Delhi) … Appellant

V/s.

1. Gope Laxmichand Badlani
2. Sunil K. Samat
3. State of Maharashtra … Respondents

None present for the Appellant
Mr. Mohan Bir Singh for Respondent No.1.

CORAM : PRASANNA B. VARALE & N.R. BORKAR, JJ.
DATE : 26.07.2021

JUDGMENT *(PER N.R. BORKAR, J.)*

1] This appeal at the instance of Union of India (CBI) takes an exception to the judgment and order dated 30.7.2001 passed by the learned Special Judge (CBI), Greater Bombay in Special Case No. 79 of 1998. By the impugned judgment and order, the respondent Nos.1 and 2, who were accused Nos.1 and 2 respectively before the trial court, have been acquitted of the offences punishable under sections 120-B and 409 of the Indian Penal Code, 1860 (for short 'IPC') and section 13(2) read with section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988.

2] It is the case of the prosecution that accused No.1 was working as Branch Manager at Oriental Bank of Commerce. During 1995-1996, he was posted at Lamington Road Branch, Mumbai. Accused No.2 was Proprietor of share sub-broker firm M/s. Neelam Consultancy. The said firm was having current bank account with Lamington Road Branch.

3] It is alleged that accused No.1 started dealing in shares through M/s. Neelam Consultancy in fictitious name of Ravi Kapoor. It is alleged that though no overdraft limit was sanctioned in the current account of M/s. Neelam Consultancy and though accused No.1 did not have power to allow over draft beyond Rs.50,000/-, M/s. Neelam Consultancy was allowed to avail overdraft facility with effect from 16.11.1995 and on 23.12.1995, the over drawn amount in the account of M/s. Neelam Consultancy went upto Rs.6,12,169.59.

4] It is further alleged that during the last week of December 1995, accused Nos.1 and 2 entered into criminal conspiracy to unauthorisedly divert Rs.2,10,000/- of the bank and in pursuance of said conspiracy, on 26.12.1995, accused No.2 presented a cheque No. 254620 dated 23.12.1995 favouring M/s. Neelam Consultancy issued by his partnership firm M/s. Neelam Corporation for Rs.2,10,000/-. It is alleged that this was an outstation cheque drawn on the Pandarpur Urban Cooperative Bank Ltd. and this cheque was purchased by accused No.1 as Branch Manager of Lamington Road Branch on 26.12.1995 and on the same date, an amount of

Rs.2,08,659/- was credited to the account of M/s. Neelam Consultancy, against purchase of said outstation cheque, after deducting the bank commission and interest for 7 days. It is alleged that this cheque of Rs.2,10,000/- was received unpaid by Lamington Road Branch of Oriental Bank of Commerce vide memo dated 6.4.1996.

5] According to the prosecution, accused No.1 had financial powers to purchase outstation cheque upto Rs.7,50,000/-, however before purchase of said cheque, he was required to ensure that the cheque pertains to genuine trade transaction. It is alleged that accused No.1 misused his official position by purchasing the above said unworthy cheque.

6] It is further alleged that the account by name M/s. Emm Gee International, (Shri Manmohan Mohey, as proprietor) was opened in Turbhe Branch of Oriental Bank of Commerce and the said account was transferred to Lamington Road Branch on 29.1.1995. It is alleged that this account was introduced by one Subhash Vats. It is further alleged that another account by name M/s.Emm Kay Gee Impex (Ranvir Singh as Proprietor) was opened with Lamington Road Branch. It is alleged that accused No.1 misappropriated a sum of Rs.90,000/- from the accounts of these two firms.

7] On the basis of above allegations, accused Nos.1 and 2 were charged and tried for the offences punishable under sections 120-B and 409 of the IPC and section 13(2) read with section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988. As stated earlier, the trial court by the impugned judgement and order acquitted both the accused of all charges.

8] The matter was listed before this court on 5.7.2021. As none appeared on that day for the appellant, the matter was adjourned to 16.7.2021. On 16.7.2021, we instructed advocate Mr. H.S. Venegaonkar to appear in the present matter as he is the retainer of CBI and on his request, the matter was adjourned and was placed today for final hearing. Today, again there is no appearance on behalf of the appellant.

9] We have heard the learned counsel for respondent No.1/ accused No.1, perused the evidence on record and the judgment of the trial court.

10] The prosecution has examined only two witnesses before the trial court, i.e., PW-1 Navleen Kundra, who was, then working as Senior Manager with Lamington Road Branch of Oriental Bank of Commerce and PW-2 Shri. Umeshkumar Goswami, the investigating officer.

11] One of the grounds on which the exception is taken to the impugned judgment and order is that the learned trial Judge has not given an opportunity to the prosecution to examine material witnesses either before examining the investigating officer or after the evidence of investigating officer was over. It is submitted that the prosecution evidence was closed by the trial court in spite of strong opposition from the prosecution.

12] We have perused the roznama (order sheet) of the trial court.

13] It appears that after examining PW-1, the prosecution has examined the investigating officer. It appears that after the evidence of investigating officer was over on 27.7.2001, the learned APP had made an application seeking permission to examine other witnesses. The trial court rejected the said application. It further appears that on the very same day, the trial court had closed the prosecution evidence and the matter was then adjourned to 30.7.2001 for arguments. It was open to the prosecution to challenge the order of trial court closing it's evidence. However, same is not done. On the contrary, it appears that on 30.7.2001, the matter was argued on behalf of the prosecution.

14] Apart from above, PW-1 Navleen Kundra has admitted that accused No.2 was not the proprietor of M/s. Neelam Consultancy and one Vijay Samat was the proprietor of M/s.Neelam Consultancy. It appears that on 26.7.2001, an application vide Exhibit-22 was moved by the prosecution under section 319 of Cr.P.C. seeking permission to implead said Vijay Samat as an accused in the matter. The trial court rejected the said application. Again the said order was not challenged.

15] Though, we do not approve the way the evidence of the prosecution was closed by the trial court, however, considering the above facts and circumstances, we are not inclined to remand the mater back to the trial court after two decades.

16] Even otherwise PW-2 Umeshkumar Goswami, the investigating officer, has admitted in his cross-examination that there was no complaint either from Manmohan Mohey (proprietor of M/s. Emm Gee International) or from Ranvir Singh (proprietor of M/s.Emm Kay Gee Impex) about wrong debit of their accounts by accused No.1. He has further admitted that after filing of charge-sheet, the bank has given no due certificate to M/s. Neelam Consultancy. Considering overall facts and circumstances, we are not inclined to interfere with the impugned judgment and order. In the result, the following order is passed.

<u>ORDER</u>

Criminal Appeal stands dismissed.

(N.R. BORKAR, J.) **(PRASANNA B. VARALE, J.)**