

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

CRIMINAL APPEAL NO. 521 OF 2020

Bhushan s/o. Prabhakar Patil -- Appellant
vs.
State of Maharashtra,
Through P.S.O. Crime Branch (E.O.W.)
Civil Lines, Nagpur. --Respondent

Mr. A.A, Mardikar, Advocate for Appellant.
Mr. A.R. Chutke, A.P.P. for Respondent/State.

**CORAM : PRASANNA B. VARALE &
N.B. SURYAWANSHI JJ.**

DATE : MARCH 30, 2021

P. C. :

By this appeal filed under Section 11 of the Maharashtra Protection of Interest of Depositors, (in Financial Establishment) Act, 1999 (the said Act), the appellant/original accused takes exception to the order passed by the learned Special M.P.I.D. Court, Nagpur, below Exhibit 2260 in M.P.I.D. Case No.03/2013.

2. The appellant is accused No.13 in the trial, who is facing charge along with other accused for an offence punishable under Sections 406, 409, 420, 120(B), 201 read with 34 of the Indian Penal Code, Section 3 of the Maharashtra Protection of

Interests of Depositors (in Financial Establishments) Act, 1999 and Sections 45(S) & 58(B)(5-A) of the RBI Act, 1934. The trial has commenced and so far the prosecution has examined 52 witnesses including the investigating officer. The prosecution filed application Exhibit 2260 contending that informant Amit Govind More, resident of Somalwada, Nagpur gave a report at Ranaprata Nagar Police Station, Nagpur City against Shreesurya Investment and its Directors namely Sameer Joshi and Sau Pallavi Joshi. Accordingly, Crime No.348/2013 for the offence under Sections 406, 420 read with 34 of the Indian Penal Code and read with Section 3 of the the said Act is registered and further investigation of the said crime is being conducted by the Economic Offence Wing, Nagpur City. In the said crime, charge-sheet came to be filed and in the said charge-sheet written complaints dated 25/08/2014 of Karamjeetsing Ghara, his wife Satvinder Kaur Ghara, so also written complaint dated 28/08/2014 of his father Jogindersing Ghara are incorporated in the charge-sheet. However, inadvertently, their statements remained to be recorded, during the course of investigation. The statement of Karamjeetsing Ghara is now recorded and the same was annexed with the application. The prayer was made seeking permission to incorporate the statement of the complainant Karamjeetsing Ghara and documents submitted by him in respect of investment in the charge-sheet.

3. The respondent, by submitting the reply, opposed the said application on various grounds including that Karamjeetsing Ghara was never a complainant after the offence was registered against the appellant in the year 2013. His statement was recorded to gain unfair advantage to the prosecution. The prosecution is trying to fill up lacunas in its case, that there is no provision in Code of Criminal Procedure which permits filing of statement when the trial is at an advanced stage. He claimed that great prejudice will be caused if the prayer of the prosecution is allowed.

4. Heard learned Advocate for the appellant and learned Additional Public Prosecutor for the State.

5. Learned Advocate for the appellant vehemently submitted that the prosecution has filed the said application to fill up the lacunas in the case which were exposed by the extensive cross-examination conducted on behalf of the appellant. The learned Trial Court was not justified in allowing the application at such a belated stage as the same may cause serious prejudice to the appellant. He, therefore, submitted that the impugned order cannot be sustained and the same may be set aside and the appeal may be allowed.

6. The learned Additional Public Prosecutor, on the other hand, supported the order passed by the learned Trial Court. He further submitted that the impugned order is well reasoned order

and no case is made out by the appellant to interfere in the same. He, therefore, submitted that the appeal is meritless and same may be dismissed.

7. We have heard the learned Advocate for the appellant and the learned Additional Public Prosecutor at length. We have perused the documents placed on record.

8. It is not disputed that Karamjeetsing Ghara, his wife and father had lodged written complaints on 25/08/2014 and 28/08/2014, respectively. The said complaints were filed in the documents along with the charge-sheet. Therefore, it cannot be said that by recording the statement of Karamjeetsing Ghara, which is sought to be placed on record by the prosecution, the appellant is taken by a surprise and something new is being introduced by the prosecution.

It is the settled legal position that the prosecution is entitled to examine a witness, even if, his statement was not recorded during the course of investigation. It is the duty of the Court to examine such a witness which it considers absolutely necessary for doing justice between the State and the subject. It is a cardinal rule of the law of evidence that the best available evidence should be brought before the Court. If the prosecution examines Shri Karamjeetsing Ghara as a witness, his complaint, which forms a part of the charge-sheet, can be treated as his previous statement.

The appellant has a right to cross-examine him. Therefore, no prejudice can be said to be caused to the appellant in this situation. We are not able to agree with the learned Advocate for the appellant that serious prejudice will be caused to the appellant if the said witness is examined. The appellant has failed to demonstrate as to exactly what prejudice would be caused to him, if the said document is permitted to be added in the charge-sheet and Shri Karamjeetsing Ghara is examined as a witness. We are not impressed by the submission of the learned Advocate for the appellant that the prosecution is trying to fill up the lacunas in its case, exposed during the cross-examination. Since, the written complaint lodged by Shri Karamjeetsing Ghara is already filed in the documents along with the charge-sheet and as the issue of probative value of the statement of Shri Ghara is kept open and since the appellant has right to cross-examine the said witness, we are not able to accept the said statement that the prosecution is trying to fill up the lacunas in its case.

9. The learned Trial Court has passed a well reasoned order and has considered all the arguments of the appellant. The learned Trial Court has protected the interests of the appellant by keeping the issue of probative value of the statement of Shri Ghara open and it has rightly held that no prejudice would be caused to the appellant as he has a right to cross-examine the witness in case the prosecution examines him. The learned Trial Court was also

justified in holding that since the written complaints filed by Karamjeetsing Ghara and others were already on record along with the charge-sheet, the same cannot be said to be a surprise for the appellant.

10. In our considered view, the order passed by the learned Trial Court cannot be faulted with. According to us, there is no merit in the appeal and the same deserves to be dismissed and is accordingly dismissed.

[N.B. SURYAWANSHI, J.]

[PRASANNA B. VARALE, J]