IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 4 OF 2021

Shri. Sambhaji s/o. Diliprao Patil,
Age 43 years, Occupation Agriculturist
Permanent Resident of 'Ajanta Talkies',
Nilanga, Taluka Nilanga,
District Latur .. Applicant

Versus

1. The Central Bureau of Investigation (CBI),
3rd and 4th Floor, Plot No. C-35A,
'G' Block, Bandra Exchange, Bandra (East)
Mumbai – 400 098

2. The Union Bank of India
Through, the Chief Bank Manager,
Prabir Kumar Nath, the then Chief Manager
Union Bank of India
C.F. 6465, Chainsukh Road,
Hanuman Chowk, Latur,
Taluka Latur, District Latur,
Maharashtra – 413 521. .. Respondents

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Mr. Shirish M. Gupte, Senior Advocate instructed by Mr. Abhakumar D. Ostwal, Advocate for Applicant
Mr. S. S. Deve, Standing Counsel for Respondent No.1
Mr. S. B. Narwade, A.P.P. for Respondent / State

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CRIMINAL APPLICATION NO. 3195 OF 2021
IN CRIMINAL REVISION APPLICATION NO. 4 OF 2021

Vinod s/o. Shankarrao Patil
Age 46 years, Occu. Business,
R/o. Khori Galli Near Vanita,
Tel Udyog, Latur,
Taluka and District Latur .. Applicant

Versus

1. Shri. Sambhaji s/o. Diliprao Patil,
Age 43 years, Occupation Agriculturist
Permanent Resident of 'Ajanta Talkies',
Nilanga, Taluka Nilanga,
District Latur

2. The Central Bureau of Investigation (CBI),
3rd and 4th Floor, Plot No. C-35A,
'G' Block, Bandra Exchange, Bandra (East)
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Through, the Chief Bank Manager,
Prabhir Kumar Nath,
the then Chief Manager
Union Bank of India
C.F. 6465, Chainsukh Road,
Hanuman Chowk, Latur,
Taluka Latur, District Latur .. Respondents

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Mr. Vijay B. Patil, Advocate for Applicant

Mr. Shirish M. Gupte, Senior Advocate instructed by Mr. Abhakumar D. Ostwal, Advocate for Respondent No. 1
Mr. S. S. Deve, Standing Counsel for Respondent No.2
Mr. S. B. Narwade, A.P.P. for Respondent / State

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CORAM : S. G. MEHARE, J.

RESERVED ON : 28-06-2022

PRONOUNCED ON : 14-07-2022

JUDGMENT :-

The applicant Sambhaji Diliprao Patil/accused takes exception to the order passed by the learned Additional Sessions Judge -2 and Special Judge Latur, below Exhibit-229 in Special Case (ACB/CBI) No. 12 of 2015 under Section 397 and 401 of the Code of Criminal Procedure.

2. The applicant had preferred an application under Section 227 of the code of Criminal Procedure ("Cr.P.C.") for discharge. The applicant was the guarantor of the company to which the two banks sanctioned term loan. The applicant has executed a letter of guarantee in favour of banks for the credit facility granted to the company. The applicant had executed a registered mortgage deed of the factory land and building along with plant and machinery situated on land Gat No.289/A in favour of the banks on 30.07.2009 before the Sub-Registrar. After the mortgage, charge in 7/12 extract was recorded. However, a charge was not carried forward in the computerized 7/12 extracts. The consortium of the bank obtained the 7/12 extract and property extract on 22.11.2012.

3. The consortium of Banks issued a demand notice under the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ("SARFAESI Act"),

and then the bank issued a notice declaring borrowers/directors/guarantors as willful defaulters as they failed to repay the loan amount and initiated the proceeding under SARFAESI Act. In the proceeding under SARFAESI Act, the Advocates appearing for the borrower company and the guarantors submitted a certified copy of the mortgage deed dated 30.07.2009, wherein it was stated that the property bearing survey no. 289/A of Nilanga has not been mortgaged to the bank, but property bearing Survey No. 5/A admeasuring 740 Sq. ft has been mortgaged. Thereafter, the bank officials obtained a certified copy of mortgaged deed dated 30.07.2009 from the Sub-Registrar Office Shirpur Anantpal on 07.07.2012 and verified the original mortgage deed with the same. It was found that pages nos. 17 and 29 had been tampered with and illegally substituted with other property, which had less value, with the criminal intention to cheat the banks. A criminal action was initiated against borrowers/ directors. On thorough investigation, CBI has filed a charge sheet against them all for the offences under Section 120-B, 420, 468, 469, 471 of the Indian Penal Code ("IPC") and Section 413(2) read with 13(1)(d) of the Prevention of the Corruption Act, 1988.

4. The applicant has claimed the discharge from the said charges; therefore, he filed an application under Section 227 of the Cr.P.C. The learned Sessions Judge /Special Judge did not

agree with the contention of the applicant and rejected his prayer of discharge.

5. The learned counsel Mr. Gupte for the applicant, has vehemently argued that the applicant has no role to play in tampering with the document which was registered and lying with the office of the Sub-Registrar. The prosecution has no evidence to show the conspiracy. PW-18 did not mention the name of the applicant. He would refer to paragraph 19 of the impugned order and submits that the finding recorded by the learned Special Judge is unfounded and without reason. He also argued that in the absence of grave suspension against the accused, he should be discharged. PW-18 does not depose anything. The amount of the loan was repaid under the settlement on 27.04.2018, and nothing remained to be recovered. Therefore, nothing remained for trial. As the matter is settled, the loan is repaid no purpose would be served by putting the applicant on trial. Not only this, the union bank addresses a letter to the Talathi of Sakol Taluka dated 25.8.2018 to remove its charges over the property described therein. This aspect has also not been considered by the learned Special Judge. He would refer to case laws in support of his contention. He prayed to allow the revision, set aside the impugned order and discharge the applicant.

6. The learned counsel for CBI would submit that barely satisfying the civil liability would not discharge the applicant from criminal liability. The prosecution has sufficient evidence that the plan was hatched in 2008. The sub-registrar was won over. He allowed preplacing the pages. The brother-in-law of the applicant was also involved in the crime. He relied on case laws and supported the impugned order.

7. The applicant has to point out that the impugned order is illegal, improper and incorrect to exercise the powers under sections 397 and 401 of the Cr.P.C.

8. The Judge empowers to discharge the accused if, upon considering the record of the case and documents submitted therewith that there is no sufficient ground for proceeding against the accused. However, before discharging the accused, an opportunity shall be given to the accused and the prosecution, and the Court has to record his reasons for so doing. As far as the powers under Section 227 of Cr.P.C. is concerned, the legal position is settled that the Judge while considering the question framing the charges under Section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. Where the material before the Court discloses grave

suspicion against the accused, which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. The Court has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court. But, he should not make a roving inquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. The purpose of Section 227 and 228 of the Cr.P.C. is to ensure that the Court should be satisfied that the accusation is not frivolous and there is some material for proceeding against the accused. It is also the settled law that in findings of the prima facie case, the entire record and documents submitted with the charge sheet by the prosecution are taken into consideration by the Court. These are the broad settled principles of law that should be considered while dealing with an application for discharge under Section 227 of the Cr.P.C.

9. The Branch Manager of the Union Bank of India Branch Latur lodged a report on 20.03.2014, alleging that the applicant and the others were the parties to the conspiracy to cheat the banks. One Ashish Marwa and the other directors diverted the funds released from cash credit accounts of the consortium banks, and for the purpose other the banks, it was sanctioned and thereby primary assets were not created against the said facility. It has been specifically alleged that the pages nos. 17 and 29 of the original

deed of mortgage registered on 30.07.2022 with Sub-Registrar Office of Survey No. 289/A wherein 8 Hector (valued Rs. 21.42 Crores) have been illegally substituted with the property bearing Survey No.5/A measuring 740 sq. fts., having lessor value. As a result, the rightful and legal claim of consortium banks has been affected and thereby caused the wrongful loss of Rs.21.42 Crores. The bank accounts were classified as non-performing assets. In Pursuant to the complaint lodged, the CBI proceeded to investigate the allegations. It has been alleged against the applicants that he was one of the conspirators and had knowledge of tampering with pages nos. 17 and 29 of the original mortgage deed. The applicant has played an active role and has used his influence in the office of Sub-Registrar. He has, with the knowledge, tampered with the pages of the original mortgage deed.

10. The learned counsel for the applicant referred to a statement of P.W.18 Shri. Mohan Sadashiv Londhe, and would submit that he would state nothing. He is village Talathi of Nilanga. He has stated that there was no charge on survey no. 239/A of village Nilanga of any financial institution, and the applicant was shown the owner of the said land. In brief, he has stated that there are two contradictory 7/12 extracts dated 23.9.2010 and 16.7.2014. He has also stated that the 7/12 extract dated 23.9.2010 is not in

his handwriting.

11. No doubt, the dispute has been settled, and the bank loan is repaid. The prosecution has a case that civil liability, if discharged, would not discharge a person from criminal liability. The law is well settled that the parties may avail the remedies under the various forums as permissible under the law. Therefore, there is substance in the arguments advanced by learned counsel for CBI that merely clearing the loan would not discharge the applicant from criminal liability. The learned counsel for the applicant relied on the case of ***Central Bureau of Investigation, Hyderabad Versus K. Narayan Rao [(2012) 9 SCC 512]*** and referred to paragraphs no.13, 14 and 15. Paragraph no. 13 is relating to the Section 227 of Cr.P.C. laying down the rule that if two views are possible and one of the views given rise to suspicion only as distinguished from grave suspicion. The trial Judge would empower to discharge i.e. at this stage, he is not to see whether a trial ends in conviction or acquittal. Paragraph no. 24 of the said judgment is about the ingredients of the offence of criminal conspiracy that there should be an agreement between the persons who are alleged to conspire, and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself will not be illegal. If some acts are proved to have been committed, it would be clear that they were so committed in pursuance of an agreement made

between the accused persons, who were parties to the alleged conspiracy. He would rely on the case of ***Subramanian Swami Versus A. Raja [(2012) 9 SCC 257]*** and would refer to para nos. 62 and 63. These paras are again on the point of criminal conspiracy. He would further rely upon the case of ***Baldev Singh Versus State of Punjab [2009 (6) SCC 564]*** and would refer the para no. 17. Further, he would rely on the case of ***State Versus Siddarth Vashisth @ Manu Sharma and Ors. [2001 SCC OnLine Del 270]*** and would refer to para no. 39 to 42. Again, these paras are related to Section 120-B of the IPC and its ingredients. He further relied on the case of ***State through Superintendent of Police, CBI/SIT Versus Nalini and others [(1999) 5 SCC 253]*** and referred to paragraph nos. 583, 654, 663, 664 and 665. Again these paragraphs are on the criminal conspiracy and its ingredients.

12. The learned counsel for the applicant also relied on ***Union of India Versus Prafulla Kumar Samal and another [(1979) 3 SCC 4]*** and would submit that a court cannot act merely as a post office or mouthpiece of the prosecution but has to consider a broad probability of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. It has also been observed in the said case that the test to determine prima facie depends upon the

facts of each case. Where the material placed before the Court were grave suspicion against the accused, which has not been properly explained, the Court will be fully justified in framing a charge and proceeding to the trial.

13. Relying on the case of ***Dilawar Balu Kurane Versus State of Maharashtra [(2002) 2 SCC 135]***, the learned counsel for the applicant, relying on para no. 12 of the said judgment has pointed out settled position of law exercising the powers under Section 227 of the Code of Criminal Procedure that the Judge has undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not prima facie case against the accused has been made out. He also relied upon the case of ***P. Vijayan Versus State of Kerala and another [(2010) 2 SCC 398]*** and again referred to Section 227 of the Cr.P.C.

14. Lastly, he relied on the case ***Yogesh @ Sachin Jagdish Joshi Versus State of Maharashtra [(2008) 10 SCC 394]***, and referred to the head note A, B, C and D. This case is once again on the similar points which have been referred to by him relying on the other case laws.

15. In the case of **Yogesh** (cited supra), the Hon’ble Apex Court observed that it is trite that the words “not sufficient ground for proceeding against the accused” appearing in Section 227 of

Cr.P.C. postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing these facts, the Judge has the power to shift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine to prima facie case depends on the facts of the each case and in this regard and it is neither feasible nor desirable to made out rule of universal application.

16. The learned counsel for the accused has emphasized on the law laid down by the Hon'ble Apex Court in various cases that if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion again and distinguished from grave suspicion, he will be fully within his right to discharge the accused. However, he has referred to the statement of the village Talathi PW-18 and vehemently argued that there is nothing in the evidence of this witness, wherein the witness has given the details as regards the mutation entry of the field which was mortgaged by the applicant, and he has categorically stated that a 7/12 extract dated 23.9.12 was neither written nor signed by him. He also stated that the stamp affixed on the said extract was also not of the Talathi Nilanga because the extract showed the charge of Union Bank of India and Bank of

Maharashtra. Whereas the previous extract dated, 16.7.2014 does not show the charge of any bank as stated by him in the alleged statement. He also stated that the 7/12 extract dated 10.7.2009 is neither written nor signed by him. He has specifically stated that the mutation entry no. 464 in both the above 7/12 extracts is false. These mutation entries are about the field owned by the present applicant. The Talathi is the authority who issues and maintains the 7/12 extracts. He has denied the signature and stamp over the 7/12 extracts of the relevant period. The investigation has collected evidence that pages nos. 17 and 29 of the original mortgage deed have been tampered. The applicant has no satisfactory explanation that the evidence produced before the Court gives rise to the suspicion only. It would not be appropriate to discuss the entire evidence and documents produced by the prosecution against the applicant. However, the prosecution has strong prima facie evidence of tampering with previous pages nos. 17 and 29 of the original mortgage deed and instead of the property survey no. 289/A, the property bearing no. 5/A was substituted. The applicant has control over the documents of his own property. He never complained of committing such fraud with his property.

17. It is undoubtedly true that it is difficult to prove the conspiracy by direct evidence; therefore, the inference could be

drawn from prior and subsequent circumstances of the incident. Considering the papers placed before this Court, this Court is of the view that the prosecution has prima facie evidence against the applicant, and there appears sufficient ground for proceeding against the applicant.

18. This Court has gone through the impugned order. The scope of revision petition under Section 379 is extremely narrow. Section 397 of the Cr.P.C. gives the High Courts or Sessions Courts jurisdiction to consider the correctness, legality or propriety of any finding inter se an order and as to the regularity of the proceedings of any inferior Court. Examining illegality or impropriety of the impugned order, this Court is of the view that the impugned order is well reasoned, correct and error free. Hence, there is no substance in the petition. Therefore, the following order -

(i) The Revision Application stands dismissed.

(ii) Pending Criminal Application No. 3195 of 2021 is disposed of.

19. Learned counsel for the applicant requests for extension of interim relief for four weeks. His request is accepted. The interim relief is extended by four weeks from today.

(S. G. MEHARE)
JUDGE

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