

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2410 OF 2022

Rahul Dadasaheb Jagtap
versus
The CBI and another

Petitioner

Respondents

AND

CRIMINAL WRIT PETITION NO.2411 OF 2022

Akhilesh Arun Naik
versus
The CBI and another

Petitioner

Respondents

Mr.Sudeep Pasbola i/by Mr.Karl P. Rustomkhan, Advocate for petitioners.

Mr.H.S.Venegavkar, Special Public Prosecutor for respondent no.1 CBI in both matters.

Mr.Arfan Sait, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 2nd August 2022

PC :

1. The petitioners in both the petitions are practicing advocates. They were prosecuted in RC No.08/E/2019/CBI/EOB/Mumbai registered under Sections 120B r/w 420, 465, 467, 468 and 471 of Indian Penal Code and under Section 13(1)(d) r/w 13(2) of Prevention of Corruption Act. The petitioners were arraigned as accused Nos. 7 & 6.

2. The alleged role attributed to the petitioners in Writ Petition No.2410 of 2022 is that, in the matter of sanction and disbursement of term loan of Rs.5 Crores and cash credit of Rs.55 Lakhs to M/s.

KEPL from State of Bank of Bikaner and Jaipur Branch, Nashik on instructions of Chief Manager of said Bank Ram Shakya (accused) submitted fake title investigation reports without conducting search report from concerned Sub-Registrar Officer, wherein it was mentioned that ownership of property belong to M/s. KEPL. The role attributed to Petitioner in Writ Petition No.2411 of 2022 is that, in the matter of sanction and disbursement of working capital of Rs.5 Crores to M/s. Kalyani Charitable Trust from State of Bank of Travancore. The petitioner on the instructions of accused Animesh Kumar without conducting requisite title search report from concerned Sub-Registrar office, submitted false title investigation report dated 7th July, 2014, wherein he mentioned that the ownership of the property belong to KEPL.

3. The petitioners applied for discharge before Special Judge for CBI. The application for discharge was allowed vide order dated 28th March 2021. However, vide clause (3) of the operative part of order dated 28th March 2021 it was directed by the Trial Court that copy of order be forwarded to Indian Bank Association through CBI to ensure that in future the petitioner in Writ Petition No.2410 of 2022 and Writ Petition No.2411 of 2022 should not be empanelled on bank panel and if they are on bank panel, they should be de-empanelled.

4. Learned advocate for petitioners submitted that Special Judge (CBI) has travelled beyond its powers. The petitioners were discharged by the Trial Court from prosecution case and hence there was no occasion to issue directions as stated above. Pursuant to the said directions, the petitioners' names are de-empanelled from the bank panels. The order affects the right to profession of the

petitioners. In the event bank finds any irregularities in services provided by advocates in the panel, there is separate procedure provided for taking action. The order is prejudiced to petitioners, who are practicing Advocates. The petitioner in Writ Petition No.2410 of 2022 has been empanelled on legal panel of 3 bank, since over 6 to 12 years and never faced any complaints of professional misconduct while discharging his duties. The petitioner in Writ Petition No.2411 of 2022 is empanelled on 8 Banks since over 10 to 15 years and never faced any complaint of misconduct. Due to impugned condition, petitioners right to livelihood has been affected. The State of Bank of India vide circular dated 26th March, 2013 has laid down process for reviewing of empanelled Advocates and for de-empanellment of Advocate as per Circular, an empanelled Advocate should be reviewed every year by concerned controlling Authority and the review should evaluate the performance of empanelled Advocate in respect of matters entrusted to Advocate. The empanelled Advocate can be de-empanelled on the ground such as professional misconduct, lack of integrity, negligence etc. However, recommending committee at zonal office will have to first record their reasons and grounds for de-empanellment.

5. Learned advocate for respondent – CBI submit that impugned order was passed by Trial Court on the basis of factual aspects of the matter.

6. The petitioners are practicing advocates since last several years and they were empanelled on various banks. The role attributed to them was that they had conspired with co-accused and provided false title reports to the bank. Their application for discharge was

allowed, which indicate that they have not participated in the crime as conspirators. I have perused the orders passed by Trial Court discharging petitioners. The order discharging petitioner Rahul Dadasaheb Jagtap indicate that there is no evidence to prove that accused was aiding or abetting or conspiring with borrowers or others. However, acts attributed to the said accused at the most would amount to misconduct. Similar observations were made in respect of petitioner Akhilesh Arun Naik. Both the petitioners were discharged by Trial Court from the proceedings. There is Mechanism to initiate action by Banks for misconduct of Advocate empanelled on the Bank. Enquiry is contemplated. The learned judge has directed drastic action. In the circumstances, directions in clause 3 of the order dated 28th March, 2022, required to be set aside.

7. The directions stipulated in clause 3 of the order dated 28th March, 2021 reads as follows :

“Copy of order be forwarded to Indian Bank Associates through CBI, to ensure that, in future Rahul Dadasaheb Jagtap/Akhilesh Arun Naik,should not be empanelled on bank panel and if he is on bank panel, then de-empanelled him.”

8. The petitioners are empanelled on several banks. As a result of the aforesaid direction, they would be or must have been de-empanelled from panel of Banks without any enquiry by respective Banks. In the order dated 28th March, 2021, discharging petitioners, the learned Judge has recorded that, after analysing all the material grounds are exist to infer that there is no prima facie case for proceeding in respect of charges alleged against the petitioners/accused and they are entitled for discharge.

ORDER

- (i) Writ Petition Nos.2410 of 2022 and 2411 of 2022 are allowed and disposed off;
- (ii) Clause 3 of order dated 28th March 2021 passed below Exhibits-49 and 50 respectively in CBI Special Case No.892 of 2021 issuing directions to forward copy of order to Indian Bank Association through CBI to ensure that in future petitioners should not be empanelled on bank panel and if they are on bank panel, then to de-empanell them is quashed and set aside.

(PRAKASH D. NAIK, J.)

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