IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3189 OF 2021

Ajoy Kumar Singh .. Petitioner
Versus
Central Bureau of Investigation and Anr. .. Respondents

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Mr.Dinesh Tiwari a/w. Mr.Mikhail Dey, Mr.Sumit Khanna i/b.Mr.Rajeev N. Kumar, Advocate for the Applicant.

Ms.Ameeta Kuttikrishnan, Special P.P. for Respondent No.1-CBI.

Mr.A.R. Patil, APP for the Respondent No.2-State.

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CORAM : PRAKASH D. NAIK J.

DATED : JUNE 28, 2022.

P.C. :

The petitioner has challenged the order dated 28th October, 2009, passed by the Special Judge issuing process against the accused under Section 13(1)(d) read with 13(e) of Prevention of Corruption Act, 1988 ("P.C. Act", for short).

2 The case of the prosecution is as under:

(a) First Information Report ("FIR", for short) was registered *vide* R.C.No.08(A)/2007 on 22nd February, 2007, under Section Section 13(2) read with 13(1) (e) of P.C. Act read with Section 109 of Indian Penal Code ("IPC", for short).

(b) The accused (petitioner) Joined Income Tax Department as Assistant Commissioner of Income Tax during the period 16th December, 1987 to 23rd February, 2007. The applicant being a public servant acquired immovable and movable assets to the tune of Rs.3,70,97,136/-, in his name and in the name of his family members and relatives against his likely savings to the tune of Rs.6,64,441, during this period.

(c) Smt.Mrunalika Singh (wife of the petitioner) Prabhat Kumar Rai (nephew of the petitioner) Mrs.Bacchidevi Sharma (mother-in-law of the petitioner) Shri Abhy Kumar Singh (brother of the petitioner), Smt.Chunchun Singh (relative of wife of A.K. Singh), Mrs.Nisha Kumari (nice of the applicant), Mr.Rameshwar Prasad Singh(father of the applicant), Mrs.Saroj Singh (sister-in-law of Ajoy Kumar Singh), Mr.Satyapriya Rakekksh Rai (brother of the petitioner), Mrs.Shanti Kumari (sister of the petitioner), Mrs.Shripati Sharma (mother-in-law of Mrs. Chunchun Singh), Mr.Subhash Chandra Kumar (brother of the petitioner), Mrs.Usha Rai (sister of the petitioner), Mr.Kartik L.Kothari (CA of petitioner) aided and abetted the petitioner in acquiring these assets in their names, which were disproportionate to the income and likely savings of the applicant, Smt.Murnalika and Rameshwar Prasad Singh. On 23rd February, 2007, the applicant was found in possession of assets worth Rs.3,77,61,577/-, which are disproportionate to his known source of income in which he did not give satisfactory account.

(d) Search conducted at the office premises of Kartik Kothari resulted in seizure of blank signed cheque books, bank pass book of Punjab and Sind Bank, pass book of the post office and pan cards in the name of petitioner and his relatives.

(e) The petitioner was posted in Mumbai from June 1997 to 1st August, 2022, and, subsequently, from 29th February, 2005 to 25th July, 2008. Mr.Kartik Kothari is a Chartered Accountant and proprietor of M/s.Kartik L. Kothari met applicant in 2000, when he was posted as Deputy Commissioner of Income Tax Circle-1, Investigation Circle-1, Mumbai. The petitioner used the office of Kartik Kothari to circulate the black money in the market by generating cheques using the accounts in the name of his relatives.

(f) The SB accounts were opened in two banks of Mumbai, in the name of his relatives. 15 accounts were opened in the name of relatives of petitioner from 28th January, 2003 to 25th March, 2004. The said accounts were opened by using the address of D/3, Commerce Centre, Tardeo, Mumbai. Although they were not resident of Mumbai, huge cash amounting to Rs.2.23 crores were deposited by the staff of Kartik Kothari on instructions of the petitioner and further cheques were generated which were transferred for investment in favour of various builders and other investments.

(g) Permanent account number were also opened in the name of the petitioner, which is nowhere related to any of the relatives of petitioner. The petitioner was in possession of assets in his own name and in the name of his family members. The details are provided in the complaint. The order dated 28th October, 2009, passed by the Special Judge has been challenged. Prosecution has filed charge-sheet against respondent nos.1 to 5 in Court. In the charge-sheet, process under Section 13(1)(d) read with 13(e) of P.C. Act issued against accused no.1, and, process under Section 13(1)(e) read with 13(1)(e) of the PC Act read with Section 109 of IPC issued against accused no.2. Thus, the charge-sheet was filed and process was issued against other accused.

(3) Criminal Writ Petition No.2225 of 2007, was filed in this Court by Devendra Doctor, who prayed for CBI investigation against accused. This Court directed to complete investigation. According to respondents High Court directed to complete investigation and submit draft charge-sheet within 15 days. In compliance with orders on 6th February, 2009, CBI submitted draft charge-sheet in sealed cover. It was mentioned that investigation is continuing. Shri Devendra Doctor filed criminal Application No.99 of 2009 in Criminal Writ Petition No.2225 of 2007, for contempt on the ground that, CBI has still not filed charge-sheet. On 8th October, 2009, the High Court directed CBI to file charge-sheet within two weeks i.e. 27th September, 2009. The petitioner was arrested on 25th October, 2009 at Nagpur and after obtaining transit remand produced before the Court on 27th October, 2009, alongwith charge-sheet. Before that, prosecution had applied for sanction from competent authority. Sanction was received on 6th January, 2010, by CBI and it was submitted to special Court. Fresh cognizance was taken on 6th February, 2010

4 Learned advocate for the petitioner submitted that the trial Court ought not to have taken cognizance of the proceedings in the absence of sanction against the petitioner. The sanction was obtained subsequently. In the absence of charge-sheet before taking

cognizance the entire proceedings shall stand vitiated. It is submitted that it was mandatory to obtain sanction under Section 19 of the PC Act before taking cognizance of the complaint. It is submitted that it was mandatory to obtain sanction under Section 19 of the PC Act before taking cognizance of the complaint. Trial Court ought not to have taken cognizance of the offences under Section 3(1)(d) and Section 13(e) without previous sanction. The order taking cognizance is bad in law. The Court overlooked the law while taking cognizance of the charge-sheet. Filing of charge-sheet subsequently would not cure the defect.

5 Learned advocate for the applicant relied upon the decision of Supreme Court in the case of ***State of Goa Vs. Babu Thomas***[1]

6 Learned advocate for respondent submitted that sanction was obtained to prosecute the accused. Merely on account of the fact that the sanction was obtained subsequently after taking cognizance of charge-sheet, the proceedings would not get vitiated. The sanction order was filed before the Court on 7th January, 2010. Thereafter, the matter was taken on board on 6th February, 2010. The trial Court took fresh cognizance on 6th

1 (2005) 8 SCC 130

February, 2010, and, issued process under Section 13(1)(d) read with 13(1)(e) of P.C. Act against the petitioner. The petitioner had challenged the order dated 28th October, 2009, before this Court by preferring Writ Petition No.4322 of 2017. The said petition was withdrawn on the ground that the petitioner had also filed a discharge application before the Sessions Court. The discharge application was rejected on 3rd November, 2020. Thereafter, the petitioner moved an interim application in Writ Petition No.4322 of 2017, for restoring the said petition. The Court had observed that it is open to the applicant to file a separate petition. CBI had registered the case vide R.C.No.8(A)/2007 on 22nd February, 2007. One Devendra Doctor had filed a writ petition No.2225 of 2007 before this Court and prayed for CBI investigation against the accused. The Court directed to continue with the investigation and complete it and submit draft charge-sheet within 15 days. In compliance with the said order dated 6th February, 2009, CBI submitted a draft charge-sheet in a sealed cover giving details of investigation conducted. Shri Devendra Doctor filed criminal Application No.99 of 2009 in Criminal Writ Petition No.2225 of 2007 for contempt of Court on the ground that CBI has not filed charge-sheet. The Court directed to file charge-sheet before the trial Court within two weeks. As per order of the High Court, charge-sheet was filed. The prosecution has also applied for sanction from competent authority on 8th June, 2009. The petitioner was arrested on 25th October, 2009. He was produced before the Court along with the charge-sheet. The prosecution acted in accordance with orders of this Court. Fresh cognizance were taken by the Special Judge CBI on 6th February, 2010. Trial Court while deciding discharge application has held that the cognizance taken by it is correct by relying upon the decision in the case of ***Jaysingh Wadhu Singh Vs. State of Maharashtra*[2]*.*

7 The question which arises for consideration is whether charge-sheet filed before the Court without granting sanction for prosecution could have been taken into consideration by the trial by taking cognizance. The proposal of sanction was already forwarded. According to prosecution on account of directions of the High Court, the charge-sheet was filed without sanction order. Subsequently, after obtaining sanction, the same was placed on record and the trial Court took fresh cognizance of the proceedings. There is no infirmity in the order passed by the trial Court. Fresh application for taking cognizance, which was granted by the Court and sanction order was taken on record. The

2 2001 Cri.L.J.456 Bombay High Court

decision relied upon by the advocate for the petitioner cannot be applied in the present case.

8 Considering the aforesaid circumstances, I do not find any infirmity in the order passed by the Special Court. The petition is devoid of merits.

9 Hence, I pass the following order:

:: **O R D E R** ::

(i) Writ Petition No.3189 of 2021, is rejected, and, stands disposed of accordingly;

(ii) At this stage, learned counsel for the petitioner seeks stay to the order passed by this Court. During the pendency of petition, no interim stay was granted. Prayer is rejected.

(PRAKASH D. NAIK, J.)