IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.432 OF 2019

Subroto Banerjee ... Applicant
versus
Central Bureau of Investigation and another ... Respondents

Adv.Sonal Parab with Tanvi Mahadik i/by Mr.Rahul Arote for applicant.
Mr.Kuldeep S.Patil, Special Public Prosecutor for CBI.
Mr.Ajay Patil, APP, for State.

CORAM : PRAKASH D. NAIK AND

DATE : 28th February 2022

PC :

1. The applicant is facing prosecution in CBI Special Case No.101 of 2012 and charged for the commission of offence punishable under Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988 and Section 109 of Indian Penal Code.

2. The applicant is aggrieved by order dated 17th July 2019 passed by Special Judge (CBI) rejecting the application for discharge and order dated 9th July 2021 passed by the Special Judge (CBI) framing charge.

3. The prosecution case is that during the period from 1-10-1992 to 16-4-2019 the co-accused Sumitra Banerjee, while functioning as Assistant Commissioner, Deputy Commissioner, Joint Commissioner

and Additional Commissioner of Income Tax at various places being public servant abused her official position and acquired assets disproportionate to her known source of income to the extent of Rs.2,31,16,451/- During the tenure as a public servant Smt.Banarjee with the aid of applicant accumulated assets disproportionate to her known source of income. The applicant is husband of accused no.1. The applicant has abetted the co-accused to amass such wealth. On completing investigation charge sheet was filed against both the accused for offence u/s.13(2) r/w 13(1)(e) of Prevention of Corruption Act (`P.C.Act' for short).

4. The applicant preferred application for discharge before Trial Court under Section 227 of Code of Criminal Procedure. The application was opposed by prosecution by filing say dated 16-1-2019. Vide order dated 17-7-2019 learned Special Judge (CBI) rejected the application. During pendency of this application learned Special Judge has framed charge against applicant vide order dated 9-9-2021. Both the orders are challenged by the applicant in this revision application.

5. It is submitted on behalf of the applicant that there is no evidence to frame charge against applicant. The charge framed by the Trial Court is defective. The Court ought to have bifurcated salary and income. The charge framed by the Trial Court is required to be altered. The Trial Court ought to have directed the CBI to provide proper calculation of disproportionate income by taking into consideration separate and independent income of the applicant, which was necessary to show the complicity of applicant. The CBI has erred in calculating the disproportionate assets of accused no.1.

The applicant is husband of accused no.1. He is working since June-1987. His income ought to have been excluded. The assets acquired by applicant are out of his own source of income. The prosecution has not segregated the income and expenditure of applicant. He is frequent traveller to overseas and working abroad on business trips. The foreign currency recovered by CBI was independent income of applicant from the amount given to him by his employer towards allowance and tour expenses. The Trial Court ought to have appreciated that salary income of the applicant was wrongly considered by the investigating agency during the same period based on the salary statement inasmuch as the said amount was for a period from July-2005 to November-2007. The Court failed to appreciate that salary of the applicant for the period from August-2005 to September-2007 was Rs.1.12 crores which is supported by bank statements. The statement of applicant's bank shows salary credited during August-2005 to November-2005 to the tune of Rs.19,35,219/-. The other bank statement also show salary credits for the respective period. There is no evidence to establish that the applicant has abetted in commission of crime. Detailed explanation was provided in the application for discharge before Trial Court about income of applicant, which has not been considered by the Court. The amount of Rs.46,80,790/- recovered from the Flat which is owned by the applicant and occupied by both of them, has been shown as money at the hands of accused no.1, though the same belong to the applicant as well. The amount of Rs.50.25 lakh recovered from the locker of IDBI Bank belongs to the applicant exclusively. The ornaments are jointly in the name of applicant and the co-accused. The Sessions Court failed to consider the prayers of applicant in Exhibit-117. Prayer (a) was seeking directions to the respondents to furnish calculations of income, expenditure and assets at the hands of accused no.1 excluding income and expenditure of the applicant. The Trial Court has failed to consider prayer clause (a) and proceeded to frame charge on the basis of mis-calculation provided by respondents. The applicant had challenged the computation of disproportionate assets by respondents to the tune of Rs.2.31 crores being erroneous. There is non-application of mind by the Trial Court while framing charge. The revised calculation was not provided to the applicant. The defect found in the charges framed against accused needs to be rectified to ensure fair trial. The offence is u/s.13(1)(e) of the Act which quantifies the amount of disproportionate assets acquired by the accused as compared to their known source of income. Hence, the quantum of income assumes importance which would prove whether accused has disproportionate assets. The charge being defective and for not furnishing revised calculation, the order rejecting the application for discharge and the order framing charge, may be set aside. In the alternative, the matter be remanded to Trial Court.

6. The respondent no.1 CBI has filed affidavit-in-reply. Learned counsel for respondent no.1 has submitted that there is no illegality in the order passed by the Trial Court. The application for discharge has been rejected by the Trial Court. The applicant is husband of accused no.1. Both of them were prosecuted for other offences under P.C.Act and they have been convicted. Huge cash was found in possession of accused. There is sufficient evidence against accused to frame charge. The submissions advanced by applicant's counsel need to be appreciated at the stage of trial. There is no defect in charge. No case is made out for discharging the accused by setting aside the order framing charge.

7. The role attributed to the applicant is that being husband of the accused no.1 he has aided and abetted the accused no.1 in holding disproportionate assets to the known and legal source of income. According to the prosecution, salary income of the applicant is calculated on the documents collected and statements recorded of concerned witnesses during investigation. Investigation revealed that out of total consideration of Rs.50 lakh for purchase of Flat No.101-A, Palms CHS Deonar, accused no.1 had paid Rs.6,47,000/- from her GPF account and Rs.3,53,000/- from savings account from salary and perks and applicant had arranged balance of Rs.40 lakh from her savings. The applicant was unable to satisfactorily account for the cash of Rs.46,80,790/- recovered from his house during search by CBI. He failed to furnish any documentary evidence in support of his claim that money is his business receipts through cash. On the other hand, there is oral statement of Kishor Mohanlal Shah that he has paid Rs.50 lakh in cash to accused no.1 as bribe. According to prosecution, during investigation applicant was unable to satisfactorily account for the cash of Rs.50.25 lakh recovered from the locker of IDBI Bank during search by CBI. He failed to furnish any documentary evidence in support of his claim that money is his business receipts through cash. During investigation the applicant was unable to explain the accounts for cash of Rs.9 lakh recovered from locker by CBI. He failed to furnish any documentary evidence in support of his claim. He was unable to account for possession of ornaments worth Rs.22,99,732/- found in his house. He was also unable to satisfactorily account for possession of ornaments worth Rs.31,36,065/- found in the bank locker. Section 13(1)(e) of P.C.Act mentions that if he or any person on his behalf is in possession or has at any time during the period of his office being in possession for

which the public servant cannot satisfactorily cannot account of pecuniary resources or property, disproportionate to his known source of income. According to prosecution both the persons were given ample opportunity during investigation to account for the cash amount found in their possession, which they could not account satisfactorily. Prima facie case is made out against applicant. At the stage of discharge and/or framing of charge the Court is not required to conduct roving enquiry. The submissions on behalf of applicant cannot be appreciated at this stage. The Trial Court while rejecting the application for discharge has observed that applicant has abetted the activities of accused no.1 who acquired ill-gotten assets needs scrutiny. On perusal of the charges levelled against the applicant in the charge sheet, it reveals the definitive involvement and role of the applicant as an abettor in the actualization of crime. The Trial Court had also observed that applicant and accused no.1 were prosecuted in CBI Special Case No.6 of 2012 wherein accused no.1 was convicted for the offence u/s.7, 13(1)(d) of P.C.Act for demanding and accepting bribe amount of Rs.1.5 crores. The applicant was convicted in the same case for the offence u/s.12 of P.C.Act for abetting the public servant in accepting the illegal gratification. The Court further observed that judicial note of said conviction can be taken by Court while arriving to prima facie conclusion in respect to offence of abettment committed by the applicant by way of abetting public servant in amassing disproportionate assets to the known sources of income. The Trial Court has assigned reasons while rejecting the application for discharge. The charge has been framed against applicant. I do not find any infirmity in charge or the order rejecting application for discharge. Hence, I pass following order :

ORDER

(i) Criminal Revision Application is rejected.

(PRAKASH D. NAIK, J.)

MST