IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 652 OF 2018

Milind S/o. Vinayak Govilkar ...Applicant
Versus
CBI, ACB, Mumbai And Anr. ...Respondents

WITH
CRIMINAL REVISION APPLICATION NO. 657 OF 2018

Brigadier Anuj Kainthla (retired) ...Applicant
Versus
Union Of India And Anr. ...Respondents

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Mr. D. V. Mirajkar a/w Mr. Jagdish G. Shetty, Advocate for the Applicant in Revision Application No.652 of 2018.

Mr. Girish Kulkarni i/by Mr. Madhusudan D. Pareek, Advocate for the Applicant in Revision Application No.657 of 2018.

Mr. H. S. Venegavkar, Special P. P. for the Respondent – UOI in Criminal Revision Application Nos.652 of 2018 & 657 of 2018.

Mr. S. R. Agarkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 29th JULY, 2022.

PER COURT:

1. The applicants in both the applications are facing prosecution vide CBI Special Case No.100 of 2014 pending before the Special Court at Greater Bombay for offences under Section 120(B) of Indian Penal Code (for short 'IPC') and Sections 7, 11, 12, 13(2) read with Section 13(1)(d) of Prevention of Corruption Act,1988 (for short 'PC Act').

2. The case of the prosecution is that, Accused No.1 Brigadier Anuj Kainthla while functioning as joint General Manager, I in the Office of Canteen Store Department, Head Office, Adelphi, Mumbai, during the period from June 2011 to June 2012 was in regular touch with Shri. Milind Govilkar (Accused No.2), Director of M/s. Sankalp Consumer Products Pvt. Ltd, who was working as agent for various suppliers of CSD and discussed issue concerning client companies of M/s. Sankalp Consumer Products Pvt. Ltd knowing that, agents are not allowed in CSD business. During the said period, Accused No.1 retired Brigadier Anuj Kainthla hatched criminal conspiracy with Accused No.2, Milind Govilkar and demanded and accepted Rs.7,50,000/- as gratification other than legal remuneration from accused No.2 for showing favour in the exercise of his official function and abused his official function. The accused No.1 while holding office of Joint General Manager -I in the office of Canteen Stores Department (for short C.S.D.), Adelphi, Mumbai obtained vehicle facility without making any payment to Accused No.2. The demand of accused No.1 is supported by the recorded telephonic conversation. On 15.06.2012 Accused No.1 contacted Accused No.2 Milind Govilkar and demanded Rs.7,50,000/- from him. Accused No.2 arranged Rs.5,00,000/- from Delhi and delivered it on 19.06.2012 to Shri. Sushmit Thapar at Chandigarh through his employee Shri. Rohit Kumar. On 20.06.2012, Shri. Sushmit

Thapar deposited Rs.5,00,000/- in the of office of M/s. Amar Nath Aggarwal Investment Pvt. Ltd. against Flat No.504, Pent House, Vinaca, Amravati Enclave, Panchkula which was booked by Accused No.1 and his wife as part payment as per direction of Accused No.1. Accused No.2 made arrangement of remaining amount of Rs.2,50,000/- in Delhi and arranged its delivery on 23.06.2012 to Mr. Pravin Kumar, employee of Mr. Sushmit Thapar at Karol Baug, New Delhi. Thus, the accused No.1 demanded and accepted Rs.7,50,000/- from accused No.2 as gratification other than legal remuneration. Accused No.1 had obtained vehicle facility for himself and his family from Accused No.2 on 13 occasions. The total expenditure on the said vehicle facility was Rs.82,007/-. The Accused No.1 had not paid the same but signed the duty slips available with the drivers. The travel agent sent the duty slips signed by Accused No.1 alongwith the bills to M/s. Sankalp Consumer Products Pvt. Ltd for their payment. M/s. Sankalp Consumer Products Pvt. Ltd had paid the amount of Rs.46,697/- to the travel agents for the vehicle hired for Accused No.1. The transcripts of recorded telephonic conversation between the Applicants indicates that, there was talk between them and there was conspiracy, whereby the accused No.1 demanded and accepted Rs.7,50,000/- from accused No.2.

3. The applicant in Criminal Revision Application No.657 of 2018 (Accused No.1) preferred an application for discharge before the Special Court for CBI at Greater Bombay. The applicant (Accused No.2) in Revision Application No.652 of 2018 also preferred an application for discharge before the trial Court. Vide separate Orders dated 03.11.2018, both the applications were rejected.

4. Learned Advocate for the applicant in Criminal Revision Application No.657 of 2018 submitted that, there is no material to frame charge against the Applicant (Accused No.1). The Accused cannot be prosecuted on the basis of inferences. There is no legally admissible evidence against the Applicant (Accused No.1). The demand of illegal gratification is not supported by any evidence. The impugned order rejecting the application for discharge is contrary to law. There is no evidence of demand and acceptance of illegal gratification. There is no witness to support the charge of demand and acceptance of illegal gratification. There is no evidence to establish that, the amount was transferred as a bribe for committing any official act by public servant. This is not the case of trap of acceptance of money. Due to lack of material to constitute charge under Section 7 of the PC Act, the accused cannot be prosecuted under Section 13(1)(d) of the said Act. Mr. Vilas Harer, Manager, Sankalp Products Pvt. Ltd is not charge-sheeted.

5. Learned Advocate for the Applicant in Criminal Revision

Application No. 652 of 2018 submitted that, the charge-sheet is silent about the evidence supporting the allegation that, demand of illegal gratification has been made with this applicant and that, he has fulfilled the said demand. Illegal gratification is *sine qua non* to constitute the offence and mere recovery of currency notes cannot be constituted offence under Section 7 of the PC Act, unless it is proved that the accused had offered to pay the bribe which was accepted by other accused as bribe. There is no evidence that, the accused No.1 had obtained undue favour from Accused No.2. None of the documents in the charge-sheet referred to Accused No.2 as a person responsible for providing vehicle facility to Accused No.1. There is no prima facie case against the applicant for framing charge. Neither Accused No.2 nor Company M/s. Sankalp Consumer Products Pvt. Ltd., received any pecuniary benefits from Accused No.1 nor any loss has been caused to C.S.D. The trial Court has committed error in rejecting application for discharge.

6. Learned Advocate for Respondent No.1 submitted that, the application for discharge has been rejected by the trial Court by assigning cogent reasons. There is sufficient evidence to frame charge against the accused. Prima facie case is made out against them. Both the accused had hatched criminal conspiracy to demand and acceptance of illegal gratification. Accused No.1 has obtained favour from Accused

No.2. The grounds urged by the applicants cannot be appreciated at this stage. Considering the nature of evidence against both the applicants, they cannot be discharged from the proceedings and the defence urged in that application will have to be established during trial. Specimen voice samples of Accused Nos.1 & 2 were obtained vide panchanama. Recorded conversation was sent to C.F.S.L. New Delhi for voice spectrography examination. The voice of accused Nos.1 & 2 matches with conversation recorded in CD's. Witnesses Shakti Kumar Gupta, Dinesh Patal and Ravindra Raorane have identified the voice of Accused No.2 Milind Govilkar. The handwriting has been confirmed. The handwriting of accused No.1 is appearing on duty slips for booking of vehicles from accused No.2. The statements of witnesses and other evidence on record is sufficient to proceed against the accused.

7. The learned Special Judge has appreciated the material on record and rejected the applications for discharge with elaborate reasoning. It is indicated that, prima facie the Accused No.1 had demanded money from Accused No.2 and accepted Rs.7,50,000/- as gratification other than legal remuneration. Accused No.1 had obtained vehicle facility from Accused No.2, who is connected with the office business of C.S.D. There is recorded incriminating telephonic conversation against the applicants. The statements of witnesses indicate parting of the amount through persons to accused No.1. The evidence disclosed that, accused

had obtained vehicle facility on 13 occasions. This is not the stage to discard the evidence. The Court is not required to conduct roving inquiry at the stage of framing of charge. Transcript indicates talk between Accused Nos.1 and 2, which supports the charges levelled against them.

8. It is settled law that, while adjudicating the application for discharge the Court has to see whether from material on record it could be said that, accused might have committed offence. It need not hold mini trial and come to conclusion that material produced warrant conviction. Roving inquiry in pros and cons of matter and weighing of evidence as is done in trial is not permissible at this stage. Charge has to be framed if the Court feels that, there is strong suspicion that, accused has committed offence.

9. It revealed during investigation that, on 01.02.2012, Accused No.2 from his mobile No.9821140901 had a talk with Accused No.1 on his mobile No.9819817952 and during the said conversation, Accused No.2 requested Accused No.1 for making some correction in the allocation of stock of 'Santoor Soap" Wipro and Brigadier Anuj Kainthla (Accused No.1) agreed for the same. The relevant conversation between Accused Nos. 1 & 2 is part of charge-sheet. On 17.04.2012, Accused No.2 from his mobile No.9821140901 had talked with Accused No.1 on the landline telephone No.022-66382904 installed in the office

of Brigadier Anuj Kainthla, JGM-1 CSD, Adelphi and asked for favour in the Price Revision of items of M/s Colgate in the Price Revision Committee (PRC) meeting to be conducted on 17.04.2012.

10. On 15.06.2012, Accused No.1 had a talk with Shri. Vilas Harer, Manager of M/s. Sankalp Consumer Products Pvt. Ltd. on mobile number 9821140893 from his mobile number 8404626846 and demanded Rs.7,50,000/- by saying “Sade Sat Ticket” (Seven & half). On 15.06.2012, Accused No.1 from mobile number 8404626846 contacted Accused No.2 over his mobile no.9821140901 and demanded Rs.7,50,000/- from him.

11. On 19.6.2012, Accused No.2 arranged Rs.5,00,000/- in Delhi to deliver the same to one Shri. Sushmit Thapar at Chandigarh through his employee Shri. Rohit Kumar. PW-40. The relevant conversation between Shri. Vilas Harer and Shri. Rohit Kumar both employees of Accused No.2 is on record. Conversation between Shri. Rohit Kumar and Accused No.2 is also part of charge-sheet. On 20.06.2012. Mr. Sushmit Thapar, deposited Rs.5,00,000/- in the office of M/s. Amar Nath Aggarwal Investments Pvt. Ltd. against flat No.504, Pent House, Vinaca, Amravati Enclave, Panchkula booked by Brigadier Anuj Kainthla and his wife Mrs. Anita Kainthla as part payment, as per directions of Accused No.1.

12. Accused No.2 made arrangement of remaining Rs.2,50,000/- in Delhi and arranged delivery of it to Shri. Praveen Kumar (PW-42), employee of Shri. Sushmit Thapar at Karol Bagh, New Delhi through his employee Shri. Anish Kumar (PW-41) on 23.06.2012. Shri. Sushmit Thapar entrusted the said amount to Shri. Anil Sharma who deposited Rs.2,50,000/- at the office of M/s. Amar Nath Aggarwal Investments Pvt. Ltd. on 27.06.2012 against flat No.504, Pent House, Vinaca, Amravati Enclave, Panchkula booked by Brigadier Anuj Kainthla and his wife Mrs. Anita Kainthla, as further part of payment, as per directions of Brigadier Anuj Kainthla.

13. Accused No.1 obtained gratification other than legal remuneration of Rs.7,50,000/- from Accused No.2 as motive or reward for showing favours in the exercise of his official function. The chain of delivery of money has been proved from the statements of Shri. Anil Sharma, Shri. Sushmit Thapar, Shri. Praveen Kumar, Shri. Rohit Kumar and Shri. Anish Kumar. Shri. Pratap Singh and Shri. Virbhan Garg working as Accountant cum Sales Manager with M/s. Amarnath Agarwal Investments Pvt. Ltd. corroborated by the above facts.

14. It is also revealed during investigation that, Accused No.1 obtained vehicle facility for himself and for his family members from Milind Govilkar (Accused No.2) on 13 occasions. Accused No.2 had used the vehicles hired by Milind Govilkar (Accused No.2) for his

personal use. The total expenditure on said vehicle facility obtained by Accused No.1 and his family members comes to Rs.82,007/-. Accused No.1 did not pay any money for the said facility but signed the duty slips available with the drivers. Travel Agents sent the duty slips signed by Accused No.1 along with the bills to M/s. Sankalp Consumer Products Pvt. Ltd. for payment. Till July, 2012, M/s. Sankalp Consumer Products Pvt. Had paid an amount of Rs.46,697/- to the Travel Agents towards the hiring of the vehicle for use of Accused No.1.

15. The transcripts of recorded telephonic conversation between both the applicants indicate that, the Accused No.2 had talk with Accused No.1 on their cell-phone and the transcripts prima facie indicate that, the Applicants had conspired and Accused No.1 demanded/accepted the gratification other than legal remuneration from Accused No.2. The transcripts, CDR's, and exchanged telephonic conversations prima facie point out favours made by Accused No.1 to Accused No.2 and vice-versa. The conversation referred to criminal misconduct under P.C. Act, on the part of Accused No.1. The Accused No.1 not only dealt with Accused No.2 by breaching the service Rules to commit criminal misconduct under PC Act by accepting the illegal gratification. There are number of telephonic conversation in the transcripts. The same prima facie pointed out the involvement of Accused No.1. C.B.I. intercepted exchange of telephonic conversation with the permission of

Secretary, Ministry of Home Affairs, Government of India. The trial Court has rightly observed that the permission is sufficient to hold that, C.B.I. was permitted by competent authority to intercept and recorded telephonic conversation between Accused Nos.1 & 2 to make its transcription. The trial is open for appreciation thereof under Section 3 of the Indian Evidence Act. Prima facie, the permission produced with the charge-sheet indicate that, C.B.I. was permitted to intercept and record the conversation at the relevant time. Legality, propriety and competent authority who agreed the same are mixed questions of law and fact. Same cannot be prejudged at the stage of Section 227 of Cr.P.C. The statements of witnesses indicates the involvement of accused in the offence under the PC Act. The prosecution would prove the charges by leading substantive evidence during the course of trial. The trial Court had observed that, it cannot be ignored that, accused No.1 was high level military officer. Such activities are done by conduct, gestures and code language. At the stage of discharge, the material charge-sheet is sufficient to arrive it conclusion to provide with the case. The prosecution has made out prima facie case to prosecute accused Nos.1 & 2.

16. Considering the nature of evidence, I do not find any reason to interfere in the impugned orders passed by the trial Court rejecting the applications for discharge.

ORDER

Criminal Revision Application Nos.652 of 2018 and 657 of 2018 are rejected and disposed of accordingly.

(PRAKASH D. NAIK, J.)