

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.645 OF 2018

Bikash Ranjan Daschaudhary, Age 65 years,
R/o.1102, Green Tower CHS Ltd;
Gilbert Hills Lane, Andheri (W),
Mumbai-400 058.

Applicant

versus

1. Union of India through CBI, ACB,
Mumbai.
2. The State of Maharashtra.

Respondents

WITH
CRIMINAL REVISION APPLICATION NO.653 OF 2018

Milind Vinayak Govilkar,
Age 58 years, Occ.Business,
R/o.4/5, Nav Vikas Co-op. Hsg.Society,
Plot No.33, Subhash Road,
Vile Parle(East), Mumbai-400 057.

Petitioner

versus

1. CBI (ACB, Mumbai)
2. The State of Maharashtra.

Respondents

Mr.Girish Kulkarni i/by Mr.Madhusudan D. Pareek, Advocate for
Applicant in Revision Application No.645 of 2018.

Mr.Jagdish G. Shetty, Advocate for Applicant in Revision Application
No.653 of 2018.

Mr.H.S.Venegavkar, Special P.P for Respondent-UOI in both Revision
Applications.

Mr.S.R.Agarkar, APP, for Respondent-State.

CORAM : PRAKASH D. NAIK, J.

DATE : 29th July 2022

PC :

1. The Applicants in both the revision applications are prosecuted
for offences under Section 120B, 109 of Indian Penal Code and
Sections 7, 12, 13(2) r/w 13(1)(d) of Prevention of Corruption Act.

(PC Act).

2. The case of prosecution is as follows :-

(i) Accused no.1 Bikash Ranjan Daschaudhary was posted as General Manager-II at the office of Canteen Stores Department (CSD), Head Office, Adelphi, Mumbai during February 2012 to June 2012. He was in regular contact with accused No.2 Milind Vinayak Govilkar, Director of M/s.Sankalp Consumer Products Pvt.Ltd. Working as an agent for various suppliers of CSD and discussed issues concerning client companies of M/s. Sankalp Consumer Products Pvt. Ltd.;

(ii) Accused no.1 kept contact with accused no.2 knowing that agents(middlemen) are not allowed in CSD business;

(iii) During the said period accused No.1 entered into criminal conspiracy with Milind Govilkar and in pursuance to criminal conspiracy being public servant obtained Rs.1.25 lacs as gratification other than legal remuneration from Milind Govilkar for showing favour in the making of places for market survey of client companies of M/s. Sankalp consumer products Pvt. Ltd.

(iv) There were conversations between accused no.1 and accused no.2 which reflects conspiracy between them.

(v) On 24th May 2012, during telephonic conversation between Shri. Milind Govilkar and Shri Bikesh Daschoudhary, amount of Rs. One lakh was demanded by Shri. Daschoudhary from Shri. Govilkar.

(vi) On 30th June 2012, Shri. Milind Govilkar visited house of Mr. Daschoudhary and delivered Rs. 1.25 lakhs to him. The said amount was for the month of February to June 2012. The amount was recovered from the cupboard of Shri. Daschoudhary.

(vii) Shri. Milind Govilkar was Director of M/s. Sankalp

consumer Products Pvt. Ltd. and was dealing with CSD on behalf of his client companies. M/s. Sankalp was having agreement with said companies for facilities at CSD depots and URC's. For providing such facilities M/s. Sankalp received commission from said companies.

(viii) Shri. Daschoudhary was working as JGM-II and was competent authority to mark the stations for market survey. Shri. Daschoudhary while marking the stations for market survey of items of client companies of Shri. Milind Govilkar, violated policy of CSD and choose the stations other than emphasised in policy circular dated 4th December 2007.

(ix) The acts on the part of accused constitute offences punishable under Sections 7, 12, 13(2) read with Section 13(1), (d) of P.C. Act and 120(B) of Indian Penal Code read with Section Sections 7, 12, 13(2) read with Section 13(1), (d) of P.C. Act.

3. Charge-sheet was filed before the special Judge for CBI and the proceedings were numbered as CBI Special Case No. 26 of 2014.

4. Applicant Bikash Ranjan Daschaudhary (Revision Application No.645 of 2018) and applicant Milind Vinayak Govilkar (Revision Application No.653 of 2018) preferred applications for discharge u/s.227 of Cr.P.C. The applications were rejected by Special Judge vide order dated 3rd November 2018.

5. Learned advocate Mr.Kulkarni appearing for Applicant in Criminal Revision Application No.645 of 2018 submitted as under:

(a) There is no evidence to frame charge against applicant. The Trial Court has mechanically rejected the application for discharge;

(b) Entire conversation relied upon by prosecution does not show any demand of illegal gratification;

(c) There is no evidence to establish that Applicant had

made any demand for illegal gratification or accepted any amount from the co-accused;

(d) Recovery of Rs.1.25 lakh is of no consequence in the absence of any demand and even otherwise such recovery without a trap panchanama is of no use. The amount claimed to be recovered lacks identity to indicate it that amount was paid against the alleged demand;

(e) The recovered amount claimed to be bribe remains unidentified;

(f) Verification of demand is a crucial aspect to ascertain the demand so as to proceed further for laying trap. The trap is part of investigation to ascertain the truthfulness of suspected charges. Investigating agency failed to bring such trap panchanama;

(g) The prosecution should make out prima facie case supporting demand and acceptance of illegal gratification with definite allegations and material to substantiate it. In the present case there is neither any material to suggest that applicant obtained any valuable thing or pecuniary advantage by illegal means;

(h) There is no witness in the charge sheet to show that applicant had at any point of time made demand of money for doing particular an act. The case of prosecution is entirely based on the presumption which is impermissible in law;

(i) None of the acts alleged against applicant show that he had any intention of deceiving and making wrongful gain to himself;

(j) There is no evidence to show that CSD or anybody had suffered losses due to act of applicant;

(k) To establish commission of offence u/s.7 of P.C.Act, there must be clinching material showing that there was demand of bribe and accused accepted the amount with motive or reward for doing

an official act or showing favour to any person in exercise of official function.

(l) The prosecution relies on telephonic interceptions of alleged conversations between accused. However, in the absence of any substantive material to make out a prima facie case, there is no evidence on record. In the entire charge sheet no material to substantiate that prosecution has obtained any approval and confrontation of the Review Committee under Indian Telegraph Rules. Intercepted communications need to be corroborated with legally admissible evidence;

(m) The prosecution alleges violation of policy Circular No.12 of 2007. Whereas perusal of the same shows that there is no violation of policy circular;

(n) There is no evidence to establish the alleged conspiracy between accused;

(o) There is no material to establish any demand by public servant to any private person. In the absence of substantive material, the transcripts cannot be relied upon;

(p) There was no complaint of demand. To constitute the offence under section 13(1)(d), an offence under Section 47 is sine qua non.

(q) Proceedings against Mr. Vilas Harer has been dropped.

6. Learned advocate for Respondent no.1 submitted that there is sufficient evidence against applicant. The Trial Court has rejected the application by assigning reasons. This is not the stage to appreciate evidence. There is sufficient evidence to frame charge against accused. The applicant has conspired with the co-accused in commission of offence. The interceptions relied upon by prosecution supports the case of prosecution. The grounds urged by the applicant

are required to be established in the trial. No case is made out for discharge. Applicant was a public servant. The conversations prima facie refer to involvement of applicants. The statements of witnesses are sufficient to show involvement of applicants in the crime. The defence of applicants cannot be looked into at this stage. The amount of Rs.1.25 lacs has been recovered from house of accused. The trial Court has rightly rejected the application for discharge.

7. Learned advocate for Applicant in Criminal Revision Application No.653 of 2018 submitted that the applicant cannot be prosecuted on inferences. The offence under IPC is not made out. The applicant is Director of M/s.Sankalp Consumer Products Pvt.Ltd which is a supply chain solution company. The main function of the company is to ensure timely supply of the product of their principals. There is no demand of bribe. Learned Sessions Judge has not appreciated the grounds of discharge in proper perspective. There is no evidence to show as to where and when accused no.1 marked stations favouring the company represented by applicant. The conversation which is the basis for prosecution has no legal sanctity and it is not incriminating. There is no evidence to indicate wrongful loss/wrongful gain to attract section 13(1)(d) of P.C. Act. Alleged recovery of Rs.1,25,000/- from residence of accused No.1 was not done at the instance of accused No.2 so as to be relevant under Section 27 of the Evidence Act. There is no proof of demand of bribe.

8. Learned advocate for Respondent no.1 submitted that both the accused have conspired to commit offence. Prima facie case is made out against applicant. This is not the stage to appreciate evidence. There is sufficient material to frame charge against applicant. Learned Sessions Judge has rejected the application by assigning

reasons.

9. While rejecting the application for discharge preferred by applicant in Criminal Revision Application No. 645 of 2018 the learned Special Judge has scrutinized the charge-sheet. It is observed that, there is prima facie evidence and material to indicate that Milind Govilkar (Accused No.2) had come in his vehicle in the parking area of accused No.1. Panch witnesses and eye witnesses had seen him. They have stated that they saw accused No.2 with green envelope containing bribe amount which was immediately recovered from the house of accused No.1. The circumstances of transaction leading to the facts in issue prima facie indicate that the presence of accused No.2 at the house of accused No.1. Similarly, while rejecting the application preferred by applicant in Criminal Revision Application No. 653 of 2018, it was observed that, the conversations prima facie refer to involvement of applicant. He had visited house of accused no.1 with bribe amount. There are statement of eye witnesses. Sifting and weighing the evidence on record for limited purpose the court is of the opinion that the material placed before the Court disclose a triable case against the accused persons. It is necessary to frame charge against them.

10. 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.

11. The CBI, ACB, Mumbai registered the FIR vide RC-BA-1/2012/A/0028, dated 29th June 2012 under Sections 120B of IPC and Sections 7, 12, 13(2) r/w 13(1)(d) and 14 of P.C.Act. On completing investigation charge sheet was filed against accused Bikash Ranjan Daschaudhary and Milind Vinayak Govilkar vide Special Case No.26 of 2014. It is alleged that on 17th February 2012 and 20th February 2012, accused Milind Govilkar had a talk with accused Bikash Ranjan Daschaudhary on his cell phone. During conversation Mr. Daschaudhary informed Mr. Govilkar that files of some companies are received by him for marking. They also had other conversation. The recorded conversation between them in Compact Discs (CDs) is part of charge sheet and that transcript is cited as D-23, 24 and 29. Both the accused had a talk on 25th May 2012. During the conversation Mr. Bikash Ranjan Daschaudhary demanded Rs.1 lakh from Milind Govilkar. The said conversation is transcribed as D-4. On 30th June 2012 Milind Govilkar visited residence of Bikash Ranjan Daschaudhary and delivered amount of Rs.1.25 lakh. The amount was recovered from the cupboard of Mr.Bikash Ranjan Daschaudhary vide panchanama dated 30th June 2012. Mr.Milind Govilkar was one of the Director of M/s.Sankalp Consumer Products Pvt.Ltd and was dealing with CSD on behalf of his client companies. M/s.Sankalp Consumer Products Pvt.Ltd was having agreement with said companies for providing the logistics and other facilities at CSD depots. M/s.Sankalp Consumer Products Pvt.Ltd received commission for providing such facilities. During the period from February 2012 to June 2012, Mr.Bikash Ranjan Daschaudhary was working as JJM-II. Competent Authority to mark stations for market survey. Mr.Bikash Ranjan Daschaudhary while marking stations for market survey of items of client companies of Mr.Milind Govilkar

violated policy of CSD and chose the stations other than emphasized in policy Circular dated 4th December 2007. Specimen voice sample of accused were obtained vide Panchanama dated 5th July 2012 and 22nd September 2012 and recorded conversations were sent to CSFL, New Delhi for voice spectography. The expert of CSFL, New Delhi has opined that voice of Mr.Bikash Ranjan Daschaudhary matched with conversation recorded in CDs. Mr.Shakti Kumar Gupta, Mr. H.P Naik and Mrs.Rosbell Alwa identified voice of Bikash Ranjan Daschaudhary vide panchanama dated 3rd October 2012. Statement of Mr.Nityanand, Manager, CSD states that Mr.Bikash Ranjan Daschaudhary violated the norms and policy of CSD and favoured clients of Mr.Milind Govilkar.

12. CBI had intercepted exchange of telephonic conversation with the permission of Secretary, Ministry of Home Affairs, Government of India.

13. Charge sheet contains statements of witnesses, transcripts, recorded telephonic conversations and documents. It is clear that Mr.Milind Govilkar is agent and director of M/s.Sankalp Consumer Products Pvt.Ltd who was supplying commodities to CSD and Mr.Bikash Ranjan Daschaudhary was GM-II at the office of CSD, HQ, Mumbai. Accused no.1 is not permitted to keep any contact or communication with agents like accused no.2. He is not permitted to make dealings, show favours to accused no.2. He cannot accept favours from accused no.2. The transcripts recorded telephonic conversation between both the applicants on 17th February 2012 and 20th February 2012, indicate that accused no.2 Mr.Milind Govilkar had a talk with Mr.Bikash Ranjan Daschaudhary on cell phone. The transcript prima facie indicate that both the accused had hatched criminal conspiracy wherein accused no.1 marked stations for market

survey of items of client companies of Mr.Milind Govilkar. Mr.Bikash Ranjan Daschaudhary chose the stations other than the suggestions emphasized in Circular dated 4th December 2007 to favour accused no.2. The transcripts, CDR and exchange of telephonic conversation prima facie point favour made by applicant Bikash Ranjan Daschaudhary to Milind Govilkar by illegal gratification. The investigating agency kept watch and intercepted telephonic conversation between accused and it was revealed that accused no.1 was accepting illegal gratification from accused no.2. It was revealed that accused no.2 approached and visited house of accused no.1. Thereafter raid was conducted and amount of Rs.1.25 lakh was recovered from the house of accused no.1. The statement of eye witnesses indicate that accused No.2 had visited accused No.1 with bribe amount. These witnesses will be examined during trial. Considering the evidence on record, at this stage it is not possible to hold that the offence of conspiracy and offences under P.C. Act are not made out against both applicants. It was revealed that accused no.1 gave favours to accused no.2 for accepting commodities of various companies and accused no.2 gave amount of Rs.1.25 lakh as gratification to accused no.1. Thus, prima facie there is material against applicants to charge them for the aforesaid offences.

14. Considering aforesaid circumstances, interference in the impugned orders is not warranted. The applications deserve to be rejected.

ORDER

(i) Criminal Revision Application No.645 of 2018 and Criminal Revision Application NO.653 of 2018 are rejected and disposed off.

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(PRAKASH D. NAIK, J.)