

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 83 OF 2021

Jawahar K. Jagiasi .. Applicant
Versus
The Union of India & Anr. .. Respondents

**WITH
CRIMINAL REVISION APPLICATION NO. 192 OF 2022**

Kailash Kanhaiyalal Gidwani .. Applicant
Versus
The State of Maharashtra .. Respondents

Mr. Girish Kulkarni, Senior Advocate a/w. Mr. Kripashankar Pandey, Adv. Omkar Ghag and Adv. Darshan Juikar for the Applicant in REVN/83/2021.

Mr. Satish Maneshinde, Senior Advocate a/w. Mr. Deepal Thakkar, Adv. Shanice Mansukhani for the Applicant in REVN/192/2022.

Mr. Sandesh Patil a/w. Mr. Chintan Shah, Adv. Anusha Amin for Respondent No. 1-CBI in REVN/83/2021.

Mr. Aayush Kedia h/f Mr. H. S. Venegavkar for CBI in REVN/192/2022.

CORAM : BHARATI DANGRE, J.

DATE : 26th APRIL, 2023

P.C.:

1. Two Revision Applications are filed by Accused No. 1 and Accused No. 3 who came to be charge-sheeted by the CBI, ACB, Mumbai for committing offence u/s 7, 8, 12 & 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the PC Act") and Section 120(b) of Indian Penal Code, the case

being registered as CBI Special Case No. 106 of 2012.

Both the Applicants sought their discharge before the Special Judge (CBI), City Civil & Sessions Court, Gr. Mumbai by filing two distinct Applications vide Exhibit No. 83 and Exhibit No. 105 respectively. The discharge was sought specifically on the ground that there was no sufficient material collected by the prosecution, which would sufficiently justify framing of charge against them, and it was specifically pleaded that the Accused No. 4 in the said case, one Mandar Goswami who faced serious charges came to be discharged by the High Court in CRA No. 528 of 2016 whereas Accused No. 2-Kanhaiyalal Gidwani expired prior to filing of the charge-sheet and hence the Applicants who moved an Application being private persons could not be indicted for the alleged offence u/s. 7, 8, 12 and 13(2) r/w. 13(1)(d) of the PC Act, as the Act deals with public servant who demand gratification other than legal remuneration and is not intended for demanding of money by private person.

The Special Judge partly allowed the two Applications of the two Applicants and discharged them for the offence punishable u/s. 7, 12 and 13(2) r/w. 13(1)(d) of the PC Act by his order dated 12/02/2020.

The learned Judge, however refused to grant discharge u/s. 8 & 9 of the PC Act and this has constrained the Applicants to approach this Court by filing present Revision Applications.

2. Heard, Senior Counsel Mr. Girish Kulkarni for the Applicant in REVN/83/2021 and Adv. Satish Maneshinde for the Applicant in REVN/192/2022. Adv. Sandesh Patil a/w. Mr. Chintan Shah representing the CBI in REVN/83/2021, whereas and Adv. Aayush Kedia h/f. Mr. H. S. Venegavkar is representing the CBI in REVN/192/2022. With the able assistance of respective counsels, I have perused the Applications alongwith impugned order.

3. The learned Senior Counsel appearing for the Applicants would submit that the prosecution only proceed on the presumption that the transactions alleged in the charge-sheet is in relation of exercising personal influence in relation to Adarsh case, however, nothing has come forward through the entire charge-sheet to establish a link of the alleged recovery of diaries to the 'Adarsh Case' and the specific submission is, the material compiled in the charge-sheet is insufficient to frame charge against the Applicants. Apart from this, it is sought to be canvassed that the co-accused Mandar Goswami, Special CBI Retainer counsel is already discharged by Bombay High Court and

in wake of his discharge, when there exist no public servant, who was admitted to be influenced, as per the allegation of the prosecution, nothing remains to substantiate the charge either u/s. 8 or 9 of the PC Act. Apart from this, it is also sought to be submitted that it is not even the case of the prosecution that Mandar Goswami was in any way concerned with 'Adarsh Scam' matter during the course of the investigation and therefore there is no relevance of the Applicants exercising any influence over Mandar Goswami for any of the reasons, as alleged.

Per contra, learned counsel for the CBI would vehemently oppose the Applications by asserting that the material in the charge-sheet is sufficient to establish the charge u/s. 8 of the PC Act, for taking gratifications by corrupt or illegal means to influence the public servant and the said offence is clearly made out as there is sufficient material in the form of statements of employees of the Applicants to establish that the amount was given in cash to Mandar Goswami.

4. Before I appreciate the rival contentions, it would be necessary to refer to the brief facts leading to filing of charge-sheet against the Applicants and their discharge under the PC Act, except for the offence u/s. 8 & 9.

The prosecution case can be briefly culled out as under:

"(a) It is alleged that the Informant in this case, during the course of investigation of another case registered against the present applicant lodged at the behest of one Mr. Amodh Sharma under sections of the PC Act came across some petty cash books and ledger diaries which showed amount being received and amounts paid to various persons. It was revealed that the same pertained to a third case commonly known as the "Aadarsh scandal".

(b) That during the above said investigation it revealed that the applicant has taken Rs.1.25 crores from Mr. Kailash and Kanhaiyalal Gidwani to influence public servant by corrupt and illegal means.

(c) It is also revealed that the Applicant, through co-accused Mandar Goswami, CBI retainer counsel, agreed to provide information regarding arrest in Adarsh society case to other co-accused Mr. Gidwani, and also assured that he would be saved from any form of harassment in the Aadarsh Case as well as a lenient view would be taken during his examination."

5. The charge framed against the two Applicants on written complaint of Shri R. S. Gosain, PI, CBI, ACB, Mumbai read thus:

"That during 2011, Shri Mandar Goswami, Retainer Counsel who was a public servant entered into criminal conspiracy with Shri J. K. Jagiasi, Advocate & Tax Consultant, Shri Kanhaiyalal Gidwani (an accused in Adarsh Case), Shri Kailash Gidwani and in furtherance of the said criminal conspiracy Shri Kanhaiyalal Gidwani paid a sum of Rs.1.25 Crore to Shri J. K. Jagiasi by illegal means to influence the Public Servant i.e. CBI officials to show favour and service in connection with a pending case against Shri Kanhaiyalal Gidwani through one Shri Mandar Goswami, Retainer Counsel CBI. Out of the said money about Rs.21 lacs has been delivered to Shri

Mandar Goswami, Retainer Counsel of CBI who accepted the same by corrupt and illegal means for providing inside information about the Adarsh case such as plan of CBI to arrest the accused persons and for influencing CBI officials. The said amount were delivered to Shri Mandar Goswami through the office boys of Shri Jagiasi."

6. The charge-sheet filed for establishing the charge u/s. 7, 8, 12 and 13(2) r/w. 13(1)(d) of the PC Act comprise of certain statements recorded u/s. 164 and the prosecution has heavily relied upon the said statements, to establish the charge. This includes the statement of Rajendra S. Gosain, the complainant.

The prosecution rely upon the statement of one Vikas Ramsamujh working as accountant in the office of the Applicant, J. K. Jagiasi, who has stated as under:

"On being asked I state that Shri Jagiasi is also engaged in accepting cheques from various persons and giving them cash after encashing them after deducting commission. The cash is paid to the clients in installments. Sometimes, Shri J. K. Jagiasi receives cash from other and issues them cheques from his accounts or from the accounts of the staff."

He has stated that eight persons were working in the office in different capacities as collector and delivery of cash, peon, driver, telephone operator and David John engaged in office and residence work and V. Daniel employed for filing slip book, attending clients etc.

The witness has stated that he used to make entry in the cash book and ledger as per the transactions taking place and the entries were taken by him in his own handwriting, which was to be checked by Jagiasi. He categorically stated that Jagiasi make separate envelopes containing amounts for separate persons and he used to direct the envelopes to be delivered.

The prosecution relied upon the above statement to establish that in the year 2011 Kanhaiyalal Gidwani and Kailash Gidwani had visited the office of J. K. Jagiasi on several occasions and even Mandar Goswami visited the office. However, this witness, did not disclose the purpose of the visit nor did he divulge any conspiracy, that was hatched during this visit.

The witness further stated that he has made three envelopes containing Rs.5,00,000/- and one envelope containing Rs.3,00,000/-, which was given to Mandar Goswami, in respect of which the entries were made in the cash book.

7. Another employee V. Daniel has also recorded his statement on similar lines. The statement of peon/office boy in the office of Jagiasi, Shri David John is also complied in the charge-sheet, who has stated that Jagiasi is Advocate and Tax Consultant and his main work is to receive cash from different parties and to issue

cheques to them in lieu of cash.

He speak about meeting Mandar Goswami and of collecting envelope consisting of Rs.2,00,000/-, which was handed over by him to his Master, Jagiasi. He also state that he was instructed to take envelope containing Rs.75,000/- and hand over to Mandar Goswami at the place, where he was waiting. He also carried out envelope of Rs.2,25,000/- at the instructions of Jagiasi and handed over the same to Mandar Goswami.

Another witness, working as peon by name Jairaj Shervekaran has also given his statement about the amount of Rs.5,00,000/- and Rs.3,00,000/- being given in envelope to Mandar Goswami.

8. It is through these statements, the prosecution attempt to establish the charge of criminal conspiracy involving the Applicant, J. K. Jagiasi, Advocate and Tax Consultant, Kanhaiyalal Gidwani an accused in Adarsh case who is no longer alive and Kailash Gidwani who is alleged to have paid a sum of Rs.1.25 Crs to J. K. Jagiasi to influence the public servant i.e. CBI Officials to show favour and service in connection with the pending case against Kanhaiyalal Gidwani through one Mandar Goswami, who is described, as retainer counsel of CBI.

9. With the same set of witnesses, Mandar Goswami's case for discharge was considered by this Court in Criminal Revision Application No. 528 of 2016, the learned Judge (A. S. Gadkari, J) while dealing with the case on 05/09/2018, applied his mind to the sufficiency of material to frame charge against him.

Relying on the statements of four office boys / staff members of J. K. Jagiasi, Vikas Ramsamujh, V. Daniel, David John and Jairaj Shaktivel, who gave reference of the meeting in the office of Jagiasi and delivery of envelope containing the cash amount to Mandar Goswami, and by referring to the cash book maintained by J. K. Jagiasi reflecting certain entries of payments made in favour of the Applicant, Mandar Goswami, the order records the following observations, which need a reproduction:

"8. It is, thus, clear that, there were monetary transactions *inter-se* between the Applicant and Shri. J.K. Jagiasi (co-accused). As noted earlier, Shri. J.K. Jagiasi (co-accused) was a tax consultant of the Applicant. The evidence on record is silent about the fact that, the alleged meeting which took place in the office of Shri. J.K. Jagiasi (co-accused) between the Applicant, Shri. Kanhaiyalal Gidwani and Shri. J. K. Jagiasi (co-accused) was for a specific purpose. It is apparent from record that, Shri. Kanhaiyalal Gidwani and the Applicant both were clients of Shri. J. K. Jagiasi (co-accused) and it might be a coincidence that on a particular day, the Applicant and Shri. Kanhaiyalal Gidwani might have come in front of each other in the office of Shri. J. K. Jagiasi (co-accused) and therefore, one solitary incident of their meeting

without any other corroboration cannot be treated as a substantial piece of evidence in the chain of circumstances.

9. The Investigating Agency has charged the Applicant with Sections 7 and 13 of the P.C. Act. It is the settled position of law that, insofar as the offence punishable under Section 7 of the P.C Act is concerned, the demand of illegal gratification is sine-qua-non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 of the P.C. Act, unless it is proved beyond all reasonable doubt that the accused voluntarily accepting the money knowing it to be a bribe. It is the further settled position of law that, mere possession and recovery of currency notes from an accused without proof of demand, would not establish an offence under Section 7 as well as Section 13(1)(d) of the P.C. Act. The proof of demand thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13(1)(d) of the P.C. Act. That, the proof of demand of illegal gratification thus, is the gravamen of the offence under Sections 7 and 13 (1) (d) of the P.C. Act and in the absence thereof, unmistakably the charge therefor, would fail. A safe reliance can be placed on the decision of the Supreme Court in the case of P. Satyanarayana Murthy (Supra).

10. In the present case, there is no material available on record even to remotely infer that the Applicant was in fact, a part of alleged conspiracy hatched by Shri. J.K. Jagiasi (coaccused) and Shri. Kanhaiyalal Gidwani for drawing inside information and providing it to Shri. J.K. Jagiasi (coaccused) pertaining to the said Adarsh case.

10. By referring to the evidence of witnesses, the learned judge concluded that there were monetary transactions between Mandar Goswami and J. K. Jagiasi, the co-accused but there is no material to show meeting of minds for the purpose of accepting

illegal gratifications from Kanhaiyalal Gidwani (the deceased/co-accused) for influencing and/or for gathering inside information from the investigating officer of the Adarsh Case.

It was therefore concluded that the charge cannot be framed on the basis of surmises and conjectures and since there was no allegations that the bribe was demanded, the material collected was found to be legally inadmissible and insufficient to frame charge u/s. 120-B of Indian Penal Code or u/s. 7, 9 and 13 of the PC Act.

The order of the Special Judge, CBI, refusing to grant discharge to Mandar Goswami was therefore set aside and he stood discharged for the offences punishable u/s. 120-B of IPC and u/s. 7, 9 and 13 of the PC Act.

11. The reasoning adopted by learned Judge in discharging the co-accused Mandar Goswami apply with equal force to the present applicants, as it is the same material, which is sought to be pressed into the service for framing the charge against them.

In the impugned order dated 12.02.2020 Special Judge (CBI) discharged the Applicants u/s. 7 by recording that they are not the public servants and therefore cannot be prosecuted under the said section and since there was no offence u/s. 7, even section 12 of

the PC Act cannot be invoked against them. Similarly, is the case in respect of sections 13(2) r/w. 13(1)(d) of the PC Act as it prescribe penalty for criminal misconduct by a public servant and since the applicants were not covered in the said category, they were held entitled to be discharged, under the said section.

12. However, the impugned order find the applicants guilty of committing an offence u/s. 8 of the PC Act which is independent of sections 7, 12 and 13 and in the impugned order it is recorded that these section can be invoked even against the private individuals, since it has applied the word 'Whoever' which has wide meaning and it can cover private individuals.

For holding that the charge u/s. 8 can still be framed, the learned Judge has relied upon the statements of the very same witnesses, who are employees of J. K. Jagiasi and particularly the statement of P.W. No. 2-Vikas Ramsamujh working as accountant, who has stated that the meeting took place in office of Jagiasi, which lasted for half an hour and he has delivered the money at the instance of Jagiasi. The statement of V. Daniel, the office boy is also relied upon to establish that he had collected cash amount from Kailash Gidwani / accused no. 3 and deceased - Kanhaiyalal Gidwani who had visited the office of Jagiasi.

By relying upon the same set of witnesses, the learned Special Judge has recorded that the applicants cannot be discharged u/s. 8 of the PC Act.

13. In reaching the aforesaid conclusion, the learned Judge has committed a grave error, as he has failed to take into consideration the necessary ingredients of section 8, being accepting from any person, himself or other person, any gratification whatever, as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forebear to do any official act, or in exercise of official functions of such public servant to show favour or disfavour to any person, or render or attempt to render any service or disservice to any person with the Central Government or the State Government or the Parliament or the Legislature of any State or with any local authority as prescribed in Section 8.

This Court while dealing with the case of Mandar Goswami, alleged to be a public servant appointed by the Union of India and representing CBI in Sessions Court and High Court has discharged him on the ground that there is no allegations against him, that he demanded bribe and if it is to be construed that the applicants have accepted an amount by way of gratification for Mandar

Goswami, it is the duty of the prosecution to provide material, that this gratification was obtained as motive or reward for inducing Mandar Goswami, to do or forbear to do any official act in exercise of his official function to show favour or disfavour to any person or to render service or disservice.

Learned counsel for CBI, Mr. Sandesh Patil would vehemently submits that the amount was accepted for some unknown CBI officials but when asked what favour was to be returned by him in lieu of gratification, he is unable to throw any light.

Though Section 8 of the PC Act extend to a public servant, whether named or otherwise, is imperative for the prosecution to establish that the gratification was paid for particular purpose to be achieved i.e showing any favour or disfavour or to render or attempt to render any service or disservice to any person working with the Central Government or the State Government or the Parliament etc. as a any public servant.

14. The statement of the witnesses which is the only material complied in the charge-sheet, has failed to establish this necessary ingredient of Section 8 and merely because the term used in section 8 is 'Whoever accepts', in absence of the ingredients of the section being fulfilled, it cannot be said that the

very same material on the basis of which this Court has held that no charge can be framed against Mandar Goswami is sufficient enough to proceed against the two applicants u/s. 8 and 9 of the PC Act.

15. The Special Judge has erred in not taking the said position into account, while he passed the impugned order dated 12/02/2020 though he has discharged the applicants for the offence punishable u/s. 7, 12 & 13(2) r/w. 13(1)(d) of the PC Act on the ground that they are not the public servants. The impugned order suffers from total non-application of mind and hence it is quashed and set aside.

The revision applications are allowed. The applicants stand discharged of the offence punishable u/s. 8 and 9 of the Prevention of Corruption Act.

(BHARATI DANGRE, J.)