IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.105 OF 2018

Megharaj Sohanlal Jain, Age 46 years,
R/o.401/402, Sheela Niwas, Ramabai
Chemburkar Marg, Vile Parle (East),
Mumbai-400 057. Applicant
versus
The State of Maharashtra Respondent

Mr.Pankaj Dinesh Jain with Ms.Tejashree Kamble i/by P.D.Jain and Co; Advocate for Applicant.
Mr.Manoj Sable h/for Mr.Hiten Venegavkar, Special P.P for CBI.
Mr.Y.M.Nakhwa, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 14th July 2023

PC :

1. Applicant has challenged the order dated 27th November 2017 passed on Exhibit-113 in CBI Special Case No.32 of 2016 @ 10 of 2015 @ 42 of 2014 by learned Special Judge for CBI, City Civil & Sessions Court, Greater Bombay.

2. The FIR was registered on 8th March 2014 vide FIR No.RC BSM 2014 E 0002 for offences punishable under Sections 120-B, 201, 409, 420, 468 and 471 of Indian Penal Code and u/s.13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. It was alleged that accused were involved in fraud of Rs.180 crores by transferring through JNPT to Oriental Bank of Commerce, Malvani, Malad Branch for the purpose of creation of term deposit on 12th February 2014 and 17th February 2014. The funds were transferred from JNPT to Oriental

Bank of Commerce with specific instructions for creation of fixed deposits in favour of JNPT. However, the fixed deposits were not created. No receipts were issued and entire amount was transferred to the account of M/s.Padmavati International and others and from there to several other accounts in multiple cities and multiple banks. The FIR was registered against the persons specified therein. Applicant was not impleaded as an accused. On completing investigation charge sheet was filed against accused which were indicated in the FIR and whose names were revealed during the investigation. Applicant was never sought to be arrested. He received a summons that he has been impleaded as accused no.48 in the supplementary charge sheet filed by CBI.

3. Applicant preferred an application for discharge before Special Court and contended that he has no concern with the alleged offence. There is no iota of evidence to show his complicity in the crime. Prosecution has implicated him being Director of M/s.Aayan Comtrade Pvt.Ltd. Applicant had ceased to be the Director of M/s.Aayan Comtrade Pvt.Ltd on 8th October 2013 and the transactions executed subsequently have no connection with the Applicant. Learned Special Judge, however, rejected the application vide order dated 27th November 2017.

4. Learned advocate for Applicant submitted as under :-

(i) There is no evidence before the Court to frame charge against applicant. Applicant cannot be prosecuted on inferences when there is no evidence to substantiate any charge;

(ii) The case of prosecution is that sum of Rs.4,12,50,000/- were transferred from M/s.Eklavya Trading to Bhavya International and from Bhavya International to M/s.Ritu Diamond Pvt.Ltd and from M/s.Ritu Diamond Pvt.Ltd to M/s.Aayan Comtrade Pvt.Ltd. The transfer was initially effected on 26th February 2014. At that point of time applicant was no more a Director of M/s.Aayan Comtrade Pvt.Ltd;

(iii) At one point of time applicant and his brother were Directors of M/s.Aayan Comtrade Pvt.Ltd. However, they had resigned on 8th October 2013 from the directorship of said company. Form-32 has been submitted to the Registrar of Companies on 23rd October 2013. Mr.Sanjay Singh Chouhan and Mr.Jagdish Singh were appointed as Directors of M/s.Aayan Comtrade Pvt.Ltd. Copy of Form-32 has been annexed to this application;

(iv) During the directorship of applicant with M/s.Aayan Comtrade Pvt.Ltd, the account was opened at the instance of company in Bharat Co-operative Bank Ltd, Vile Parle (East) Branch. Upon request of Mr.Sanjay Singh Chouhan and Jagdish Singh, applicant had handed over cheque book of M/s.Aayan Comtrade Pvt.Ltd containing blank cheques of Bharat Co-operative Bank Ltd signed by applicant to the aforesaid persons. The said cheques were handed over only for the purpose of discharging any urgent statutory liability of the company till Mr.Sanjay Singh Chouhan and Mr.Jagdish Singh opens a new bank account in the name of M/s.Aayan Comtrade Pvt.Ltd;

(v) Mr.Sanjay Singh Chouhan and Mr.Jagdish Singh had also executed duly notarized affidavit dated 9th October 2013 wherein it was categorically recorded that applicant and his brother are to resign from the directorship of M/s.Aayan Comtrade Pvt.Ltd w.e.f. 8th October 2013 and Mr.Sanjay Singh Chouhan and Jagdish Singh are exclusively looking after the affairs of M/s.Aayan Comtrade Pvt.Ltd. It was also recorded that cheque book having cheque nos.864401 to 864425, 300451 to 300500 and 322301 to 300344 of Bharat Co-operative Bank Limited pertaining to M/s.Aayan Comtrade Pvt.Ltd containing blank cheques signed by applicant were handed over to the above persons for discharging urgent statutory liability. A copy of affidavit has been annexed to this application;

(vi) The persons named hereinabove were allegedly involved in transferring the amount received from M/s.Ritu Diamond Pvt.Ltd after the applicant had resigned from M/s.Aayan Comtrade Pvt.Ltd. Thus, applicant has no connection with said transfer. On 28th August 2014 Mr.Sanjay Singh Chouhan who had given an undertaking in his affidavit dated 9th October 2013, closed the bank account of M/s.Aayan Comtrade Pvt.Ltd with Bharat Co-operative Bank Ltd and he misused the blank cheques signed by applicant which were handed over to them at the time of resignation and while doing so the said person tried to divert funds from Bharat Co-operative Bank Ltd to M/s.Aayan Comtrade Pvt.Ltd at Axis Bank. However, RTGS requires bank account. Therefore Mr.Sanjay Singh Chouhan on the same day misused another blank cheque No.322306 and transferred the amount by RTGS to M/s.Ritu Diamonds Pvt.Ltd. The amount received by M/s.Ritu Diamonds Pvt.Ltd on 28th February 2014 was returned back to M/s.Aayan Comtrade Pvt.Ltd by accused no.40 Sanjay Singh Chouhan. It is submitted that entire exercise of diverting the funds and transferring the funds between these two company was done by Sanjay Singh Chouhan. Applicant has no complicity with the said transactions. Thus, the amount was received by M/s.Aayan Comtrade Pvt.Ltd and diverted through the bank as stated above after the applicant had resigned from the said company;

(vii) Applicant has no role to play in the aforesaid transaction constituting alleged offence. Applicant had ceased to be the director of M/s.Aayan Comtrade Pvt.Ltd from 8th October 2013 and applicant had no control over the business affairs of M/s.Aayan Comtrade Pvt.Ltd and was not even aware of the fact that M/s.Aayan Comtrade Pvt.Ltd was having bank account with Bharat Co-operative Bank Limited opened by accused no.40 Sanjay Singh Chouhan;

(viii) Learned Sessions Judge has rejected the application for discharge on surmises and conjectures. The Court has observed that amount was transferred from the account of applicant and his brother. The signature of applicant is on cheque No.322305, dated 28th February 2014 for Rs.4,12,50,000/- from account of M/s.Aayan Comtrade is on record. Bank account is opened by applicant. He has also signed cheque No.322306 in favour of M/s.Ritu Diamond Pvt.Ltd. Applicant had signed cheques and same were handed over to Sanjay Singh Chouhan and Jagdish Chouhan. However, learned Judge failed to consider the fact that Form-32 clearly indicate that applicant has ceased to be the director of M/s.Aayan Comtrade Pvt.Ltd and the affidavit executed by aforesaid persons clearly mentions that cheque book containing several cheques were handed over to the said persons for utilizing said cheques to clear urgent statutory liabilities. There is no evidence on record to establish involvement of applicant with the said transaction or to show that applicant had acted in connivance with accused no.40. In the absence of any evidence even prima facie to show the involvement of applicant in the crime, he cannot be prosecuted. Thus, there was no evidence before the Court to proceed against applicant to frame charge.

5. Learned counsel for CBI submitted that Trial Court has rightly

rejected the application for discharge at the stage of deciding the application for discharge or framing of charge. The Trial Court is required to see that prima facie case is made out to proceed against the accused. Evidence on record is sufficient to frame charge against applicant. Defense of applicant cannot be adjudicated at this stage. At the relevant time applicant was director of M/s.Aayan Comtrade Pvt.Ltd. The cheques utilized in transferring the amount were signed by applicant. Learned counsel has relied upon affidavit-in-reply on behalf of CBI opposing grant of relief.

6. On perusal of the documents on record it is apparent that transaction relates to transfer of amount from JNPT to Oriental Bank of Commerce Ltd for utilizing it for fixed deposits. The prosecution case is that officials of the bank and other accused had connived with each other and misappropriated the entire amount and transferred it to the account of Ms.Padmavati International and from said company it was transferred to various other banks in various cities. The applicant was never called upon by the investigating agency for interrogation or for any information in respect of alleged offense. FIR was registered on 8th March 2014 against Ms.Suja Koshy, M/s.Padmavati International and others, alleging that a fraud of Rs.180 crore pertaining to misappropriation of an amount transferred by JNPT to Oriental Bank of Commerce, Malad Branch for creation of term deposit on 12th February 2014 and 17th February 2014. Funds were transferred from JNPT to Oriental Bank of Commerce with instruction for creation of fix deposit in favour of JNPT. FD’s were not created. Amount was transferred to M/s.Padmavati International and from there to other accounts. The applicant was not impleaded as accused in first charge sheet, and

supplementary charge sheet filed on 1st January 2015. When another supplementary charge sheet was filed on 14th May 2016, applicant was shown accused. Sanjay Singh Chouhan opened a bank account of M/s.Ayan Comtrade in Axis Bank after becoming Director on 26th February 2014 and transferred funds. Subsequently he closed the account of company with Bharat Co-operative Bank. As stated above, amount as aforesaid was transferred to M/s.Aayan Comtrade Pvt.Ltd. It is pertinent to note that said transfer was effected on 26th February 2014. Applicant had resigned from the directorship of M/s.Aayan Comtrade Pvt.Ltd on 8th October 2013. The resignation is fortified by Form-32 which is filed with Registrar of Companies. It is relevant to note that transaction of amount received by M/s.Aayan Comtrade Pvt.Ltd through Bharat Co-operative Bank Limited was effected by utilizing cheque which was signed by the applicant before he resigned from the company. It is pertinent to note that affidavit was executed by accused no.40 and Jagdish Singh wherein it was clearly stated that the cheque books containing several cheques were handed over to meet statutory liabilities by applicant. Some cheques were utilized by accused no.40 in transferring the amount. This transfer was effected after resignation of applicant from M/s.Aayan Comtrade Pvt.Ltd. It is also pertinent to note that there is no iota of evidence of any nature to show that applicant has acted in connivance with aforesaid two persons namely Sanjay Singh Chauhan and Jagdish Singh who were controlling the company after resignation of applicant from the said company. It is also necessary to consider that amount could not be transferred to the new account opened by the aforesaid two persons on account of technical glitches and amount was re-transferred to M/s.Ritu Diamond Pvt.Ltd by using another cheque which was signed by applicant. In these circumstances I do not find any evidence to show that applicant is involved in commission of any crime. In any case, the case of prosecution that M/s.Aayan Comtrade Pvt.Ltd is involved in the crime as some amount was transferred to the said company. The initial transactions were initiated by officials of the Oriental Bank of Commerce Ltd and other accused have supported them. In the absence of evidence against applicant, charge cannot be framed against him. Hence impugned order passed Special Court (CBI) is required to be set aside.

ORDER

(i) Criminal Revision Application No.105 of 2018 is allowed and disposed off;

(ii) The impugned order dated 27th November 2017 passed by The Special Judge for CBI, City Civil & Sessions Court, Greater Bombay, in CBI Special Case No.32 of 2016 @ 10 of 2015 @ 42 of 2014 is quashed and set aside qua applicant herein;

(iii) The applicant is discharged from CBI Special Case No.32 of 2016 @ 10 of 2015 @ 42 of 2014.

(PRAKASH D. NAIK, J.)

MST