Andreza

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NOS. 131 AND 130 OF 2018
WITH
CRIMINAL APPLICATION NO. 348 OF 2014

CRIMINAL REVISION APPLICATION NO. 131 OF 2018

Samay Tradelink Pvt. Ltd. ... Applicant
Versus
The State of Maharashtra ...Respondent

WITH

CRIMINAL REVISION APPLICATION NO. 130 OF 2018

Vipul Pramodchandra Shah & anr. ... Applicants
Versus
The State of Maharashtra ...Respondent

WITH

CRIMINAL APPLICATION NO. 348 OF 2014

Vishwas Pandurang Ugale & anr. ... Applicants
Versus
The State of Maharashtra ...Respondent

Mr. Niranjan Mundargi i/by *Mr. Nilesh Patil, Advocate for the Applicant in Criminal Application No. 348 of 2014.*

Mr. Vikram Sutaria, Advocate *for the Applicant in Criminal Revision Application Nos. 130 of 2018 and 131 of 2018.*

Ms. Ameeta Kuttikrishanan, Spl. P. P. *for UOI.*

Mr. Y. Y. Dabake, APP *for the Respondent-State.*

CORAM: PRAKASH D. NAIK, J
DATED: 25th JULY 2023

ORDER

1. The applicants are facing prosecution for offences punishable under Section 120-B, read with Sections 409 and 420 of Indian Penal Code (IPC) and Sections 13(2) read with Section 13(1)(d) of Prevention of Corruption Act.

2. The applicants are aggrieved by orders passed by the learned Special Judge (CBI) for Greater Mumbai, rejecting application for discharge preferred by them.

3. The case of the prosecution is as follows :

(I) The applicants Sh. Vipul Shah, Sh. Switto Shah and Sh. Anil K. Upadhyaya, were Directors of Samay Tradelink Pvt. Ltd., Ahmedabad. The applicant Vishwas Pandurang Ugale and Bhupal Dattatray Chavan, were working in Vasantdada Sahakari Bank Ltd. (VSBBL). Accused R. Madhusudan was working as DGM with Karnataka Rajya Kaigarika Sahakari Bank Niyamitha, Bangalore (KRKSBN). The aforesaid persons and the officials of Vasantdada Shetkari Sahakari Bank Ltd. Sangli and officials of Mahesh Sahakari Bank Ltd., Pune, Bharati Sahakari Bank Ltd, Pune, The Kapol Co-op Bank Ltd. Mumbai and Karad Urban Co-op Bank Ltd., were impleaded as accused in complaint dated 30.07.2010.

(II) Conspiracy was hatched during the period 2005-2007 between Sh. Vipul Shah, Sh. Switto Shah and Sh. Anil K. Upadhyaya, all Directors of Samay Tradelink Pvt. Ltd., Ahmedabad, all Share and Stock Brokers of Ahmedabad, Bank officials of the aforesaid Banks and they committed fraud by violating RBI guidelines in the matter of sale and purchase of Non-SLR Securities namely Zero Coupon Bonds and Deep Discount Bonds.

(III) The bonds were purchased from Brokers at off market rates and sold to the same Brokers at prices much above the normal prevailing fair market value of the instruments in the market thereby resulting in financial accommodation being granted to such Brokers. This resulted in funds being siphoned out of the banking system by the said entities in conspiracy with the officials of the banks. These banks also passed on money to the Brokers in the name of purchase of Securities, which were subscribed by the Brokers as principals. The Brokers did not deliver the Securities or were either delivered very late causing loss to the banks. The Brokers furnished fraudulent contract notes causing loss to the banks. There was total loss of around ₹ 9.93 Crore during the period 2005-2007.

(IV) The investigation revealed that the banks including Urban Co-Op Banks (UCBs) were permitted to invest in Non-Statutory Liquidity Ration (SLR) Securities. This facility was given as an extra avenue of earning income for the banks. Non-SLR Investments can be made in various instruments like bonds issued by corporates, which includes interest bearing Coupon Bonds, Debentures in mutual funds, Commercial Paper issued by Corporates, Certificate of Deposits issued by banks with interest.

(V) Investigation revealed that Sh. Vipul Shah, Sh. Switto Shah and Sh. Anil K. Upadhyaya, were Directors of M/s. Samay Tradelink Pvt. Ltd., Ahmedabad. This company was engaged in sale/purchase of Zero Coupon Bonds (ZCBs)/Deep Discount Bonds (DDBs) with the five UCBs. The aforesaid persons were mainly involved in sale/purchase of ZCBs/DDBs during 2005-2007. Striking of deals in Non-SLR Bonds was done by the aforesaid persons.

(VI) Investigation revealed that Vasantdada Shetkari Sahakari Bank Ltd. is one of the Primary Urban Co-op Banks. There were 15 Directors in the Bank. Sh. Madan Patil was the Chairman and Sh. B. D. Chavan was the Managing Director. The bank had an Investment Policy which was framed during the Board meeting on 31.05.2002 and 23.06.2005. The decision to invest/sell in a particular security was taken by MD Sh. B. D. Chavan and Sh. V. P. Ugale, who was the Assistant General Manager in the Accounts Department and they used to interact with various Brokers and finalize the price of the transaction. These transactions once complete, used to be put up before the Board of Directors for their knowledge and ratification. Precautions were required to be taken by dealing with Non-SLR Securities. The bank was prohibited from investing in Non-SLR Securities which were maturing within one year.

(VII) The accused hatched a conspiracy to cheat Vasantdada Co-Operative Bank and to cause undue pecuniary benefit to M/s. Samay Tradelinks Pvt. Ltd, Sh. Vipul Shah and Sh. Switto Shah, Sh. V. P. Ugale and Sh. B. D. Chavan finalised the said transactions of 3499 nos. of zero % ICICI bonds of different maturities. Accused nos. 3 and 4 were aware that they were purchasing these Bonds from M/s. Samay Tradelink Pvt. Ltd. They prepared deal slips in their bank that they were purchasing these Securities from The Prantij Nagrik Sahakari Bank to show as if the Securities were being purchased from a counter party in compliance if RBI guidelines. Two UCBs namely The Prantij and Kukarwada, did not possess the Securities on the date of purchase by Vasantdada Shetkari Sahakari Bank Ltd. Accused no.1 and accused no.2 routed the sale transactions by M/s. Samay Tradelinks Pvt. Ltd. through these two Co-operative banks of Gujarat. The banks did not possess the Securities on the date of transactions. Accused nos.1 or 2 informed them that they would be supplying the Securities through their demat accounts which, in turn, would be passed on to Vasantdada Shetkari Sahakari Bank. Several other transactions were executed by the aforesaid persons in connivance with each other.

4. The applicants in Criminal Application No. 348 of 2014, were impleaded as accused nos. 3 and 4. The applicant no.2-Bhupal Dattatray Chavan had expired during the pendency of the application. The applicant Vishwas Pandurang Ugale preferred Miscellaneous Application no. 122 of 2013 before the Sessions Court of Greater Bombay seeking discharge from the proceedings. The said application was rejected vide order dated 27th January, 2013.

5. The applicants in Criminal Revision Application no. 130 of 2018 were impleaded accused nos. 1 and 2. They are Directors of M/s. Samay Tradelink Pvt. Ltd. The said applicants preferred an application for discharge before the Special Court. The said application was rejected vide order dated 29.01.2018.

6. The applicant in Criminal Revision Application no. 131 of 2018, is a company arraigned as accused no.6 in the proceedings. The application for discharge preferred by the said applicant was rejected by Special Court by order dated 29th January, 2018.

7. Learned Advocate for the applicant in Criminal Application no. 348 of 2014 submitted that the applicant no.1 has not played any role in the transaction. He has been falsely implicated in this case. He was not involved in taking any decision or investment in Non-SLR Bonds. The accused R. Madhu Sudan had preferred Revision Application no. 175 of 2014 before this Court. He was at the relevant time working with Karnataka Rajya Kaigarika Sahakari Bank Niyamitha, Bangalore. Vide order dated 03.02.2015, he has been discharged from the proceedings by this Court. The role assigned to the applicant is identical. The learned Sessions Judge has erroneously rejected the application for discharge. The transactions were executed in routine course. No malice can be attributed to applicant. The applicant had no vested interest in executing transactions. He was acting upon the decision taken by the Board of Directors. The applicant has not received any illegal gratification. No offence under Prevention of Corruption Act or IPC can be made out against him. The statements of witnesses does not attribute any overact to the applicant.

8. Learned Advocate for the applicants in Criminal Revision Applications nos. 130 and 131 of 2018 submitted that no offence is made out against the said applicants. They are not public servants. The impugned order passed by the learned Sessions Judge is contrary to law. Although the co-accused R. Madhu Sudan was discharged by this Court, the said fact was not considered by the Special Court while deciding application for discharge. The impugned order reflects nonapplication of mind. The matter can be remanded back to the trial Court for fresh consideration of the application for discharge in the light of the order dated 03.12.2015 passed by this Court in Revision Application no. 175 of 2014. The applicants were mainly dealing with co-operative banks for Non-SLRs bank; the transaction was routed in routine course. The applicants' Company used to sell and buy Non-SLR Bonds as well as other Brokers in the market. The applicants were not concerned with how the bank offers the same Bonds to another person in the market. The prosecution has not brought any evidence to show that the applicants were in touch with the officials of other UCBs during the relevant period. The offence of cheating is not made out against the applicants. The provisions of Prevention of Corruption Act are not applicable to the applicants. It is a commercial transaction. No element of crime is involved.

9. Learned Advocate for the respondents-CBI submitted that the offence is of serious nature. At the stage of discharge, the Court is required to see whether *prima facie* case is made out. There is sufficient evidence indicating involvement of the applicants. The learned Sessions Judge has rightly rejected the application for discharge. The investigation revealed the involvement of these applicants. The applicant in Criminal Application no. 348 of 2014 has played a vital role. He was the Assistant General Manager with Vasantdada Shetkari Sahakari Bank Ltd. He was involved in signing the deal slips, delivery instructions slips as well as cheques which were signed by the applicant. The decisions in purchase and sale of Non-SLR Securities were taken by applicant who used to interact with the prospective buyers/sellers and finalizing the prices for the transaction so that the applicant used to place the transaction before the Board for other information. As per the Investment Policy of the Bank, purchase and sale transactions are to be carried out based on periodical report. The decisions were taken without following the available Fixed Income Money Market and Derivatives Association of India (FIMMDA) rate which caused huge loss to the bank. There is sufficient oral and documentary evidence against the applicant. The applicants in Criminal Application nos. 130 of 2018 are the prime accused in this case. Their role has been described in the chargesheet. There is evidence by way of statements by the Officers of UCBs. The applicants were instrumental in carrying out sale of Bonds with the UCBs who suffered losses. There is evidence that the Officers have misrepresented and submitted wrong information to the higher authorities. The applicants cannot be discharged from the proceedings. The applicant in Criminal Revision Application no. 131 of 2018 is the Company. The application has been filed through the Director of the Company. There is sufficient evidence against the said applicant. The learned Sessions Judge has considered the nature of evidence against all the applicants and rightly rejected the applications for discharge.

10. It is true that the co-accused R. Madhusudan had preferred Revision Application no. 175/2014 before this Court challenging the order passed by the trial Court rejecting the application for discharge. Vide order dated 03.12.2015, the revision application was allowed. While allowing the said application, it was observed that there was no material to indicate that the said accused had received or accepted or agreed to accept any gratification rather than legal remuneration and no offence under the Prevention of Corruption Act is leviable against him. It was also observed that the Board of Directors were aware that the loss would be caused to the bank due to purchase but looking to the nature of Bonds, the Board of Directors may have failed that on sale of Bonds, in future, it would lead to profit. No offence under IPC can be alleged against the said person.

11. However, on perusal of the chargesheet filed in the present proceedings, I find that there is sufficient evidence to show the involvement of the applicants in commission of offences. At the stage of discharge, the Court is not required to embark upon an enquiry and decide the veracity of the statements of witnesses. I have perused the statement of Sh. Madan Vishwanathrao Patil, statement of Sh. Prasad Pandurang Karganikar and various other witnesses. I have also perused the impugned orders rejecting the application for discharge and did not find any infirmity in the said orders. There is substantial evidence collected during the course of investigation to show that although transactions of purchase of Bonds were at the instance of accused nos. 1 and 2, initiation was taken by the accused nos. 1 and 2 and both the banks purchased large number of Bonds at inflated rates in violation of directions of Reserve Bank of India and without considering the rates of the Bonds, has Fixed Income Money Market and Deriatives Association of India (FIMMDA). After the purchase of Bonds, the same were sold to Alavi Co-operative Bank in Vadodara. The Bonds were purchased by M/s. Samay Tradelink Pvt. Ltd, of which accused nos. 1 and 2 were Directors. The banks sold the Bonds purchased at a very low price to Alava Co-operative Bank, Ltd. and Alavi, in turn, transferred the Bonds to M/s. Samay Tradelink Pvt. Ltd and hence there is sufficient evidence to draw inference that the transactions of purchase and sale of Bonds were managed by accused nos. 1 and 2 for their benefit and they were acting in connivance with each other to cause loss to respective co-operative banks.

12. Statements of A. N. Subharao, Manager of RBI, Urban Bank Department, Mr. Chandrasekaran Ebenezer Srinivasan Azariah, Chief General Manager of State Bank of India and Ms. Arwa Shabbir Tambawala, Assistant Manager of FIMMDA, discloses that they had examined purchase and sale transactions by Vasantdada Shetkari Sahakari Bank Ltd. and Karnataka Rajya Kaigarika Sahakari Bank Niyamitha, Bangalore. These witnesses have stated that the Bonds were purchased by both the banks at very high rate in comparison to the rates valued by FIMMDA about 25% to 30% more price per Bond was paid by both the banks while purchasing the Bonds. *Prima facie,* the applicant-accused Vishwas Ugale were responsible for the transactions. The bank officials were required to safeguard the interest of the bank. They did not verify the rates of the Bonds which were to be purchased and did not take any care when the Bonds were sold to Alavi Co-operative Bank at low price. Statements of Prasad Karganikar and Madan Patil reveal that Brokers used to visit Vasantdada Shetkari Sahakari Bank Ltd., and they were offering various schemes to invest money. There were directions by RBI not to purchase Securities from the market. In violation of circulars, the Brokers were contacted. Vasantdada Bank purchased 3499 Bonds at inflated price. Statement of Saurabh Patil mentions that, at the time of sale, the Bonds were not in the name of Prantij's Bank. The Bonds were in possession of M/s. Samay Tradelink Pvt. Ltd. Statement of witnesses indicate the involvement of all the applicants. The idea to sell the Bonds to the Banks was apparently originated in the minds of accused nos. 1 and 2 and they took help of their banks and sold the Bonds at inflated rate to the two banks and, in turn, the Bonds were again sold to Alavi Co-operative Bank who subsequently sold them to M/s. Samay Tradelink Pvt. Ltd. This shows the connivance and conspiracy to cause loss to the aforesaid banks. Although it is contended that the Board of Directors had authorized the accused to enter into deals, at this stage, such defence cannot be accepted. There is no material that correct information was submitted by the Officers of the bank to the Board of Directors. Considering the aforesaid circumstances, no case is made out to discharge the applicants herein.

13. The statements of various witnesses indicate that M/s. Samay Tradelink Pvt. Ltd. and its Directors are the main masterminds of transactions. The investigation revealed that on the date of purchase of subject Bonds, the applicant Vishwas Pandurang Ugale was involved in preparing deal slips showing that the Securities are purchased from The Prantij Nagarik Sahakari Bank Ltd and Kukarwada Nagrik Sahakari Bank to show that the Bonds are purchased from UCBs in compliance of RBI guidelines. In fact, on the date of purchase, these banks were not in possession of the said Securities. On the same day, the above banks had purchased the Securities from M/s. Samay Tradelink Pvt. Ltd. Hence, the applicant Sh Ugale and the other accused were acting in connivance with each other. The accused no.6-Company was aware that there were restrictions from RBI for directly dealing by UCB's with Brokers in purchase/sale of bonds/securities. The company purchased Bonds at lower rate and managed to sell the same to five UCB's at a higher rate and earned profit. The statements of prosecution witnesses and the documents in chargesheet indicate that the accused company entered into purchase and sale transactions of Non-SLR Securities viz. Zero Coupon Bonds and Deep Discount Bonds with five Urban Co-operative banks. The accused-company was engaged in finalising deals and confirming rates with bankers. Company has cheated five Urban Co-operative banks.

14. There is no infirmity in the impugned orders passed by the trial Court. Hence, I pass the following order :

ORDER

(i) Criminal Revision Application no. 130 of 2018; Criminal Revision Application No. 131 of 2018 and Criminal Application No. 348 of 2014, are rejected.

15. At this stage, learned Counsel for applicant submitted that interim relief granted by this Court may be continued for period of four weeks to enable the applicants to challenge the order before the Higher Court.

16. The request is opposed by the learned Counsel for CBI. However, considering the fact that the interim order was running in favour of the applicant, the same is extended by four weeks.

17. Applications are disposed of.

PRAKASH D. NAIK, J

ANDREZA PEREIRA Digitally signed by ANDREZA PEREIRA Date: 2023.08.21 17:57:13 +05'30'