IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1047 OF 2022

Philomina Dias ...Petitioner

Versus

Central Bureau Of Investigation & Anr. ...Respondents

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Mr. Sanjeev Kadam i/by Mr. Akhilesh Singh, Advocate for the Petitioner.

Mr. Bharat Mirchandani h/f Mr. Hiten Venegavkar for Respondent No.1-C.B.I.

Ms. Pallavi N. Dabholkar, APP for the Respondent No.2 – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 16th JUNE, 2023.

PER COURT:

1. The Petitioner is aggrieved by order dated 01.03.2022 passed by the learned Special Judge (CBI) in C.B.I. Special Case No.4 of 2018 rejecting the application for discharge.

2. The case of the prosecution is as follows :-

The CBI, EOW, Mumbai had registered the case bearing No. R.C. 14/E/2017/CBI/EOW/Mumbai dated 31.08.2017 for the offences punishable under Sections 120-B of Indian Penal Code (for short 'IPC') r/w Sections 420, 468, 468, 411 and 471 of IPC and Sections 13(2), 13(1)(d) of Prevention of Corruption Act against present applicant/accused No.11 Philomina Dias, on the basis of written complaint received from D.G. Kallatti, the DGM of Central of India against M/s. Ashok Property Developers and M/s. Aashish Communications System and its Director/Guarantor 1) Ashok Kumar Singh, Proprietor of M/s. Aashish Communication Systems; 3) Philomina Dias (Applicant/Accused No.11), 4) Shrikant Shankar Pawar, Proprietor of M/s. Dattaguru Construction and M/s. Shree Enterprises; 5) Manita Rajesh Agarwal, owner of M/s. Naman Sales; 6) Sanjay Kumar Yadav, owner of M/s. Grace International and Promoter/Director of M/s. Ashok Infra Energy Project Ltd; 7) Nitin Ashok Maniyar; 8) Hitendra Virendra Gangwar, M/s. Rachana Valuers & Surveyors; 9) Mehul @ Sadashiv D. Pandey; 10) Janardan D. Pande; 11) Kalpesh Jayram Koshti; 12) Arvind Atma Sethi (Bankar); 13) Subhas K. Roy (Banker and 14) Ramesh Madan Patel that they entered into criminal conspiracy in the year 2011-12, cheated the Central Bank of India, Peddar Road Branch, Mumbai and Mumbai Main Officer, Mumbai of its funds to the tune of Rs.17 Crores balance of outstanding Rs.32,52,30,749/- by creation of false and fabrication of documents, dishonestly suppressing the material information, offering immovable property as collateral security by over valuation for availing credit facility and also mis-utilization of credit facility.

3. Learned Advocate for the Petitioner submitted that, there is no evidence to frame charge against the Petitioner. The Petitioner was the guarantor and the properties which were furnished as collateral security and the documents relating to those properties were not fabricated. The Petitioner had not participated in the crime. She was not aware about the credit facilities which were alleged to be taken on the basis of alleged fabricated documents. She is the wife of the co-accused. The co-accused is the borrower. Although it is alleged that the amount of Rs.3,00,000/- was transferred into the account of the Petitioner, there is no document on record to show that such amount has been credited into the bank account of the Petitioner. The Petitioner did not receive any amount of Rs.3,00,000/- which could be termed as proceeds of crime.

4. Learned counsel for Respondent No.1 submitted that the Petitioner had acted in connivance with the co-accused. There is charge of conspiracy. The Petitioner is the wife of co-accused Ashok Kumar Singh. Properties were given as collateral security for loan facility availed by the co-accused. She is the beneficiary of the crime proceeds for an amount of Rs. 3,00,000/-. At the stage

discharge, the Court is not required to hold a detailed roving inquiry. The prosecution has made out prima facie case to proceed against the Petitioner. Learned Special Judge has considered these aspects and rejected the application for discharge. At this stage, the defence of the accused cannot be considered.

5. Learned counsel for the Respondent No.1 has relied upon the following decisions:

i. *Central Bureau of Investigation Vs. Hari Singh Ranka and Ors.* passed in Criminal Appeal No. 1289 of 2017 arising out of Special Leave Petition (Cri.) No.5857 of 2017 passed by the Hon'ble Supreme Court vide Judgment and Order dated 18th July 2017.

ii. *Sushil Sure Vs. C.B.I. & Anr.* in Criminal Appeal No. 1109 of 2011 arising out of Special Leave Petition (Cri.) No.6113 of 2009 passed by the Hon'ble Supreme Court vide Judgment and Order dated 6th May, 2011.

6. Perused the impugned order passed by the trial Court and the documents on record. The Petitioner is the wife of accused. It is not in dispute that, she stood as guarantor. The documents relating to the property which has been kept as collateral security were not fabricated. Although it is alleged that the amount of Rs.3,00,000/- has been transferred into the account of the Petitioner, the prosecution has not been able to justify as to which

account of the Petitioner, the said amount is transferred. There is no cogent evidence to establish even prima facie to show that the Petitioner is beneficiary of the proceeds of crime. The written complaint which was treated as FIR alleged that, Petitioner is the wife of Mr. Ashok Singh. She stood guarntor for overdraft facility. Out of the three properties mortgaged as collateral security, the two properties were owned by the Petitioner and one property was owned by the Ashok Kumar Singh. However, there is no dispute with regards to the properties mortgaged in this account. Ashish Kumar Singh, son of Ashok Kumar Singh Applied for overdraft facility for an amount of Rs.2.75 Crores. The Petitioner and Ashok Singh were guarantors of said facility. Four properties were given as security by way of mortgage in this account. Out of four properties, three properties were owned by Petitioner and one property owned by Mr. Ashok Singh. However, there is no dispute with regards to the properties mortgaged in this account. Statement of Vilas Patkar refers to the fact that, Petitioner is having bank account in Syndicate Bank with Ashok Kumar Singh and beneficiary of Rs.3,00,000/- from account of Grace International owned by Sanjay Yadav. The Bank statement of Petitioner with Syndicate Bank is produced by learned Advocate for the Petitioner and contended that the said statement does not show any entry of Rs.3,00,000/- being credited from Grace International to account of Petitioner. Nothing incriminating was produced by prosecution to support transfer of proceeds of crime to Petitioner. The evidence on record does not attribute any other overt act to the Petitioner having participated in the crime or connivance with the co-accused in the alleged transaction. It is true that, at the stage of discharge, the Court is not called upon to conduct a roving inquiry. However, to frame charge there has to be prima facie evidence which is lacking in the present case qua the Petitioner. In these circumstances, the Petitioner is required to be discharged from the impugned proceedings.

ORDER

i. Writ Petition No.1047 of 2022 is allowed;

ii. The order dated 01.03.2022 passed by the learned Special Judge (CBI) in C.B.I. Special Case No.4 of 2018 is quashed and set-aside.

iii. The Petitioner is discharged from the proceedings in CBI Special Case No.4 of 2018 pending before the Special Court, C.B.I. at Greater Bombay.

iv. Petition is disposed off accordingly.

(PRAKASH D. NAIK, J.)