IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 165 OF 2022

Dinesh K. Kargal ...Applicant

Versus

Union of India & Anr. ...Respondents

....

Mr. Sudatta Patil a/w Ms. Priyanka Rane Patil, Mr. Vikramsingh Parmar, Advocate for the Applicant.

Mr. Kuldeep Patil, Spl. P.P. a/w Mr. Nikhil G. Hire for Respondent-UOI.

Mrs. Anamika Malhotra, APP for the Respondent – State.

....

CORAM : PRAKASH D. NAIK, J.
DATE : 28th JULY, 2023

P.C.:

1. The applicant is aggrieved by the order dated 3rd February 2022 passed by the learned Special Judge (C.B.I.) Gr. Bombay rejecting the application for discharge filed by the applicant in CBI Special Case No.282 of 2020.

2. The prosecution case is as follows:

i) Complaint was forwarded by Chief Vigilance Officer MbPT, Mumbai on 03.06.2016 alleging commission of offences under Sections 120-B, 420, 465, 468 & 471 r/w Section 511 of Indian Penal Code (for short "IPC") and Section 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988.

ii) The then Senior Deputy Director E&T, Mb.P.T. Shri. Nishant K. Pathare entered into conspiracy with private contractors viz. Shri. Shrinivasa Rao, the then proprietor of M/s. Suntel Engineers, Chembur, Shri, Tirupati Makku Reddy, Proprietor, M/s. Tirumal Constructions, Chembur, Shri. Srinivas Makku Reddy, Proprietor, M/s. Skylark Enterprises, Chembur, Shri. Dinesh K. K. MD, M/s. Dinesh Engineering Pvt. Ltd. Navi Mumbai, for getting the tender work awarded to them on the basis of bogus quotations, forged documents supporting work experience to cheat Mumbai Port Trust. The accused furnished false site inspection reports. Financial loss of Rs.1.13 Crores was caused to Mumbai Port Trust. The accused attempted to cheat Mumbai Port Trust to the tune of Rs.3.81 Crores. There were irregularities in processing of tender and award of work with respect to three tenders of Mumbai Port Trust.

iii) The applicant was aware that the documents pertaining to his firm such as work experience were being used for submitting bids in response to the tenders of MbPT. The purchase orders/work experience certificates submitted by the applicant were forged as per the eligibility of the tenders. The applicant abetted with Shri. Srinivas Rao and Shri. Tirupati Makku Reddy in manipulating the price bids by which, the beneficiary firm was able to obtain the work order at a price pre-decided by itself.

3. The applicant preferred application for discharge before the trial Court which has been rejected vide order dated 3rd February 2022.

4. Learned Advocate for the applicant submitted that the charge against the applicant is groundless. The applicant cannot be prosecuted on the basis of conjectures. Prima facie there is no evidence to frame charge against the applicant. There is no evidence to substantiate that the applicant was conspirator in the alleged crime. The applicant was not involved in commission of forgery of documents. The applicant is not beneficiary of the purported transactions. At the most the role attributed to the applicant that he had handed over the documents of his firm to the co-accused. Only on the basis of such factual aspects, no adverse inference could be drawn against the applicant. The applicant had no role to play in the tender process. The documentation was allegedly prepared by the co-accused. There is no evidence to infer that the applicant had any intention to cause wrongful loss to complainant and wrongful gain to himself.

5. Learned Advocate appearing for the Respondent-CBI submitted that prima facie case is made out showing involvement of the

applicant in the crime. The applicant was a conspirator. He acted in connivance with the co-accused. The applicant had forwarded his documents to the co-accused to enable them to indulge in fraudulent activities. There were irregularities in processing of tenders and award of work. The applicant played active role in turning the process of tendering into farce. The applicant was aware that documents pertaining to his firm for being used for submitting bids in response to tenders of MbPT. The documents submitted by the applicant were forged by the co-accused. At the stage of framing charge, detailed inquiry is not warranted. There is sufficient evidence to proceed against the accused.

6. The prosecution case proceeds on the basis that the public servants of MbPT had entered into criminal conspiracy with private contractors for getting the tender work awarded to them on the basis of false quotations, forged documents to deceive MbPT.

7. Perused the charge-sheet which includes the statements of witnesses and the documents collected during investigation. The material on record at the most would indicate that the applicant had handed over his documents to the co-accused. The prosecution is trying to draw an adverse inference against the applicant on the basis of the said conduct. Undisputedly, the prosecution case is that the documents

were misused by the co-accused. The applicant is not involved in fabricating documents. The applicant is not the beneficiary of the transactions. The tender was not obtained in favour of the applicant. There is no evidence to show that the applicant has participated in any process of obtaining the tender. The case of the prosecution against the applicant that the charge against the applicant is of conspirator. However, conspiracy cannot be inferred on the basis of imagination. There has to be prima facie material to support the charge of conspiracy. There is no evidence to establish that the applicant had acted in connivance with the co-accused in deceiving MbPT or attempting to deceive them. It is a settled law that in the absence of prima facie evidence to frame the charge, the accused cannot be prosecuted. In the absence of cogent evidence, the applicant cannot be compelled to face the prosecution. In these circumstances, the applicant deserves to be discharged. Hence, I pass the following order:

ORDER

i. Criminal Revision Application No.165 of 2022 is allowed;

ii. Impugned order dated 3rd February, 2022 passed by the Special Judge (CBI), CBI Special Court below Exh.36 in CBI Special Case No.282 of 2020 is quashed and set aside. The

Applicant is discharged from Special CBI Case No.282 of 2020.

iii. Application stands disposed off

(PRAKASH D. NAIK, J.)