

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 111 OF 2023

Rajendra Shyamlal Bhatnagar

...Applicant

Versus

State Of Maharashtra

...Respondent

....

Mr. Girish Kulkarni, Senior Advocate a/w Mr. D. J. Juikar and Ms. M. G. Kulkarni i/by Mr.Kripashankar N. Pandey Advocate for Applicant.

Ms. P. N. Dabholkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 13th JULY, 2023.

P.C.:-

1. The applicant is aggrieved by order dated 23rd February 2023 passed by the learned Special Judge (A.C.B.) and Sessions Court for Greater Bombay rejecting the application for discharge in A.C.B. Special Case No. 35 of 2016.
2. The applicant is arraigned as accused No.7 in prosecution initiated vide A.C.B. Special Case No.35 of 2016 for commission of the offences punishable under Sections 120(B), 465, 466, 467, 468, 471, 477(A), 420 read with 34 and Section 109 of Indian Penal Code and Section 13(1)(d), 13(2) of the Prevention of Corruption Act.
3. The prosecution story in nutshell can be summarized as under:-

Rohinton K. Khan is the owner of C.S. No.2/176 admeasuring 2869

sq. yards situated at Malabar Hill Region, Mumbai. M/s. Honesty Builder (accused No.8) had purchased said land from the original owner on 20th February 1979. M/s.Honesty Builder had submitted proposal to B.M.C. on 8th August 1979 for approval through its architect Mr. D. V. Ambekar. On 11th August 1979, the proposal was approved by Mr. Joshi (Ex-Engineer) and Mr. S. B. Ghosh (Sub Engineer). On payment of requisite charges, M/s. Honesty Builder measured and demarcated the property. As per order dated 19th September 1981, the area of property was increased to 3075.93 sq. yards from 2869 sq. yards. It is alleged that, false record was created by the employees of City Survey Office and Land Record Department and on that basis builder and architect submitted amended plan to the B.M.C. for getting more F.S.I.. Based on the letter dated 8th May 1986 issued by B.M.C., inquiry was conducted and subsequently F.I.R. was registered. The applicant as well as various other persons were impleaded as accused. Investigation proceeded, charge-sheet was filed.

4. The applicant preferred an application for discharge before the Sessions Court, which has been rejected vide order dated 23rd February 2023.

5. Mr.Kulkarni, Senior Advocate learned Advocate for Applicant submitted is as under:-

(i) There is no material before the trial Court to proceed against the applicant by framing charge for the alleged offences.

(ii) The applicant is the architect by profession and his services were engaged by M/s. Honesty Builder. He has performed his professional duty. There is no incriminating evidence to show his complicity in the crime. No malice is attributed to the alleged act of submitting the amended plan. The employees of Survey Department i.e. original accused Nos.3 and 4, who were present at the time of carrying out measurement and were involved in submitting requisite documents and were exonerated from the prosecution as the sanctioning Authority had refused to accord the sanction to them.

(iii) The prosecution cannot be based on the inferences, surmises and conjunctures. Merely on the ground that the applicant was architect, it cannot be inferred that he was part of conspiracy along with M/s. Honesty Builder or any other persons, who are allegedly involved in commission of crime to earn extra F.S.I.

(iv) The document on record at the most denote that the applicant had submitted amended plan to B.M.C. on the basis of extract issued by Mr.Hawal bearing plot area 3075.93 sq. yards. Assuming the said Act to be framed, no criminality could be assigned to the applicant for merely submitting the document with the department.

(v) The case of the prosecution is based on the fact that, the area of property is fraudulently increased by the accused. There is no substance in the said allegations. In any case, the applicant is not involved in committing the alleged act. Undisputedly, the applicant was not involved in fabricating

any documents or making any alteration to increase the area. Officers of City Survey office had visited and inspected the property. Neighbouring land owners had given notice about the measurement be carried out. No grievance was made by them about loss of any property. There is no allegation that the applicant or any other person, who are present at the time of measurement and committed by mischief while measuring the area. The factum of document created by the City Survey staff is not in dispute. It is also not the case of the prosecution that certain measurement in the area were increased abruptly or manipulated without any correspondence increases any assessment of land. The process required for demarcation and measurement of land, who was followed.

(vi) The learned Sessions Judge has mechanically rejected the application for discharge preferred by applicant. The proposal for demarcation and survey was submitted by builder and subsequently the concerned staff had visited and surveyed the property and prepared demarcation plan. On verifying the details requisite entries were made in the land record i.e. extracts/PR cards. Post entries, the amended plans were submitted by the applicant. There is no material to indicate that, the land records were forged.

(vii) The applicant was appointment as an architect of the building project and an amended plan was purportedly submitted by the applicant to the Building Proposal Department of BMC. The said department had conveyed

the no objection to the amended plans submitted to them. On 11th January 1983, the applicant had submitted proposal for re-validation of plan and commencement certificate of the building. The said proposal was approved by B.M.C. In the light of the factual aspects it cannot be said that, the applicant had misrepresented the concerned department in any manner. There was no false representation from them. There was no honesty concealment of the vital fact. The applicant was not present at the time of measurements were carried out. The representative was present. Only on the basis of conjunctures, no charge can be framed against the applicant/accused.

6. Learned APP submitted that, at the stage of framing charge, the Court is required to see whether prima facie case is made out. The material on record which form part of charge-sheet is sufficient to frame charge against the applicant. Learned Special Judge has taken into consideration the evidence on record and rightly rejected the application for discharge. The applicant was an architect appointed by M/s. Honesty Builder. He submitted the amended plan. The area was increased. The whole idea was claimed for more FSI. The applicant had acted in connivance with other accused. He was instrumentally in submitting the amended plan. He had knowledge that there is variation in the area. It was increased on the basis of which the amended plan was submitted. Learned APP is averted to the several statements recorded during the course of investigation. She relied

upon the statement of Ganesh Baburao Savardekar, Chandrakant Sadashiv Sutar, Sureshchandra Vasudeo Vadhavkar, Sathish Bhagvan Palav and Bhaskar S. Joshi. It is further submitted that, the sanction to prosecute accused Nos. 3 and 4 was refused. Considering the role attributed to the said accused were acted only on the instructions and had present at the spot, while carrying out measurement of the plan.

7. From the factual analysis of the case, it can be seen that the subject plot was purchased by M/s. Honesty Builder in 1979. Proposal was submitted to BMC for approval in 1979. Property was measured on the basis of requisition by M/s. Honesty Builder. Accused No.2 (M/s. Honesty Builder) had initially appointed Mr.Ambedkar as Architect, who has subsequently expired. Thereafter, services of applicant were engaged as architect. The record indicate that the representative of the applicant was present at the time of carrying out measurement. Subsequently, the applicant had submitted the amended plan to BMC. The amended plan was apparently based on the measurement carried out by the concerned staff. There is no evidence to show that the applicant has in any manner acted in connivance with the staff carried out measurement or with M/s. Honesty Builder. Submissions of amended plan which is based on the measurement carried out is not sufficient to infer criminal liability. It cannot be said even prima facie that the applicant was acting in connivance with other accused. The survey/measurement was conducted by the officer of city survey office.

There is nothing on record to indicate that on showing the variation in the area of the plot. M/s. Honesty Builder had usurped the area from the adjacent plot. In any case as stated above, measurement was carried out by the concerned staff and no ill-motive can be attributed to the applicant while submitting the amended plan. It is also not indicated that measurements were carried out abruptly and there is any manipulation by the applicant. Demarcation and measurement of land was conducted by following the procedure. Statement of Satish Palav was recorded on 6th August 1990. He stated that he is the architect by profession. He referred to the report dated 13th September 1981 prepared by Mr.H. N. Naik, which was lying in demarcation file. He admitted that he had signed the said report. He stated that he was working with M/s. Bhatnagar, Amre and Kothari and he was present at the place of measurement on instructions of Mr. Bhatnagar (Applicant). He was present at the site. He further stated that City Survey staff including Mr.H. N. Naik and Mr. Raut visited the site of the property. Bearing CS No. 2/176 Malabar Hill demarcated and re-measured in his presence and he has signed the papers. Thus, the applicant was not even present at the time of measurement being carried out. Report was prepared by the person as stated hereinabove. I have also perused the statements of various witnesses referred to by learned APP. All these statements, who merely indicate that the applicant has submitted the amended plan. In the light of the nature of material collected during

investigation, the applicant cannot be prosecuted for the aforesaid offences. The prosecution cannot be based on the inferences and conjunctures. Hence, case for discharge is made out.

ORDER

- (i) Criminal Revision Application No. 111 of 2023 is allowed.
- (ii) Impugned order dated 23rd February 2023 passed by the learned Special Judge (ACB) and Sessions Court for Greater Bombay rejecting the application for discharge in ACB Special Case No. 35 of 2016 is set aside.
- (iii) Applicant is discharged from ACB Special Case No. 35 of 2016.
- (iv) Application stands disposed off.

(PRAKASH D. NAIK, J.)