

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1882 OF 2023

Sanjay Kashinath Sawal, Age 62 years,
R/o.Flat No.305, Vishwashish CHS Limited,
Shankar Ghanekar Marg, Dadar (W),
Mumbai-400028.

Petitioner

versus

1. Union of India through CBI, ACB,
Mumbai.
2. The State of Maharashtra

Respondents

Mr.Madhusudan Pareek, Advocate for Petitioner.

Mr.Kuldeep Patil, Advocate for Respondent no.1.

Ms.PN.Dabholkar, APP, for Respondent no.2.

CORAM : PRAKASH D. NAIK, J.

DATE : 12th July 2023

PC :

1. Petitioner is aggrieved by order dated 6th April 2023 passed by Special Judge, CBI, Greater Bombay below Exhibit-194 in Special Case No.12 of 2012 preferred by Petitioner u/s.319 of Code of Criminal Procedure (`Cr.PC`) to implead PW-7 Vidyadhar Kshirsagar as an accused in Special Case No.12 of 2012.

2. Petitioner is prosecuted for offence u/s.120-B r/w 420 of Indian Penal Code and Section 13(2) r/w 13(1)(c)(d) of Prevention of Corruption Act (`P.C.Act`).

3. Petitioner was arraigned as accused no.1 being public servant. It is alleged that accused no.1 while working as a Branch Manager,

Bank of Maharashtra, Girgaum Branch, during the period of 2007-2009 hatched a conspiracy with accused no.2 to defraud the bank. Accused no.1 allowed credit facilities to co-accused including short term loan, which were left unpaid outstanding and accordingly resulted in loss to the bank to the tune of Rs.3,44,33,244/-. The credit facilities were extended to accused no.2 by accused no.1 in violation of guidelines and abusing official position.

4. Charge was framed against accused u/s.420 r/w 120-B of IPC, Section 13(1)(d) r/w 13(2) of P.C.Act.

5. Evidence of 24 prosecution witnesses was recorded. Statements of accused were recorded u/s.313 of Cr.PC. Evidence of one defense witness was recorded.

6. Petitioner preferred an application for arraigning PW-7 Vidyadhar Kshirsagar as an accused in the case. Application was opposed by CBI. Learned Special Judge rejected the said application vide order dated 6th April 2023.

7. Learned advocate for Petitioner Mr.Pareek submitted that case revolves around banking facilities extended to accused no.2 by Bank of Maharashtra, Girgaum Branch, Mumbai wherein accused no.1 was the Branch Manager. During the trial it has come on record that accused no.2 had enjoyed various credit facilities even after transfer of Petitioner, during the tenure of PW-7 Vidyadhar Kshirsagar, who took charge as Branch Manager of Girgaum Branch after transfer of accused no.1 and hence PW-7 is also required to be impleaded as an accused. The Trial Court erred in dismissing the application. PW-7

in his evidence has admitted that he has also extended credit facilities to accused no.2 to the tune of Rs.113.10 lakh making it clear that his role is similar to that of Petitioner in every sense and there is no reason why he should not be impleaded as an accused. Evidence of other witnesses viz PW-6, PW-18, PW-19 and PW-21 reflect that accused no.2 was not only enjoying credit facilities prior to the tenure of Petitioner but also continued to enjoy credit facility during the tenure of PW-7. This fact is admitted by PW-7, which is corroborated by statements of accounts. PW-7 has admitted that he has taken charge as Branch Manager of Girgaum Branch of Bank of Maharashtra on 23rd September 2009. The prosecution case is that short term loans were disbursed during the period from 6th October 2009 to 9th October 2009. This shows involvement of PW-7. Although loans were sanctioned during the tenure of Petitioner, disbursement of part of the same was after PW-7 took charge as Branch Manager. There is nothing on record to show that any efforts were made by Pw-7 to stop disbursement of loan amount. There is nothing to show that he raised any alarm to prevent disbursing the said amount after taking charge as Branch Manager. Trial Court has ignored the substantive evidence available on record in the form of depositions of witnesses. PW-7 permitted disbursing facilities to accused no.2. Section 319 of Cr.PC would come into play if evidence led in the trial discloses offence committed by other person who could be tried along with accused. The Trial Court has ignored the settled law with regards to applicability of Section 319 of Cr.PC.

8. Mr.Pareek has relied upon following decisions :

(i) Hardeep Singh & others Vs. State of Punjab and others –

CDJ-2014-SC-035;

(ii) Sukhpal Singh Khaira Vs. The State of Punjab – CDJ-2022-SC-1331.

9. Learned advocate Mr.Patil appearing for Respondent no.1 submitted that prosecution examined 24 witnesses. Statements of accused are recorded u/s.313 of Cr.PC. Defense has examined one witness. Application u/s.319 of Cr.PC was made belatedly with vested interest. Trial Court has rightly rejected the application. There was no evidence to charge sheet PW-7. Evidence of PW-7 was recorded and he has supported the prosecution case. Thereafter several witnesses were examined and belatedly the application u/s.319 is preferred by the Petitioner. The investigating agency did not find any illegality in the acts of PW-7. Investigation has established that Petitioner has entered into conspiracy with co-accused Romen Patel and misused his power in violation of bank rules with utter disregard to the system and procedures, banking norms and gross abuse of discretionary lending powers and suppression of facts. PW-7 took charge of Branch on 23rd September 2009. Complaint against Romen Patel, Sanjay Sawal (Petitioner) and others was lodged alleging commission of offence during the period from January-2003 to September-2009. During the period from January-2003 to September-2009, PW-7 was neither posted in the concerned branch nor he was found involved in the offence in any manner.

10. Petitioner was working as Branch Manager, Bank of Maharashtra, Girgaum Branch. It is alleged that he had entered into criminal conspiracy with Romen Patel during the period between

2007-2009 and the object was to cheat the bank. Romen Patel availed various credit facilities on the basis of false and bogus documents. Petitioner without verifying the genuineness or otherwise of the documents, had allowed the credit facilities to Romen Patil; at times beyond his delegated financial powers in contravention of instructions of his superior officers and also in contravention rules and guidelines of bank. It is alleged that acts of accused has resulted in wrongful loss of about Rs.3.44 crores to Bank of Maharashtra. The charge was framed against accused. Petitioner was accused no.1 while Romen Patel tried as accused no.2. Evidence of 24 prosecution witnesses was recorded. Vidyadhar Kshirsagar was examined as PW-7. His evidence had commenced on 31st August 2018 and concluded on 7th June 2019. The witness was cross-examined at length by defense. Thereafter evidence of other witnesses was recorded. Statements of accused were recorded u/s.313 of Cr.P.C. One defense witness was examined by accused. Petitioner then preferred application u/s.319 of Cr.P.C to arraign PW-7 as an accused. Learned Special Judge has passed a detailed order examining the evidence on record and law relating to Section 319 of Cr.P.C and rejected the application. I do not find any infirmity in the impugned order. The Trial Court has opined that there is no evidence against PW-7 to summon him as additional accused. The contention of Petitioner is that PW-7 has also played active role in commission of offence. The Trial Court has observed that although PW-7 admitted that during his tenure he had allowed credit facilities to Romen Patel to the tune of Rs.113.10 lakhs from 12th October 2009 to 15th October 2009 and the said credit facility is reflected in the statements of accounts of Romen Patel, but during special internal inspection by Inspection Officials of bank, nothing

incriminating was found against PW-7 to hold that he has committed any illegality or irregularity in allowing credit facilities to accused no.2. PW-7 took charge of the Branch on 23rd September 2009 and till then accused no.1 was working as Branch Manager. The period of working of Petitioner was from 23rd October 2006 to 10th October 2009. Short term loans/credit facilities had been sanctioned to accused no.2 during the period of accused no.1. Once short term loan is sanctioned, it cannot be stopped for disbursement. As per report Exh.28 dated 18th April 2011 there is no allegation against PW-7. On the basis of report filed by PW-1, FIR was registered against accused nos.1 and 2 and on completing investigation charge sheet was filed.

11. Prosecution has examined PW-7. He has been cross-examined at length. After completion of evidence closing purshis was filed by CBI. It is admitted that accused has opened 12 accounts in Girgaum Branch in the name of different companies. Accused no.1 had sanctioned credit facilities including short term loans to 12 accounts of accused no.2.

12. The law relating to Section 319 of Cr.PC is well settled. The provision empowers the Court to proceed against a person not shown to be an accused, if it appears from the evidence that such person has also committed an offence for which he can be tried together with the accused. However, in the present case, there is no such evidence or material brought on record against PW-7 to add him as an accused. In the absence of any cogent evidence PW-7 cannot be impleaded as an accused and forced to face trial. The Trial Court has rightly rejected the application preferred by Petitioner. The petition

is devoid of merits and deserves to be dismissed.

ORDER

- (i) Criminal Writ Petition No.1882 of 2023 is dismissed.

(PRAKASH D. NAIK, J.)

MST