IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 139 OF 2023

Gaurav Vinod Mitra ...Applicant
Versus
Central Bureau Of Investigation ...Respondent

WITH

CRIMINAL REVISION APPLICATION NO. 140 OF 2023

Sunil Purushottam Bagaria ...Applicant
Versus
Central Bureau Of Investigation ...Respondent

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Mr. Bhomesh Bellam i/by Ms. Pritha G. Mitra, Advocate for the Applicant in Cri. Revn. No.139 of 2023.

Ms. Sonal V. Parab a/w Kunal Kamble, Mr. Ramesh Jain i/by Ms. Kirtimala Kamble, Advocate for Applicant in Cri. Revn. No. 140 of 2023.

Mr. Harsh Dedhia, Mr. Shantanu Thorat i/by Mr. H. S. Venegavkar, Spl. P.P., Advocate for CBI in Cri. Revn. No. 139 of 2023.

Mr. Kuldeep Patil, Spl. P.P. a/w Mr. Nikhil Hire, Advocate for CBI in Cri. Revn. No.140 of 2023.

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

CORAM : PRAKASH D. NAIK, J.
DATE : 5th JULY, 2023.

PER COURT:

1. The Applicants in both these applications have assailed the order dated 2nd March, 2023 passed by Learned C.B.I. Special Judge, City Civil and Sessions Court below Exh.-668 allowing the

application preferred by Respondent No.1 vide Exh.-668 and thereby permitting the prosecution to adduce secondary evidence.

2. The Applicants are prosecuted as Accused Nos. 3, 5, 6 and 9 in CBI Special Case No.28 of 2007 for offences under Sections 120-B, 420, 471, 471-A of Indian Penal Code (for short 'IPC') and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. The prosecution case relates to the allegations of criminal conspiracy by Directors of M/s. NBD Pharma Pvt. Ltd. and its related parties with the officials of Central Bank of India. It is alleged that the Directors of Accused company had opened a current account with the bank and applied for working capital of Rs.275 lakhs. The Directors submitted false and exaggerated projections about the working of the company and submitted over valuation about the assets of the companies. The Directors of the company availed all the limits and failed to repay the funds to the bank which resulted in wrongful loss of Rs.244.85 lakhs to the bank as on 31st January, 2023.

3. Impugned order dated 2nd March, 2023 has been challenged on various grounds.

4. Learned Advocate for Applicants submitted that impugned order is erroneous and ought not to have been passed allowing the application preferred by the Respondent No.1. The application

Exh.-668 was preferred by the Respondent No.1 for adducing secondary evidence on 9th January, 2023. Inspite of the fact that the previous applications for similar relief were rejected by the Court, the learned Judge has allowed the said application. The case has been pending in the Court since long. The prosecution had examined about 25 witnesses. The prosecution had preferred the application for secondary evidence vide Exh.-379 on 13th February, 2018. The application was rejected on the same day. Subsequently, CBI preferred application for adjournment on the ground that the documents are required to be produced. The Court granted time to CBI. Thereafter, the application vide Exh.-392 was preferred by CBI for production of documents which was allowed vide order dated 20th March, 2018. Thus, the CBI had sought time to produce the original documents after rejection of the first application for adducing secondary evidence. Subsequently, another application was preferred vide Exh.-411 on 17th July, 2018 with the prayer for permission to adduce secondary evidence. The said application was rejected by order dated 17th July, 2018. Thus, the previous application for leading secondary evidence preferred by Respondent No.1 was rejected by trial Court and time was sought for production of original documents. However, instead of producing the original documents third application was preferred vide Exh.-668 which has been allowed. While preferring the third application it was contended that the requisite documents were lost and reliance is placed on the letter issued by Central Bank dated 19th September, 2022 wherein it was stated that the documents are lost. It is further submitted that letter dated 19th September, 2022 refers to the earlier letter forwarded by Central Bank of India dated 23rd March, 2018 and that the information about loss of documents was already provided to CBI. Thus, although the CBI was aware that the documents are not available, applications were made for adducing secondary evidence and on rejection subsequent application for adjournment and application for seeking time to produce original documents were preferred. The CBI has been protracting the trial on the aforesaid ground. In the absence of any cogent reason the learned Judge ought not to have allowed the said application.

5. Learned Advocate for Applicant has relied upon the following decisions :

i. *State of Rajastan and Ors. V/s Khemraj and Ors., (2000) 9 SCC 241.*

ii. *Shri Mahalaxmi Shikshan Samiti, Goa and others V/s. Manikrao Krishnarao Dessai and others, 2022 (1) Mh.L.J. 262.*

6. Learned Advocate appearing for Respondent - CBI submitted that original documents are not available and in the absence of original documents the secondary evidence can be adduced. The previous applications were rejected on the ground that it is not the case of the CBI that the original documents are not available. However, the Central Bank has now informed that the requisite documents are lost and hence permission can be granted for adducing secondary evidence. In the interest of justice the trial Court has allowed the said application and permitted CBI to adduce secondary evidence. No prejudice would be caused to the Applicants as their rights to defend themselves were protected under the law.

6. While allowing the application Exh.-668, the learned Special Judge has noted that the previous applications with similar prayers were rejected. In the earlier application it was mentioned that all the originals were filed in DRT and certified copies of D-1 to D-200 were obtained from DRT. The DRT proceedings are disposed off in 2008. Considering the averments in the previous application the said applications were rejected. The order further refers to the letter dated 19th September, 2022 whereby the bank had informed the CBI that vide letter dated 23rd March, 2018, Bank had already

informed CBI that the documents which were traced out were already submitted to CBI and rest of the documents could not be procured. The Court noted that the CBI was aware as on 23rd March, 2018 that some documents are lost by bank and cannot be traced out. Order also makes reference to the rejection of application Exh.-379 on 13th February, 2018. However, the reason for allowing the application Exh.-668 is that after rejection of previous application the CBI had moved the bank providing the documents hence the bank has replied stating that the documents are lost. Hence, the application is maintainable and since the originals are lost by a bank it is necessary to allow the CBI to prove the documents by secondary evidence.

7. It is true that the proceedings are pending before the trial Court since long. The prosecution has examined several witnesses. The issue relates to the documents D-1 to D-200. Undisputedly, the CBI had preferred the first application for adducing secondary evidence on 13th February, 2018. In that application it was contended that since all the original documents were with Debt Recovery Tribunal, certified copies were collected from DRI and those are available with the Court hence, the prosecution may be allowed to lead secondary evidence. Apparently, the said

application was rejected 13th February, 2013. It is pertinent to note that the said application proceeded on the basis that the originals documents were with DRT and certified copies are available with the Court. No doubt the CBI then preferred applications for producing the original documents. They could not succeed as the documents were not available. Hence, application Exh.-411 was preferred on 17th July, 2018. In the said application it was contended that the documents mentioned in D-102, 103 and 134 are certified copies. Central Bank vide their letter dated 20th May, 2018 informed CBI that they could not locate the document D-134 and they provided attested copies. Vide letter dated 20th May, 2018 the Central Bank had stated that they could not find original documents and the aforesaid documents were collected as certified copies and the same can be read in evidence. The application was opposed at the instance of Accused. The trial Court however rejected the said application primarily on the ground that the documents D-102, 103 and 134 are xerox copies and certified by Senior Manager Central Bank. The application is not supported by affidavit. It is not the case of prosecution that originals are destroyed in natural and unnatural calamities or lost. The application for adducing secondary evidence on document D-1 to D-200 filed by the prosecution vide Exh.-379 was rejected on 13th

February, 2018. Hence, the said application was devoid of any substance. However, while filing the third application vide Exh.668, it has been stated that vide letter dated 7th September, 2022 the CBI made requisition to the Central Bank to produce original documents in order to enable the prosecution to file the same before the Court. On 19th September, 2022 the bank had informed that the required documents were lost and cannot be found. Inspite of best efforts the prosecution is unable to produce the original documents which were reported by Central Bank of India as lost from their records. Vide letter dated 18th November, 2022 the prosecution has submitted the original letter received from Central Bank of India before the Court. Reference was also made to the order dated 13th August, 2018 highlighting the reason for rejection of previous application. Alongwith the application the Respondent No.1 has also filed affidavit in support of the application adducing secondary evidence. Thus, the distinctive factor which is to be noted from the previous application and the third application which is allowed by the learned Judge is that there was specific averment supported by the letter of Central Bank of India that the documents are lost and considering the averments in the application the learned Special Judge has allowed the said application. Though it appears from the letter dated 19th

September, 2022 which was placed on record that while filing the third application, the Central Bank had stated that the CBI were earlier informed vide letter dated 23rd March, 2018 about loss of documents. Assuming that the said intimation was given, the fact that the documents were lost. Considering the nature of the allegations and in the interest of justice and factual aspects as stated above the prosecution must be permitted to adduce the secondary evidence. The decisions relied upon by Applicants were decided in the facts of those cases. Hence, I do not find any reason to interfere in the impugned order.

ORDER

. Criminal Revision Application No.139 of 2023 and Criminal Revision Application No.140 of 2023 are rejected.

(PRAKASH D. NAIK, J.)