

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.183 OF 2023

Anil Goel .. Applicant
Versus
Union of India & Anr. .. Respondents

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Mr.Aabad Ponda, Senior Advocate with Adithya Iyer, Aishwarya Kanthawala, Advait Helekar, Manuj Borkar and Nyayosh Bharucha for the Applicant.

Mr.Shriram Shirsat with Shekhar Mane, Janvi Mate and Karishma Rajesh for the Respondent No.1/UOI.

Mr.Y.M.Nakhwa, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.
DATED : 25th OCTOBER, 2023

P.C:-

1. F.I.R.No.RC/18(A)/2015 dated 18/12/2015 is lodged by the CBI, ACB, Cochin for the offences punishable under Sections 7, 12, & 13(2) read with 13(1)(a) & (d) of the Prevention of Corruption Act, 1988 (for short, **“the P.C.Act”**) read with Section 120-B of the Indian Penal Code (for short, **“the IPC”**). A primary charge-sheet was filed against the other accused persons named in the F.I.R. , leaving out the Applicant and even during the course of investigation from 2015 to 2019, he was never arrested.

On 31/07/2019, C.B.I. filed the supplementary charge-sheet against the Applicant, accusing of committing an offence under Section 11 of the P.C. Act.

The allegation levelled against him is that, while functioning as Chief Commissioner of Income Tax (CCIT) from the period between 01/01/2014 to 31/12/2015, he occupied a flat (guesthouse) belonging to M/s Heera Constructions, without payment of any rent. It is a claim of the C.B.I. that as M/s Heera Constructions fell within the assessment jurisdiction of the Applicant, the act of staying in the flat, without payment of rent, constitutes the offence under Section 11 of the P.C. Act.

The investigation had revealed that Heera Constructions had taken the subject flat used by it as guesthouse on lease from another private person. On being taken on lease, the lease rent was paid by it. The Applicant is alleged to have stayed in the Apartment, free of cost, by abusing the official position, as Chief Commissioner of Income Tax, Thiruvananthapuram. It is alleged that rent of Rs.4,40,000/- was paid by M/s Heera Constructions Pvt. Ltd. to the owner of the Apartment.

The charge-sheet also allege that Mr.Sarath (Accused No.2), the Income Tax Officer (ITO), knowing that M/s Heera Constructions (Heera Builders) has official dealing with Mr.Anil Goel (Applicant), told Shri Ram Pillai Bhadra Kumar, the Chartered Accountant and Income Tax Consultant for M/s Heera Constructions, to arrange a guesthouse and, hence, Apartment No.1 A in Heera Vermont Palace, was taken on lease from the owner of the Apartment. It is alleged that Heera Builders paid rent of Rs.20,000/- per month for the period from February 2014 to January 2015 (12 months) and Rs.25,000/- per month from February 2015 to September 2015 (8 months) i.e. Heera Builders paid total rent of Rs.4.4

lakhs to Mrs.Namma Jayan for the stay of the Applicant in the flat.

2. The Applicant filed an application under Section 406 of the Code of Criminal Procedure, 1973 (“CrPC”), seeking transfer of the proceedings pending before the Special Judge at Thiruvananthapuram to any Special Court at Mumbai and the Apex Court, by order dated 28/03/2022, transferred the proceedings to the Special Court at Mumbai, with direction that the proceedings shall be decided expeditiously.

Subsequent to the transfer of the proceedings, the Applicant moved an application for his release on bail, post filing of the charge-sheet on the ground that, he was never arrested during investigation and the same is allowed by the Special Court for C.B.I. at Greater Bombay on 19/09/2022.

3. In CBI Special Case No.751 of 2022, the Applicant moved an application for discharge under Section 227 of the CrPC, by submitting that on a bare perusal of the applicable Section 7 of the PC Act, it is evident that in order to sustain an allegation under Section 11, public servant must accept or obtain or attempt to obtain for himself, or for any other person, “any valuable thing without consideration” or for a consideration, which he knows to be inadequate.

It was, therefore, submitted that since the Applicant had borne all the charges i.e. phone bill, electricity bill and society maintenance charges amounting to Rs.50,000/- for the flat/guesthouse for the entire period, when he was deputed in

Kerala notwithstanding the fact that he used only one room not more than eight months, in no way it can be alleged that he has received “any valuable thing”. It is also submitted that he was never benefited in any manner and has unjustly enriched himself, as there is no reference to the reciprocal benefit to the owner of the flat/guesthouse.

The application is rejected on 13/02/2023 by the Special Court for CBI, by recording as under :-

“44. After perusal of charge-sheet it appears that applicant has occupied said apartment for the period from February, 2014 to September 2015, which has been taken by assessee on lease from Nanma Jayan, on payment of monthly rent. Rent for the stay period of applicant has been paid by assess to original owner. Applicant has not paid any rent for the said period nor he intends to vacate the said apartment, in spite of repeated demand to applicant. The act and conduct on part the applicant, being Public Servant attract the provisions of section 11 of the P.C.Act. Prima facie offence under section 34 and 120-B of the IPC is not applicable. As per allegation of CBI, Mr.Sarat, under section 12 of the P.C. Act had abetted offence punishable under section 11 of the P.C.Act. However, as sanction to prosecute accused No.2 Sarat, Income Tax Officer, was refused therefore, he was not charge-sheeted in the instant case.

45. Admittedly, there is sufficient evidence in the form of oral and documentary evidence on record which proved the payment of monthly charges towards maintenance and electricity in respect of said apartment for the period February, 2014 to September, 2015 by the applicant as he was occupying and residing in the said apartment.”

4. The term “valuable thing” was construed in the impugned order, as something, which have money value or market value and, since, *prima facie*, there is sufficient evidence indicating that the Applicant stayed in the Apartment and failed to pay the rent to the tune of Rs.4.4 lakhs to the assessee -M/s Heera Constructions, it would

amount to “valuable thing” within meaning under Section 11 of the P.C. Act. Recording that the material contained in the charge-sheet, by no stretch of imagination could be considered as groundless and considering that there is sufficient ground to proceed against the Applicant in the trial, the application came to be rejected.

5. The learned senior counsel Mr.Ponda representing the Applicant submit that the term “valuable thing” in Section 11 of the Prevention of Corruption Act is replaced with the term “undue advantage” and the question, which he pose for consideration is, whether from the reading of the charge-sheet, there is material indicating that the Applicant has obtained a valuable thing, which necessarily must have a nexus with the official functions and, since, it is not the case of the prosecution that either the owner of the flat or M/s Heera Builders was assessed by the Applicant in his capacity as Chief Commissioner of Income Tax or that there was any connection established between him and M/s Heera Builders, on any count he was concerned in any proceedings or business transacted or about to be transacted by him in the capacity as public servant, the offence cannot be made out. In absence of establishing what is the “valuable thing” and the nexus of Heera Builders to his official duty having been established, Mr.Ponda would submit that the impugned order, refusing discharge cannot be sustained.

Per contra, Mr.Shirsat, the learned counsel appearing for the C.B.I. would support the impugned order, by submitting that Section 11 pre-supposes three things; the accused must be

a public servant, he accept any valuable thing without consideration and third, the receipt must be from a person with whom the public servant has official dealings.

According to him, when Section 11 is carefully analysed, it does not lead to an inference that the demand of illegal gratification is required to be proved by the prosecution.

In this case, the Applicant stayed in the Apartment leased by the assessee under his jurisdiction during the period from February 2015 to September 2015, without paying any rent, which the assessee firm-Heera Constructions paid to the owner of the Apartment amounting to Rs.4.4 lakhs and this amounted to undue favour received from the assessee under pressure. According to Mr.Shirsat, there is sufficient evidence in form of oral evidence regarding non-payment of rent by the Applicant and the fact is that he did not vacate the premises inspite of various requests by the assessee. He would reply upon the statement of Shri Abdul Rashid Babu, Managing Director of M/s Heera Builders, who has given the statement that the Applicant did not vacate the flat nor did he pay any rent for the period of his stay and nothing could be done, as the assessee was under the threat of harassment by the Income Tax authorities, if there was insistence to vacate the flat.

6. Before I turn to the facts of the case, it is necessary to make reference to Section 11 of the P.C. Act as it read before it's amendment in the year 2018 :-

“11. Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by

such public servant.- Whoever, being a public servant, accepts or obtains or agrees to accept or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration, which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person, whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.”

From reading of the aforesaid provision, it is evident that the act of a public servant, accepting or obtaining or attempting to obtain, either for himself or for any other person, any “valuable thing”, without consideration or for an inadequate consideration, from any person whom he knows to have been or to be likely to be concerned in any proceeding or business transacted or about to be transacted by the public servant or has any connect with his official position, then such an act would amount to an offence under Section 11.

On reading the said provision, Mr.Shirsat would pick up the words “business transacted or about to be transacted by such public servant” and based on this, his submission is, even if a business connect come into existence in future, offence under Section 11 is made out.

I find the arguments, in the facts of the case, to be completely misplaced as when I repeatedly inquired with Mr.Shirsat as to amongst thousands and thousands of assessees in Thiruvananthapuram, where the Applicant was functioning as Chief Commissioner of Income Tax, whether only on the premise that there is a possibility of his assessment being either questioned or for any reason assessed

by the present Applicant in his capacity as Chief Commissioner of Income tax, it is unfathomable to assume that at some future point of time, a business connection could be established. Mr.Shirsat has failed to consider the most important aspect of the provision, being the “valuable thing is obtained or attempted to be obtained from any person, which he knows to have been or to be likely to be concerned” in any proceedings or business transacted or about to be transacted by such public servant.

The charge-sheet falls short of this particular material, as Mr.Shirsat would take me to a statement of Shri Ram Pillai Bhadra Kumar, Chartered Accountant and working as an Income Tax Consultant and Representative of M/s Heera Builders, who has stated that he was knowing Accused No.2-Mr.Sarath, the Income Tax Officer for last 10 years. He state that Mr.Sarath requested him to get guesthouse for Shri Anil Goel, Chief Commissioner of Income Tax, who is recently posted in Thiruvananthapuram for few days and he was told to talk to M/s Heera Builders, as he was aware that he was looking after the income tax matters of M/s Heera Builders. Accordingly, he spoke to the Managing Director of Heera Builders for providing guesthouse to the CCIT and upon consulting the Finance Manager, M/s Heera Builders agreed to provide their guesthouse to the Applicant, for few days. While recording his statement, he told the Deputy Superintendent of Police that he was not aware that the Applicant was staying in the guesthouse for long duration, without paying rent, as subsequently he did not play any role in it, but later he came to know that Shri Anil Goel was not vacating the guesthouse.

Another statement in the charge-sheet is of one Udaykumar R, DGM (Finance), who has stated that M/s Heera Builders took subject flat on lease from Mrs.Nanma Jain on rent and a total amount of Rs.2,40,000/- was paid towards rent and from February 2014 to September 2015, a sum of Rs.4,40,000/- was paid towards rent and this was the rent for the stay of Shri Anil Goel i.e. the Applicant in the Apartment. It is his statement that the Applicant stayed in the Apartment from February 2014 to September 2015.

Going by his own statement, the rent which was paid to the owner was escalated to Rs.25,000/- per month from February 2015 to January 2016 and in any case, it is not only during the stay of the Applicant, the rent was borne by M/s Heera Builders.

7. The moot question that arises for consideration, as rightly put forth by Mr.Ponda is, whether staying in the flat by bearing the necessary expenses towards maintenance, electricity bill, water tax, can it be said that the Applicant was staying free of cost. The Applicant came to Thiruvananthapuram as CCIT and his sub-ordinate i.e. the ITO showed him the flat, which he was to occupy. Apparently, he did not make any inquiries, unaware about the ownership of the flat or its possession. If it is the allegation that he continued to reside free of cost, then why no notice was ever issued and in fact, the charge-sheet disclose that the service charge, as directed to be paid, was borne by the Applicant from January 2014 to November 2015.

The charge-sheet also include the statement of Shri Vijaya B. Panicker, father of the owner of the flat, Smt.Nanma Jayan, who has given his statement to the effect that he had approached Heera Constructions for renting out the flat, as it intended to take the same on lease for guesthouse purpose and the Lease Deed was signed between him and M.D. of Heera Constructions, Dr.A.R.Babu and the amount towards rent was transferred by Heera Constructions to his daughter's account. He stated that the flat was subletted on rent to one Jaykumar, after September 2015 and he had not seen Anil Goel, who has stayed in the flat.

8. The charge-sheet also compromise of the statement of one Abdul Rashid Babu, the Managing Director of Heera Builders, who states that the guesthouse was requested for few days, but since no guesthouse was available, the flat was provided to the Applicant as temporary arrangement, but the Applicant did not vacate the flat.

Not a single letter/communication is addressed to the Applicant, asking him to vacate the flat nor a demand is raised for payment of rent.

9. Whether the Applicant had any knowledge about the requirement of payment of rent is an important question and, since, he was asked to occupy the said flat by the ITO, and was never apprised that he shall bear the rent for the same, it cannot be accepted that he was aware about the rent to be paid and the flat is leased out by the owner to M/s Heera Constructions.

Further, in absence of any material to show that there was any business transacted or about to be transacted by him in respect of M/s Heera Builders as an 'Assessee' and as Mr.Shirsat would submit sometimes in future, M/s Heera Constructions would have been subjected to assessment or even if he was assessee, he may have some dealing in future, in my considered opinion, is an incomprehensible argument, as in Thiruvananthapuram, there may be large number of assessees and it cannot be speculated that there is going to be a future transaction or business connect with either of them.

In absence of this relevant material in the charge-sheet, which would constitute as a ground for presuming that the Applicant has committed the offence, the charge must be considered to be groundless, which is a same thing as saying that there is no ground for framing the charge.

The impugned order, by relaying upon the statement of R. K. Babu and Ram Pillai Bhadra Kuamr, has concluded that the Applicant occupied the flat, but has failed to pay the rent and this act is sufficient to make out a prima facie offence under Section 11 read with Section 12 of the P.C. Act though Accused No.2-Sarath was refused sanction and he was not charge-sheeted and, hence, the offence under Sections 34 and 120-B of the IPC is not made out. In absence of establishing that the flat has been enjoyed free of cost and it has a connect with the duty to be discharged by the Applicant in relation to the assessee, merely because a assessee fall within his jurisdiction, it cannot be said that the ingredients of Section 11 are made out. Hence, the Applicant has been wrongly charge-sheeted and deserve a discharge.

By setting aside the impugned order dated 13/02/2023,
the Applicant is discharged from Special Case No.751 of 2022.

Cri. Revision Application stands allowed as above.

(SMT. BHARATI DANGRE, J.)