IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3294 OF 2021

Rana Kapoor ...Petitioner
Versus
The Central Bureau of Investigation And Anr. ...Respondents
....

Mr. Vijay Aggarwal a/w Ms. Ashul Agarwal a/w Rhythm Aggarwal i/by Mr. Rahul S. Agarwal , Advocate for the Petitioner.
Mr. H.S. Venegavkar, Spl. PP for Respondent - CBI.
Mr. Arfan Sait, APP for the Respondent - State.

CORAM : PRAKASH D. NAIK, J.
RESERVED ON : 4th MARCH, 2022.
PRONOUNCED ON : 3rd JANUARY, 2023.

P.C.

1. The petitioner has invoked Article 227 of Constitution of India and Section 482 of Code of Criminal Procedure and sought following reliefs.

a. That the Hon'ble Court may be pleased to set aside and the order dated 14th August, 2021 passed by the Ld. Special Judge whereby the Ld. Special Judge dismissed the Application filed by the petitioner for seeking directions to the CBI not to proceed in the matter in non-compliance of approval, as contemplated under Section 17-A of the Prevention of Corruption Act.

b. That this Hon'ble Court be pleased to issue a Writ of Certiorari and/or a Writ in the nature of Certiorari or any other appropriate writ, necessary orders and directions thereby declaring that the investigation, including custody of the petitioner conducted by the CBI in the present matter is without valid sanction is illegal, void ab-intitio and no est in the eyes of law.

c. To further direct the respondent not to proceed in the matter in non-compliance of a proper approval, as contemplated under Section 17-A of the Prevention of Corruption Act.

2. The First Information Report (for short 'FIR') was registered by Respondent No.1/CBI on 12th March, 2020 vide R.C. BA1/2020/A0004 for offence under Sections 120-B r/w 420 of Indian Penal Code (for short 'IPC') and Section 7, 11 and 12 of Prevention of Corruption Act, 1988 (for Short ' P. C. Act') against Shri. Rana Kapoor (Petitioner) then MD and CEO of Yes Bank Ltd., Shri. Gautam Thapar, Smt. Bindu Rana Kapoor and others.

3. The brief allegations in the FIR are as follows:

(a) The FIR bearing No.RC BA1/2020/A0004 was registered by CBI/ACB, Mumbai on 12th March 2020 for offence under Section 120B r/w 420 of Indian Penal Code and under Sections 7, 11 and 12 of Prevention of Corruption Act, 1988 (`P.C.Act' for short);(b)It is alleged that the applicant was the Managing Director and Chief Executive Officer of YES Bank Limited

(`YBL'). He had obtained illegal gratification in the form of property in prime location in New Delhi at much less then realizable market value belonging to M/s. Avantha Reality Limited (`ARL') for a loan taken by ARL from YBL for extending concessions, relaxations and waivers in the already existing credit facilities provided to Avantha Group (`AG;) Companies and for advancing new/additional loans to them. The petitioner entered into criminal conspiracy with his wife Smt. Bindu Kapoor and Mr.Gautam Thapar-Promotor of AG Companies, for the purpose of obtaining illegal gratification;

(c) Information reveals that M/s. Avantha Holding Limited had obtained credit facilities from ICICI Bank Ltd and Development Credit Bank (`DCB') against collateral security of the immovable property at 40, Amrita Shergil Marg, New Delhi. This property is owned by ARL and is lavish bungalow spread over an area of 1.2 acres approximately in prime location in Delhi. The valuation of the property in the loan books of ICICI Bank was done at Rs.550 crores. M/s. Avantha Holding Ltd and ARL are part of AG Companies;

(d) Information reveals that there was principal outstanding ofRs.350 crores to ICICI Bank and Rs.30 crores to DCB in March-2016 against charge of the above property;

(e) As a part of conspiracy, YES Bank sanctioned loan of Rs.400 crores to ARL in March-2016 as lease rental discounting (LRD) for a period of ten years. In lease rental discounting, the discounted values of future lease rentals proposed to be received by the borrower by leasing its properties are sanctioned as loan amount. For this purpose ARL is stated to have entered into lease rental agreement with M/s. BILT Graphics Paper Pvt. Ltd (`BGPPL'), another AG Company. As per agreement, lease rental of Rs.65 crore per annum was payable by BGPPL to ARL. The lease rental agreement was executed on 22nd March 2016, just two days prior to sanction of loan of Rs.400 crores by YES Bank to ARL;

(f) Earlier the aforesaid property was leased to M/s. Ballarpur Industries Ltd (BILT) on a lease rent. The proposed increase of rent of Rs.1.02 crore per annum to Rs.65 crores per annum was high and intentionally done to deceive YBL to make the loan approval look justifiable without reasonable basis. This appears to have been done with intention to get the loan account becomes tressed for justifying sale of the charged property at 40, Amrita Shergil Marg by ARL to Mr. Rana Kapoor in the name of BAPL. Wife of Rana Kapoor is Director in BAPL;

(g) ARL was not eligible for loan. It had outstanding liability of Rs.690 crore and Rs.643 crore with YBL and reporting losses;

(h) Rana Kapoor as MD and CEO of YBL was head of Management Credit Committee of the Bank, which approved the loan of Rs.400 crores to ARL as well as release of property against repayment of loan;

(i) Instead of initiating transparent process of sale of the charged property by YBL for recovery of its loan as per banking norms, it entrusted this responsibility to ARL. Transparent process was not initiated by ARL and it did not give wide publicity to the proposed sale of prime property;

(j) ARL received offer of buying property from M/s. Bliss Abode Pvt. Ltd at price of Rs.378 crore. Smt. Bindu Kapoor, wife of petitioner is one of the director of said company. The committee headed by petitioner agreed to said offer and issued NOC to ARL for its sale on 6th September 2017;

(k) M/s. Bliss Abode had already obtained loan of Rs.90crores from India Bulls vide agreement dated 13th July 2017 against charge of said property. The said fact was not disclosed by petitioner to board of YBL;

(l) The facts relating to criminal conspiracy establish obtaining illegal gratification to the tune of Rs.367 crore by

Rana Kapoor (petitioner) by acquiring an expensive property situated at a prime location in New Delhi at a price of Rs.378 crore against declared value of Rs.685 crores by Bindu Kapoor and Rana Kapoor in lieu of favours extended by YBL to Avantha group companies promoted by Mr. Gautam Thapar.

4. The petitioner preferred an application before the learned Special Judge seeking orders and directions thereby directing the CBI not to proceed with the case for non-compliance of Section 17-A of the P.C. Act, 1988.

5. The learned Special Judge by order dated 14th August, 2021 rejected the application Exhibit-8, while rejecting the said application it was observed that perusal of case diary indicate that previous approval under Section 17-A of P.C. Act is forthcoming. According to the plain reading of provisions, the said approval is issued by Managing Director and CEO of Yes Bank Ltd. is valid one. The submission on behalf of the accused is that previous approval of RBI is required. On the contrary, the competent authority to remove the public servant is a person to give approval. In the present case, the same is forthcoming. No grounds are exists to issue direction to CBI, not to proceed in the matter for non-compliance of approval, as contemplated under Section 17-A of the P.C. Act. Accordingly, the submissions as well as recitals in the application including case law is

of no avail. The application is liable to be rejected.

6. The submissions of learned Advocate Mr. Aggarwal appearing for the petitioner can be summarized as under:

i. Section 17-A has been introduced by way of amendment to Prevention of Corruption Act, 1988 w.e.f. 26th July, 2018. As per the said provision no Police Officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by public servants under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties without previous approval. The investigation in the present case was conducted without prior approval from the competent authority and there is non-compliance of Section 17-A of the P.C. Act.

ii. The respondents are relying upon purported approval issued by the Board of Directors of Yes Bank Ltd. which is not valid in law. The sanction/approval under Section 17-A can be granted by RBI and not by the Board of Yes Bank.

iii. The RBI is competent to remove the petitioner/accused and therefore, approval under Section 17-A was to be obtained from the RBI.

iv. Section 36-AA of the Banking Regulations Act expressly states that RBI has power to remove the Managerial Personnel which includes the petitioner. The petitioner was Managing Director and CEO of Yes Bank Ltd.

v. Investigation was conducted without valid sanction under Section 17-A and the CBI cannot proceed with the case on the basis of such investigation.

vi. The letter dated 6th June, 2020 issued by Yest Bank Ltd. granting approval cannot be considered as a approval/sanction within Section 17-A of the P.C. Act. The Managing Director/CEO was not competent to remove the petitioner from employment.

vii. The purpose and object of introducing Section 17-A by way of amendment to the P.C. Act is required to be taken into consideration. The amendment is debated in Parliament. Report of select committee of Rajya Sabha on the Prevention of Corruption (amendment) bill 2013 proposed to insert Section 17-A under the P.C. Act to make it obligatory on the police/probe agency to obtain sanction of Lokpal, in cases involving employees of the union and of respective Lokayuktas, in cases involving employees of States, before initiating any inquiry/investigation against a public servant in all cases of corruption except where public servant is caught red handed. The speech delivered by the member introducing the aforesaid bill can be considered as a tool of interpretation of law.

viii. The alleged act attributed to the petitioner was done while performing official duty, hence, Section 17-A is squarely applicable in the present case. Want of approval under Section 17-A has rendered the investigation *void ab-initio* and the petitioner cannot be prosecuted on such investigation.

ix. The office memorandum of association dated 13th November, 2003 indicate that the termination and appointment of the Bank official shall be subject to RBI approval. The memorandum of association dated 8th September, 2017 stipulates that the petitioner can be terminated subject to approval by RBI.

x. The FIR was registered on 12th March, 2020. The alleged approval from the Managing Director/CEO of the Bank was granted on 6th June, 2020. The approval has to be before FIR.

xi. The impugned order was passed without application of mind. Learned Judge has relied upon the alleged approval dated 6th June, 2020. It is a non-speaking order.

xii. The provisions of amended Act of 2018 would apply. The mischief rule will have to be interpreted for application of the new Act and amended provision of Section 17-A of the P.C. Act.

xiii. Section 35-B of the Banking Regulations Act, 1949 adds that even an amendment relating to appointment, reappointment or termination of Chairman, Managing Director or any other Director of the banking company shall only be with the prior approval of the RBI.

xiv. When a transaction allegedly constitutes more than one offence where one section requires sanction, then the investigating agency cannot split the same to avoid sanction.

7. Learned Advocate for the petitioner has relied upon the following decisions :

i. Anil Vasantrao Deshmukh V/s. State of Maharashtra, through the Secretary, Home Department and Others, 2021 SCC Online Bom 1192.

ii. N.K. Ganguly V/s. Central Bureau of Investigation, New Delhi, (2016) 2 SCC 143.

iii. State of Goa V/s. Babu Thomas, (2005) 8 SCC 130.

iv. Anil Kumar and Others V/s. M.K. Aiyappa and Another, (2013) 10 SCC 705.

v. K.P. Varghese V/s. Income Tax Officer, Ernakulam and Ors., AIR 1981 SC 1922.

vi. Yashwant Sinha & Ors. V/s. Central Bureau of Investigation in Review Petition (Cri.) No.46 of 2019 in Writ Petition (Cri.) No.298 of 2018.

vii. State of Karnataka V/s. Ameerjan (2007) 11 SCC 273.

viii. Kavita Manikar of Mumbai V/s CBI BS & FS & Anr. in Writ Petition No.1142 of 2018 dated 10th May, 2018.

ix. Anirudhsinhji Jadeja and Ors. V/s. State of Gujrat, (1995) 5SCC 302.

x. Central Bureau of Investigation V/s. Ashok Kumar Aggarwal, (2014) 14 SCC 295.

xi. Ashok Kumar Aggarwal V/s. Central Bureau of Investigation, 2016 CRI. L.J. 2410.

8. Mr. Venegavkar appearing for Respondents-CBI submitted that approval dated 6th June, 2020 was issued by Board of Yes Bank Ltd. It is valid document. It is further submitted that Section 17-A of the P.C. Act, would apply to criminal misconduct. After it was noticed that Section 13(1)(d) was applicable, approval was sought under Section 17-A of the P.C. Act. The FIR was not registered under Section 13(1)(d) of the P.C. Act. Such approval is required only on invocation of Section 13(1)(d) of the P.C. Act. Investigation is completed. Charge-sheet is filed for offence under Sections 120-B and 420 of IPC and Sections 11, 12 and 13 r/w 13(1)(d) of P.C. Act.

The applicability of Section 17-A of the P.C Act is necessary in case the offence is relatable to any recommendation made or decision taken by public servant in discharge of his official functions or duties. The alleged acts committed by accused would not fall in the aforesaid category. The petitioner is also prosecuted for offence under Sections 420 and 120-B of IPC. The trial Court has rightly rejected the application. The prayers made by the petitioner cannot be granted. The FIR was registered against the petitioner and others for offence punishable under Sections 120-B and 420 and Sections 7, 11 and 12 of P.C. Act. The petitioner had conspired with Shri. Gautam Thapar, Promotor of Avantha Group of Companies, Smt. Bindu Rana, wife of petitioner and Director of M/s. Bliss Abode Pvt. Ltd. and others to obtain illegal gratification viz. Bunglow No.40, Amrita Shergill Marg, New Delhi by paying only Rs.378 crores through M/s. Bliss Abode Pvt. Ltd., where the wife of petitioner is one of the Director. The property was immediately mortgaged to India Bulls Housing finance Ltd. for loan of Rs.685 crores. The lesser consideration of market value was made to M/s. Avantha Reality Ltd. for relaxation of other existing loans of Avantha Group Companies and for advancing new/additional loans to Avantha Group Companies. During the investigation it was revealed that the petitioner has taken decision favouring Avantha Group Companies as

Head of Management Credit Committee at Yes Bank Ltd. He has abused his official position as a public servant. The said act attracts Sections 13(2) r/w 13(1)(d) of P.C. Act, 1988 (before amendment). Letter was sent to Yes Bank Ltd. for permission under Section 17-A of the P.C. Act for investigating offence committed under Sections 13(2) r/w 13(1)(d) of P.C. Act. The fact that the accused committed offence of criminal misconduct was revealed subsequently after registration of case and immediately thereafter the permission under Section 17-A of P.C. Act was sought and obtained. As per under Section 196 of Companies Act, the Managing Director shall be appointed by the Board of Directors at a meeting, which shall be subject to approval by resolution at the next general meeting of the company. As per Section 10B(1A) of the Banking Regulations Act, 1949 where the Chairman of Banking Company is appointed on to a part time basis the management of the whole of the affairs of such banking company shall be entrusted to a Managing Director who shall exercise his powers subject to the Superintendence control and direction of Board of Directors. In the case of Yes Bank, since its Chairman was appointed on a part time basis, it was mandatory for a banking company to appoint Managing Directors. Accordingly Mr. Rana Kapoor was appointed as a MD & CEO of the bank and was entrusted with management of affairs of Bank subject to

Superintendence, control and directions of Board of Directors. Since the Board of Directors decide on appointment and terms of appointment of MD & CEO and the MD & CEO functions under the Superintendence control and direction of Board of Directors, the Board has authority to decide about removal of Managing Director and CEO. The competent authority to decide on removal of MD & CEO is Board. The Board of Directors has authority to remove Managing Director and CEO. The RBI as the banking regulator under the Banking Regulations Act can use its regulatory power to remove Managing Director and CEO, any Managerial and other persons from office in some contingency situation. The permission under Section 17-A of P.C. Act was granted by Yes Bank Ltd with approval of Board of Directors.

9. In rejoinder, the counsel for the petitioner submitted that the provisions of the amended Act, 2018 shall be applicable in the present case. The submission that RBI is not removing and appointing authority of the petitioner is devoid of merits. Section 17-A of P.C. Act does not restrict only to Section 13 of P.C. Act. It refers to any offence. The CBI has not placed on record any material to support the contention as to on what basis under Section 13(1)(d) is added. Interpretation is against hayden's rule of mischief. The

amended provision is beneficial in nature. It seeks to remove mischief of investigating agencies. Learned counsel for petitioner has tendered written notes of arguments.

10. In the case of Anil Vasantrao Deshmukh V/s. State of Maharashtra (Supra), it was observed that official Act can be performed in the discharge of official duty as well as in dereliction. Dishonest performance falls in the dragnet of the offences punishable under the P.C. Act and Penal Code. The reasonable nexus between the act complained of and the discharge of official duty can hardly be disputed. The various pronouncements emphasize the mandatory nature of prior approval envisaged under Section 17-A of P.C. Act and there can be no qualm over the propositions enunciated therein as phraseology of Section 17-A is explicitly clear and unambiguous. In the case of N.K. Ganguly V/s. Central Bureau of Investigation, New Delhi (Supra), it was observed that for the purpose of obtaining previous sanction from the appropriate Government under Section 197 of Cr.P.C., it is imperative that the alleged offence is committed in discharge of official duty by the accused. In the case of State of Goa V/s Babu Thomas (Supra), it was observed that the sanction that is improperly granted is bad in law and proceedings originating from such sanction are liable to be quashed. In the case of Anil Kumar & Ors. V/s. M.K. Aiyappa & Anr. (Supra), it was held that

when there is bar no subsequent act can be done. In the case of K.P. Varghese V/s. Income Tax Officer, Ernakulam and Ors. (Supra), it was observed that the speech of member introducing the bill is a tool of interpretation of law. In the case of Yashwant Sinha & Ors. V/s. Central Bureau of Investigation (Supra), it was observed that in terms of Section 17-A no Police Officer is permitted to conduct any enquiry into the offence by a public servant which are relatable to any recommendation is made or decision taken by public servant in discharge of public functions without previous approval by the competent authority.

11. Section 17-A of the P.C. Act reads as follows :

> [**17-A. Enquiry or Inquiry or investigation of offences relatable to re-commendations made or decision taken by public servant in discharge of official functions or duties. -** No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval -
>
> (a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;
>
> (b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;
>
> (c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

> Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:
>
> Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.]

12. The FIR was registered on 12th March, 2020 for offence under Section 7, 11, 12 of the P.C. Act and Section 120-B r/w 420 of IPC. Apparently, Section 13 of the P.C. Act was invoked subsequently. The prosecution has relied upon the letter dated 6th June, 2020 issued by the Board of Directors of Yes Bank Ltd. and contended that it can be termed as approval under Section 17-A of P.C. Act. It is pertinent to note that the chargesheet is filed after investigation is completed for offences under Sections 120-B, 420 of IPC and Sections 11, 12, 13 r/w 13(1)(d) of P.C. Act. Section 13 of the P.C. Act has been amended by Act of 2018. Section 17-A was introduced w.e.f. 26th July, 2018. Apparently, sanction under Section 19 of P.C. Act is obtained and charge-sheet is filed. Section 13(1)(d) is stipulated in pre-amended P.C. Act of 1988. It is also necessary to note that all the transactions which are subject matter of the present case had occurred upto 2017 which is evident from the contents of the FIR, i.e. prior to amendment of 2018.

13. As per Section 17-A no Police Officer shall conduct an enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties without previous approval of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed. Apparently when offence was committed Section 17-A of P.C. Act was not in existence in any case the offence has to be related to any recommendation made or decision taken by public servant in discharge of his official functions or duties.

14. Assuming that Section 17-A of the P.C. Act is applicable in the present case, it is not possible to accept the submission of the learned counsel for petitioner that the approval under Section 17-A can only be granted by the RBI. In the present case the approval relied upon by the prosecution was granted by the Board of Directors of Yes Bank Ltd. It is difficult to accept that the Board of Directors of Yes Bank Ltd. has no authority to appoint or remove the petitioner from employment. The investigation conducted by CBI discloses that the petitioner has received undue advantage by criminal conspiracy with his wife and other accused in the form of prime property as described in the FIR at much less than realizable market value. Said

property was valued at Rs.550 crores in the loan books of ICICI Bank but it was sold out to BAPL of which wife of petitioner is one of the Director at a price of Rs.378 crores. The said property was acquired at a price of Rs.378 crores against declared value of Rs.685 crores by Bindu Kapoor and the petitioner in lieu of favour extended by Yeas Bank Ltd. to Avantha Group Companies promoted by Gautam Thapar. Agreement was executed in relation to lease rental discounting for the purpose of sanctioning loan of Rs.400 crores to ACL in March-2016 by Yes Bank Ltd. wherein lease rent of Rs.65 crores per annum was payable by BGPPL to ARL. Earlier the said property was leased to BILT another AG company on lease rent of Rs.1.02 crores per annum, thus increase of lease rent was done to deceive YBL to make loan approval justifiable. FIR and the other documents reveal that serious offences have been committed by the accused persons. *Prima facie* dishonest intention of the part of the accused to cheat Yes Bank reveals from the investigation. The petitioner did not act *bonafidely.* It is not possible to give any finding that the act committed by the petitioner was part of his official functions and his duties. Section 17-A is to provide protection to public servant who discharge their official functions and duty with diligence, fairly and unbiased manner and best of their ability. The provision is aimed for providing safeguard from vexatious prosecution for *bonafide* commission of official duties. It is not a shield to protect officials who do not act *bonafide* but with ulterior motives. Sections 420 r/w 120-B are also registered against the petitioner. The decisions relied upon learned counsel for the petitioner are not applicable in the present case. In the case of Yashwant Sinha & Ors. V/s. Central Bureau of Investigation (Supra) the aspects of decision making process, pricing and offsets were considered and that was one of the reason for not issuing any direction for registration of FIR. The petitioner therein had admitted the applicability of of Section 17-A of the P.C. Act and there was no approval from the competent authority. In the present case apart from the offences under the P.C Act Sections 420 r/w 120-B of IPC is registered. There is a approval by Board of Directors of Yes Bank Ltd. In the light of under Section 17-A of the P.C. Act, it is necessary to find out where the act is in nexus to discharge of his duties and what accused are relatable to any recommendation made or decision taken by such public servant in discharge of official functions and duties. It is not possible to hold that the acts were relatable to official functions of the discharge of duties of the petitioner. It is pertinent to note that the charge-sheet is filed after obtaining Section 19 of P.C. Act. Charge-sheet includes invocation of Section 13 of the P.C. Act, which was existing at pre-amendment stage. The contention of the petitioner that CBI shall not proceed with the proceeding for want of approval under Section 17-A of P.C. Act is devoid of merits and deserves to be rejected.

15. Hence, I pass the following order.

ORDER

Criminal Writ Petition No.3294 of 2021 is rejected and disposed off.

[PRAKASH D. NAIK, J.]