GRM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 444 OF 2022

Ajit Kamlakar Gokhale … Applicant
V/s.
The State of Maharashtra … Respondent

Mr. Sandeep Phatak, Adv. for the Applicant.
Mr. Arfan Sait, APP for the State/Respondent.
Mr. H. S. Venegaokar, Adv. for the Respondent/CBI.

CORAM : R. G. AVACHAT, J.

DATED : FEBRUARY 27, 2023

P.C. :

The challenge in this revision application is to the order dated 17/09/2022 passed by the Special Judge CBI/ACB Cases, Pune refusing to grant the applicant discharge from Special Case No. 559/2020.

2. The case of prosecution, in a nut-shell, is as follows :-

a. The applicant at the relevant time was serving as a Assistant General Manager of Bank of Maharashtra (for short "**BOM**"), Model Colony Branch, Pune. He is no longer in service. The applicant is one of the co-accused in the case instituted for the offences punishable under Section 120-B of the Indian Penal Code, 1860 (for short "**IPC**") and under Sections 11, 12 & 13(2) of the Prevention of Corruption Act, 1988 (for short "**PC Act**"). The applicant is alleged to have received a valuable thing as consideration in connection with his official function.

b. As per the case of prosecution, the applicant purchased Toyota Innova Vehicle from one of the co-accused. As per further case of prosecution, the applicant sold his Honda City Car too through one of the co-accused. The sale price thereof was shown over valued. The applicant has shown to have sold his Honda City Car for a consideration of Rs. 10,42,000/-, when its true value was less than 6,50,000/-. He then bought Toyota Innova Vehicle for a price little over Rs. 14,00,000/-.

c. In short, the case of prosecution is that the applicant favoured the co-accused while granting them various kinds of loans and cash credit facilities during the relevant time. In connection thereof, he has shown his Honda City Car to have sold to one of the co-accused for Rs. 10,42,000/-, when its true value was less than Rs. 6,50,000/-.

d. The Trial Court on appreciation of the material, observed that there is sufficient ground to frame the charge against the applicant herein. It therefore rejected the application for discharge of the applicant.

3. Heard.

4. Learned Advocate for the applicant would submit that while crime was registered, the offence punishable under Sections 420, 468 & 471 of IPC were invoked, but when charge-sheet came to be filed, those sections came to be withdrawn. He would further submit that the applicant's employer, BOM, has not filed any

complaint against the applicant. The FIR was lodged on source information. The applicant granted co-accused a loan in his official capacity and in the normal course of business. He did not flout any of the rules in that regard. It was well within his authority. The FIR has been lodged by the CBI only upon some guess work and upon implied inferences because subsequently, Honda City Car was sold for Rs. 6,50,000/- and Rs. 8,30,000/-. During the search, nothing was found at the residence of applicant. Most of the allegations in the FIR pertain to cheating and forgery, which later on came to be withdrawn. For the charge, for the offence of Section 120-B of IPC, there is nothing to indicate prior meeting of mind.

a. Learned Advocate would further submit that Section 13(1)(d) of PC Act has been wrongly invoked, since the said section is no longer on book, post amendment of the PC Act in 2018. According to the learned advocate, it is a case of applicant to have paid a valuable consideration for purchase of Toyota Innova Vehicle. It was very much adequate. The same is evident from the quotation issued by M/s. Balaji Enterprises. The receipt for fitting of CNG Kit, choice number receipt and the loan documents, referred to and which are part of the police-papers. According to learned Advocate, issue of granting financial facility to co-accused, is not the subject matter of present charge-sheet. The applicant purchased Honda City Car from his own funds. He had obtained a loan from BOM, Model Colony Branch, Pune. This fact is not in dispute. It is also an admitted fact that the applicant purchased

Toyota Innova Vehicle from the sale proceeds of his Honda City Car and by obtaining Vehicle Loan of Rs. 5,00,000/- from BOM, Nashik City Branch. The subsequent sale of the vehicle for Rs. 6,50,000/- and Rs. 8,30,000/-, are the facts not relevant, so far as the price received by the applicant for his Honda City Car is concern.

b. According to the learned Advocate, Ex-showroom Price of Toyota Innova Vehicle was Rs. 14,21,633/-. The applicant availed a Vehicle Loan of Rs. 5,00,000/-. According to him, there were transactions between the parties. Consideration was paid in all the transactions. It therefore can not be said to be a case of inadequate consideration of the payments in the transaction. The same are duly accounted for and there was no underhand dealing. Both the vehicles were purchased after obtaining permission and valid sanction from the competent authority i.e. Zonal Office of BOM. According to the learned Advocate, there is no sufficient ground for proceeding against the applicant. The Trial Court therefore ought to have granted the applicant discharge.

5. Learned Advocate for the respondent/CBI would on the other hand submit that the transactions between the applicant and co-accused are not to be seen in isolation. There are statements of bank offcials to indicate the applicant to have extended favour to the co-accused in granting loan and cash credit facilities during the relevant time itself. The applicant did not follow the prescribed procedure while granting loan or cash credit facilities. The applicant infact violated various Banking Norms and Regulations. The learned Advocate took this Court through impugned order to

submit it to have been passed with sound reasons. This Court was also taken through the reply of respondent/CBI filed to the application for discharge before the Trial Court. Learned Advocate ultimately urged for dismissal of the revision application.

6. Considered the submissions advanced. Perused the FIR and the police-papers relied on.

7. Section 227 of the Code of Criminal Procedure, 1973 (for short "**Cr.P.C.**") is reproduced, which reads thus :-

> "**227. Discharge.** – If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

8. On perusal of the police-papers, if the Court *prima-facie* finds it to be a case of involvement of the applicant in the offence in question, no discharge can be granted. As such, after all it is a matter of question of fact. Sequence of events need to be adverted to.

9. The applicant was serving as an Assistant General Manager, BOM, Model Colony Branch, Pune. In the FIR, it has been alleged that the applicant granted –

a. Term Loan of Rs. 69,00,000/- for purchase of JCB to

Ashish Dattaram Gatkal (co-accused) on **04/10/2012**, without following procedure. The said account became Non-performing Assets (for short "**NPA**") in January 2015 with outstanding amount of Rs. 96,00,000/-.

b. Cash credit facility of Rs. 1,00,00,000/- was sanctioned on **10/07/2012** to M/s. Kirti Oil and Auto Equipment, owned by the wife of Ashish Gatkal, without following procedure. The account became NPA in December 2014 with outstanding amount of little over Rs. 96,00,000/-.

10. It is further alleged in the FIR that the applicant was transferred to City Branch, Nashik in 2013. He then granted –

a. Cash credit facility of Rs. 1,50,00,000/- on **15/05/2013** to M/s. Balaji Motors, Pune. The account became NPA with the outstanding amount of little over Rs. 1,50,00,000/- + interest of Rs. 43,00,000/- thereon. This is a Proprietary Firm of brother of Ashish Gatkal.

b. Cash credit facility of Rs. 75,00,000/- was sanctioned in **23/12/2013** to M/s. Asia Autonet, Pune. The account became NPA with the outstanding amount of Rs. 84,00,000/-. It is a Proprietary Firm of father of Ashish Gatkal.

c. Term loan facility of Rs. 75,00,000/- was granted on **23/12/2013** to M/s. Asia Autonet, Pune. The account became NPA. It is a Proprietary Firm of the father of Ashish Gatkal.

d. Vehicle loan of Rs. 25,00,000/- on **26/03/2014** was granted to Ashish Gatkal and his wife Kirti. The account became NPA with the outstanding amount of Rs. 20,00,000/-.

e. Term loan famility of Rs. 60,00,000/- was granted on **07/05/2013** to Vishal, brother of Ashish Gatkal. The account became NPA.

f. Vehicle loan of Rs. 25,00,000/- was granted on **22/03/2014** to Dattatray, father of Ashish Gatkal. The account became NPA.

g. Housing loan of Rs. 60,00,000/- was granted to Ashish Gatkal and his brother Vishal on **12/03/2014**. The account became NPA.

11. The FIR contains further details to indicate that on visit to the sites, it was found that the units were non-existent. There is a statement of one Makarand Gajanan Ghanekar, Senior Manager, BOM, Pune City Zone. It is in his statement that the applicant and his Credit Officer of both the branches, in conspiracy with the borrower Ashish Gatkal, processed and sanctioned loans in violation of various Banking Norms and Regulations.

12. It is reiterated that in the aforesaid factual backdrop, the transaction in question is to be seen.

13. The applicant purchased Toyota Innova Vehicle No. MH-14-

EP-4356 from Ashish Gatkal (original accused no. 2), borrower, with whom the applicant had official dealing. The said vehicle was purchased for Rs. 14,00,000/-. The purchase price of Rs. 13,80,500/- was first paid by Ashish Gatkal, Proprietor of M/s. Balaji Enterprises through Cash Credit Account to M/s. Y. M. Motors, Sharayu Toyota, Pune. The remaining amount of Rs. 19,500/- was paid in cash on 03/07/2013. The applicant transferred Rs. 10,42,000/- on 20/06/2013 and Rs. 5,00,000/- on 16/07/2013 against purchase of Toyota Innova Vehicle.

14. The applicant claims to have sold his Honda City Car for Rs. 10,42,000/- to M/s. Balaji Enterprises, a Proprietary Firm of Ashish Gatkal on 20/07/2013. The record indicates that in 2012, the Honda City Car No. MH-12-JZ-6282 from M/s. Aadya Motors, was purchased for Rs. 9,82,394/- (including CNG Kit and insurance). The record indicates that very Honda City Car was sold by M/s. Balaji Enterprises to M/s. Bhama Auto for Rs. 6,50,000/- within few days. As such, according to the prosecution, the Honda City Car of applicant had its true value below Rs. 6,50,000/- and not Rs. 10,42,000/-, as shown. The difference between the two, is said to be illegal gratification received by the applicant.

15. This Court has every reason to raise the said inference, as has been proposed to be raised by the CBI with a view to prosecute the applicant for the alleged offence. True, subsequent to the said sale, the very car fetched Rs. 8,30,000/-. It is only a matter of evidence on which the truth would be revealed. In short, the

applicant abused his official position in granting official facilities to co-accused Ashish Gatkal and his family members. Even on his transfer from Pune to Nashik, he granted them similar favour. During the same time, the applicant had purchased Toyota Innova Vehicle and sold his Honda City Car through Ashish Gatkal.

16. It is reiterated that there is material to indicate the Honda City Car to have been purchased for Rs. 9,82,394/-. The same is shown to have been sold to Ashish Gatkal for Rs. 10,42,000/-. Within few days of the said deal, the very car was sold for Rs. 6,50,000/-. These facts speak in volumes. What case the applicant proposes to make out, could only be ascertained when the matter goes for trial. The Trial Court based on the material on record, rightly turned down the prayer for discharge. This Court finds no reason to take a different view. The revision therefore fails. The same thus stands dismissed and disposed of accordingly.

17. At the request of learned Advocate for the applicant, this order to stand stayed till next six weeks.

(R. G. AVACHAT, J.)