IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.456 OF 2019

Sadashiv Balkrishna Kulkarni,
Age 50 years, Occ.Service,
R/o.A-2/301, Rutu Park, Majiwade,
Thane (W)-400 601. Applicant
versus
The State of Maharashtra Respondent

Mr.Sunil Kale i/by Mr.Omkar Nagwekar, Advocate for Applicant.
Ms.P.N.Dabholkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 30th June 2023

PC :

1. The applicant is prosecuted in Special ACB Case No.3 of 2013 pending before the Court of learned Additional Sessions Judge, Palghar for offences under Sections 420, 465, 468, 467, 471, 34, 120(B), 109 of Indian Penal Code and Section 63(3)(5) of Bombay Sales Tax and Section 13(1)(c)(d), 13(2) of Prevention of Corruption Act (`P.C.Act' for short).

2. The prosecution case is that accused used bogus/ fabricated Form-C to claim refund of Sales Tax. The Accused for that purpose used Form-C issued by M/s.Batliboi Environmental Engineering Limited, Bangalore by pasting details of sales transactions outside State of Maharashtra and affixed the stamp of M/s.Batliboi Environmental Engineering Limited, Bangalore below it. The details mentioned below on Form-C were sealed by pasting paper on the same and refund of amount higher than was was claimed. Accused nos.1 to 3 are the Directors of M/s.Ashwati Industries. The company

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claimed to have sold goods worth Rs.1,94,70,622/- to M/s.Batliboi Environmental Engineering Limited, Bangalore. The sales being inter-State for the financial year w.e.f. 1st April 2001 to 31st March 2002, M/s.Ashwati Industries submitted Form-C to the Sales Tax Department. Tax of Rs.20,75,985/- was evaded by accused. At the back side of other forms, sales figures were hand written with its total whereas at the back side of Form-C, the sales figures were in typed form. M/s.Batliboi Environmental Engineering Limited, Bangalore was summoned and requisitioned to submit the sales invoices for the financial year from 1st April 2001 to 31st March 2002. Accordingly two invoices were submitted by M/s.Batliboi Environmental Engineering Limited, Bangalore, bearing No.31, dated 26th February 2001 for Rs.2,49,600/- and another bearing No.32, dated 27th February 2001 for Rs.1,14,608/-. Thus, goods worth Rs.3,64,208/- were sold to M/s.Batliboi Environmental Engineering Limited, Bangalore by M/s.Ashwati Industries. However, sales of Rs.1,94,70,622/- was claimed to have been made by M/s.Ashwati Industries to M/s.Batliboi Environmental Engineering Limited, Bangalore. Documents submitted by M/s.Ashwati Industries did not tally with the amount claimed towards sales to M/s.Batliboi Environmental Engineering Limited, Bangalore. Applicant (accused no.5) was working in the Sales Tax Department as Sales Tax Officer. It is alleged that he had connived with co-accused.

3. Applicant had preferred application for discharge before learned Additional Sessions Judge, which was rejected vide order dated 1st April 2019.

4. Learned advocate for Applicant submitted that there is no evidence against applicant to proceed against him by framing charge. No role has been ascribed to him. The statements of witnesses from

the office of accused no.4 did not implicate applicant. Practice of pasting papers behind Form-C was prevalent in the Sales Tax Department and there was no reason for the applicant to suspect the claim of co-accused. M/s.Batliboi Environmental Engineering Limited, Bangalore did not deny existence of stamp on the reverse of Form-C. Applicant was represented that Form-C relates to Sales Tax outside the station. It is not the case of prosecution that applicant had fabricated the documents. At the most, Form-C was produced before applicant during assessment. Accused nos.4 and 5 were discharged by Trial Court by order dated 2nd March 2021. At the relevant time applicant was working as Sales Tax Officer at Palghar Division. The alleged loss caused to the Revenue was deposited by co-accused during the hearing of their application for anticipatory bail.

5. Learned APP submitted that it was the duty of applicant to cross check the claim of co-accused. Applicant was working as Sales Tax Officer. The statements of witnesses indicate involvement of applicant. Reliance is placed on the statements of Satish Govind Pethkar and Darius Embra dated 6th January 2011 and 12th December 2010 respectively.

6. The charge is that Mr.Sureshkumar Nair, the Managing Director of M/s.Ashwati Industries and other accused had entered into criminal conspiracy with regards to Form-C by altering the amount on the said form. Original Form-C was of the value of Rs.3,64,208/- and by alteration additional value of Rs.1,91,06,414/- was inserted. Additional sales shown was in fact bogus sales and on such amount sales tax @ 15.3% was to be paid but tax @ 4% was paid causing loss of Revenue to the tune of Rs.20,75,985/-. Complaint was lodged by Assistant Commissioner of Sales Tax

against Sureshkumar Nair, Managing Director of M/s.Ashwati Industries and others. Sanction was granted to prosecute the applicant vide Sanction Order dated 10th April 2013. At the stage of framing charge and while adjudicating the application for discharge, the Court is required to consider whether prima facie case is made out to proceed against accused. The Sessions Court has assigned reasons for rejecting application for discharge. It was the duty of concerned Sales Tax Officer to cross check the sales invoices of the accused and sale amount claimed by accused as sales to M/s.Batliboi Environmental Engineering Limited, Bangalore. The disputed Form-C shows that paper has been affixed at the back side of Form-C showing amount in typewritten manner. The sales figure nowhere tallies with the sales figure given by accused. The statements of witnesses refer to the fact that there was no cross check by the applicant about sales figure or other documents submitted before accepting the figures of sales tax. Statement of Satish Govind Pethkar dated 6th January 2011 refers to the role of applicant. The refund proposal was prepared by applicant and it was forwarded to the co-accused. While considering application u/s.227 of Cr.P.C, it is not expected for the Court to go into minute details and scan the evidence on record. There is prima facie evidence against applicant showing his involvement and no case was made out to discharge him from the proceedings.

ORDER

(i) Criminal Revision Application No.456 of 2019 is rejected.

(PRAKASH D. NAIK, J.)

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