IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1327 OF 2022

T.V.A.R. Appa Rao ...Applicant
Versus
Central Bureau Of Investigation And Anr ...Respondents

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Mr.Ashish Mehta a/w mr. Shawn Fernandez i/by Ethos Legal Alliance Advocate for Applicant.

Mr. Kuldeep S. Patil, for Respondent No.2/CBI.

Mr. Y. M. Nakhawa, APP for the Respondent-State.

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ETHAPE DNYANESHWAR ASHOK
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Date: 2023.07.21 18:05:35 +0530

CORAM : PRAKASH D. NAIK, J.

DATE : 13th JULY, 2023.

<u>P.C.</u>:-

1. The applicant is aggrieved by order dated 25th November 2022 passed by the learned Special Judge (CBI) rejecting the application for discharge preferred by the applicant in C.B.I. Special Case No. 82 of 2011.

2. The applicant is arraigned as accused No.10 in the case arising out of C.R. No.RC9(E)/2010/CBI/BS&FC/Mumbai, under Section 120(B) read with 420, 467, 468, 471 of Indian Penal Code and Section 13(2) read with 13(2)(1)(d) of Prevention of Corruption Act.

3. The FIR was registered by Canara Bank. It is alleged that Mr. Vinay G. Desai is the proprietor of M/s. Maa Om Shiv Shaktee Agency (hereinafter referred to as “M/s. MOSSA”). On 9th February 2005, the said company was granted clean overdraft of Rs. 50 lakhs and FDB/FBC of Rs. 50 lakhs from

Canara Bank, Khar (W.) Branch, Mumbai sanctioned by Mr. V. S. Redyy, GM Circle Office, Mumbai. Personal guarantee of one Kirti M. Kanakia was stipulated. M/s.MOSSA was permitted FDB/FBE limit of Rs.50 lakhs. The company was frequently approaching the branch of discounting of export bills on single transaction. The branch obtained permission from Mr. V.S. Reddy and was continuously purchasing/discounting the export bills showing purported exports to overseas buyers M/s. Purple Middle East and M/s. Deltaline International. During the period from 18th May 2005 to 19th December 2005, the liability of M/s.MOSSA was up to Rs. 915.31 lakhs as against the original sanctioned limit of Rs. 50 lakhs. Since, the officials of Branch has permitted to purchase of bills on ad-hoc basis. The company then submitted ABS on 31st March 2005 and sought regular limit of Rs. 450 lakhs and Mr. V.S. Reddy enhanced FBE/FDB limit from 50 lakhs to Rs.450 lakhs. M/s.MOSSA submitted fake and fabricated export documents for discounting where actual export has not taken place. The export bills discounted till 31st December 2007 were realized but remittances received had come from various exchange companies based at Dubai. On 30th March 2007, the C.M.D. refused further enhancement the limits to M/s. MOSSA. The inquiry revealed that, they were outstanding of Rs.26.84 crores. Hence, F.I.R. was registered. On completing investigation, charge-sheet is filed.

4. The applicant preferred application for discharge before the Trial Court, which has been rejected vide order dated 25th November 2022.

5. Mr.Mehta, learned Advocate appearing for applicant submitted that, there is no material to frame charge against the applicant. The trial Court had committed an error in rejecting the application for discharge. There is no evidence to show complicity of the applicant in the crime. The applicant was only recommending Authority. He was supposed to act on the basis of sanction granted by the head office of the bank. There is no evidence to show that the applicant was involved in fabrication of any document. The applicant was branch head. Except recommendation, no overt act has been played by the applicant in the alleged transactions. There is no material to frame charge against the applicant for alleged offences. Accused No.2 was the proprietor of the firm established in 2002 and was custom duty fee licensee to procure and sell goods to Navy/Coast guard etc. It was also dealing in other goods. Mr. Vinay Desai was the customer of the branch since 2003. He submitted proposal dated 27th December 2004 in the name of his firm seeking credit facilities as proprietor of M/s.MOSSA. He approached the bank in 2004 for clean OD limit of Rs.50 lakhs and FDB/FBE limit Rs.50 lakhs for a period of five months. He submitted Audited Balance Sheet from March 2004 and had informed that he will be approaching him for regular limits along with the Audited Balance Sheet of 2005. Collateral security of stocks were offered and personal guarantee of Mr. Kirti Kanakia was proposed. Mr. Kirti Kanakia was existing customer of the bank since 1991. The accused No.2 sought overdraft cash credit,

Packing Credit, Foreign Bill of Exchange and Guarantee limits. Subsequently, he modified his earlier request and requested for a clean OD limit of Rs.50 lakhs for a period of 5 months and FDB/FBE limit of Rs. 50 lakhs. The accused No.2 had applied to ECGC and obtained a buyers limit of Rs.75 lakhs. In all these aspects, applicant had not played any role. On 9th February 2005, the sanctioning Authority sanctioned clean OD limit of Rs.50 lakhs to M/s.MOSSA. The applicant was only concerned with recommendation of facility. The departmental enquiry was conducted against the applicant and he was exonerated of all the charges. The applicant cannot be prosecuted in criminal proceedings. Reliance is placed on the decision of this Court in the case of R. Madhusudan Vs. The State of Maharashtra and Anr. (2015) SCC OnLine Bom 7359.

6. Per contra, Mr. Patil, learned Advocate appearing for Respondent-C.B.I. submitted that, there is voluminous evidence to show involvement of the applicant in the crime. The applicant has been charged for offence of conspiracy along with other accused. All the accused had acted in connivance with each other causing huge loss to the complainant/bank. The departmental proceedings and the criminal prosecution cannot be equated. Order passed by Departmental Authority indicate that, one officer was examined before the authority whereas, there are serious charges in the criminal prosecution. The prosecution proposes to examine various witnesses. The prosecution case is based on voluminous documents.

Although, the Applicant has been exonerated in departmental enquiry, the Sanctioning Authority has recommended prosecution of the applicant based on the material collected by the Investigating Agency. Prima facie case is made out for framing charge and at this stage the applicant cannot be absolved of in the criminal prosecution.

7. The contention of the applicant as stated above is that, the role attributed to him is that he was only recommending Authority. It is pertinent to note that, the investigation conducted by C.B.I. indicate that, the applicant was the Assistant General Manager of Canara Bank, Khar (W) Branch from the period of May 2004 to July 2005. The accused No.11 was Credit Manager and accused No.5 was Civil Contractor. The accused No.5 and his son submitted bogus invoices showing supply of goods of M/s.MOSSA. On 31st January 2005, the applicant being Assistant General Manager of Canara Bank requesting the clean OD of Rs. 50 lakhs for a period of 5 months FDB/FBE limit of Rs. 50 lakhs to M/s. MOSSA. Although, accused No.2 was having current account and while recommending limit, no primary security was recommended by the applicant. Collateral security was goods lying in the godown of the company. Personal guaranty of Mr. Kanakia was stipulated for providing facility to M/s. MOSSA. It is alleged that, the applicant was aware that Mr. Kanakia was guarantor in Kanakia Group of companies and availing the limits from Canara Bank on the basis of personal guarantee of Mr. Kanakia.

Apparently, the facilities were recommended by the applicant to M/s. MOSSA. Learned Sessions Judge while rejecting the application for discharge has observed that, no separate enquiry was made by the applicant to confirm as to whether such agency has got any export order or not till the date of request for facilities, M/s. MOSSA were only importing the goods. During the investigation, role of the applicant was revealed. The prosecution case is based on several statements of witnesses and documents on record. Sanctioning authority has considered nature of allegations and accorded the sanction to prosecute the offence. Although the applicant has been exonerated in the departmental enquiry in the facts of this case and order passed by the Departmental Enquiry, the investigation conducted by the C.B.I. and collection of the evidence in the form of statements of witnesses and the documents, the ground urged by the applicant that, on exoneration from the Departmental Enquiry the applicant cannot be prosecuted, cannot be accepted. At the stage of framing of charge, the trial Court is not expected to embark upon detailed inquiry. What is required is to see that, prima facie case is made out. Learned Sessions Judge has rightly considered this aspect and rejected the application for discharge.

ORDER

Criminal Application No. 1327 of 2022 stands rejected.

(PRAKASH D. NAIK, J.)