



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 527 OF 2022

CENTRAL BUREAU OF
INVESTIGATION THROUGH
SUPERINTENDENT OF POLICE

..APPLICANT

VS.

THE STATE OF MAHARASHTRA
AND ANR.

..RESPONDENTS

Mr. Kuldeep S. Patil a/w Adv. Ashish Kumar Srivastava for
the Applicant.

Adv. Sandeep S. Ladda a/w Adv. Pragya Nawandar for
Respondent No.4 (through V.C.).

Ms. Sangeeta D. Shinde, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 28, 2024

P.C. :

1. By this application, the applicant challenges the order dated 11/03/2022 passed by the learned Special Judge (CBI) below Exhibit 229 in Special Case (CBI) No. 06/2003 rejecting the application made by the prosecution for issuance of summons to additional 26 witnesses named in the application disclosing the ground on which they were to be examined. The trial Court rejected the application primarily on the ground of the litigation pending for a long time and the sufferings of the accused. The trial Court then

recorded that the case was about 20 years old.

2. For convenience the order dated 11/03/2022 passed by the trial Court needs to be reproduced, which reads thus:

- "1. Perused application and say. Heard both the learned Counsels.
2. By this application, prosecution seeks issuance of summons to additional 26 witnesses named herein sans disclosing the grounds on which they are to be examined. It is objected over age of litigation and sufferings of accused since 20 years.
3. Record shows that the case is about 20 years old. The trial has been commenced on 12.04.2016. Since then by, consuming about 5 years, prosecution has examined as far as 8 witnesses; of them last was examined on 10.10.2019. Between the period, no steps for procuring the witnesses has been taken by the prosecution.
4. Notwithstanding, Mr.P.K.Mankar, the I.O. in response to witness summons was present, he is not examined for the reasons best known to the prosecution. It is regretted to say that now, he left the Court sans permission.
5. On next date, the prosecution shall procure the presence of Mr.P.K. Mankar who was present in morning session, left the court without permission, else the matter shall be proceeded for recording statements of accused under section 313 Cr.P.C.
6. In view of above, I see the application is devoid of merits and deserves rejection. Accordingly, it is rejected."

3. When the present application was last heard by this Court on 17/10/2023, the following order came to be passed:

"1 In furtherance of the order dated 26/9/2023, Mr.Patil has placed on record the list of the witnesses which the prosecution intend to examine and worth it to note that not a single witness has been curtailed from the list which was annexed along with the charge-sheet.

Mr.Patil is only made aware of an important facet that the case under the P.C. Act is registered by CBI in the year 2000, which resulted in Special Case No.6/2003 and having been entrusted to Special Judge, Nashik.

2 The prosecution should be conscious of the timelines as it is evident that for almost two decades, the fate of the accused persons is hanging in air, as except for framing of the charge and examination of eight witnesses, the end of trial is not in foresight.

Let the CBI be conscious of the rights of the accused to have speedy trial, which is enshrined in Article 21 of the Constitution itself, and taking it into account, it shall give a list of only those necessary witnesses which would establish its case against the accused persons.

If the prosecution still insist upon examination of 26 witnesses in the list that is placed before me, I may be required to pass appropriate orders.

List on 4/11/2023."

4. So far as the accusations are concerned, the same pertain to the officials of the bank allowing credits in the current account of M/s. C.S. Lodha immediately on deposits of cheques without waiting for the cheques to be cleared. The drawings were being allowed against uncleared effects and in the process, huge amounts were allowed as clean overdraft to Shri C.S. Lodha though the bank officials had no powers to allow such drawings. The branch did not even

report the overdraft against uncleared cheques to the controller.

5. The high-value cheques while clearing pertaining to the account of M/s C.S. Lodha were mostly issued by M/s Thakkar and Sons. Such drawings against uncleared cheques were to the tune of crores of rupees. In respect of the drawing of the uncleared cheques of Rs.6.75 crores in the form of a clean overdraft resulted in the loss of Rs.5.58 crores to the bank and corresponding wrongful gain to Shri C.S. Lodha and his associates, as the same was not cleared by Shri C.S. Lodha.

6. Learned counsel for the accused vehemently opposed the application. It is submitted that the applicant is responsible for this delay. It is submitted that the applicant was very casual and callous in proceeding with the prosecution. It is then submitted that though the trial commenced on 12/04/2016, the prosecution examined only 8 witnesses in 5 years. My attention is invited to the provisions of Section 231 of the Code of Criminal Procedure while submitting that even the legislature requires the trial to proceed expeditiously. The application is thus against the

spirit of Section 231.

7. Heard.

8. The applicant undoubtedly should have been more vigilant in prosecuting the case before the trial Court. Considering the magnitude of the offence and the gravity of accusations, the interest of justice requires the applicant should be given an opportunity to examine the witnesses. This does not mean the prosecution can be given a free hand to examine any and every witness on whatever point the applicant wants. In response, learned counsel submitted that the prosecution intends to examine 18 witnesses viz. PW-6, PW-7, PW-9, PW-11, PW-12, PW-13, PW-14, PW-17, PW-18, PW-19, PW-20, PW-21, PW-24, PW-25, PW-26, PW-28, PW-31 and PW-33 mainly on the point of proving the documents as the prosecution case is based on documentary evidence. Learned counsel for the applicant submitted that these witnesses will not take much time and as all these witnesses are bank officials. It is submitted that the applicant would ensure and make every possible effort to see that they will attend the trial Court on the dates fixed. Learned counsel for the applicant assured that there will not be any application for unnecessary adjournment and

that the applicant will cooperate with the trial Court in the expeditious disposal of the proceedings.

9. With a view to giving a fair opportunity to the prosecution, in the present facts, I am inclined to allow the present application. However, the applicant must cooperate with the trial Court for expeditious disposal and will abide by what is recorded hereinabove. There is no question of any prejudice to the accused.

10. In this view of the matter, the impugned order dated 11/03/2022 passed below Exhibit 229 in Special Case (CBI) No. 06/2003 is set aside. The application below Exhibit 229 is allowed to the extent of 18 witnesses mentioned hereinbefore. The trial Court shall make an endeavour to decide the trial expeditiously. The applicant to cooperate.

11. If the witnesses do not appear, it is open for the trial Court to proceed further in accordance with law.

12. The application stands disposed of.

(M. S. KARNIK, J.)