IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.832 OF 2022

Parvinder Singh Patheja .. Applicant
v/s.
The State of Maharashtra .. Respondent

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Mr. Ashok Mundargi, a/w. Mr. Madhukar P. Dalvi, Mr. Hitendra V. Parab, Ms. Namrata Zaveri and Mr. Shivam S. Dube, for the Applicant.

Mr. Kuldeep Patil, Special PP, for Respondent No2/CBI.

Mr. Arfan Sait, APP, for State/Respondent.

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CORAM: PRAKASH D. NAIK, J.

DATE : 25th JANUARY, 2024.

P.C:-

1. The Applicant is arraigned as accused in R.C. No.6(E/2000-Mumbai) registered by CBI BS & FC, Mumbai for offences punishable under Section 120B read with 420 of the Indian Penal Code. The Applicant is aggrieved by order dated 17th June, 2017 passed by the learned Magistrate rejecting the application for discharge and subsequent order dated 23rd March, 2022 passed by the Sessions Court rejecting the revision application preferred by the Applicant.

2. The case of the prosecution can be summarized as follows:-

M/s. Patheja Brothers Forgings and Stamping Ltd. and M/s. Patheja Forgings and Auto Parts Manufacturers Ltd. were represented by its Directors, including accused no.6 in 1996. The accused had a conspiracy in order to cheat Bank of India. The accused represented to the Bank of India that the required Foreign Currency Loan (FCL) for import of raw materials/machineries/capital equipments for the purpose of modernization and expansion of their factories, i.e. M/s. Patheja Brothers Forgings and Stamping Ltd. (PBL) and M/s. Patheja Forgings and Auto Parts Manufacturers Ltd. (PFL) and, on the basis of said false representation, FCL was sanctioned to the tune of Rs.26.25 crores for PBL and Rs. 17.5 crores for PFL from Bank of India. Upon sanction and release of the FCL, the accused did not import any material, capital equipment, machineries' and instead diverted the FCL proceeds for the purpose of repayment of their dues with other financial institutions, for the purchase of real estate, investment in share and stock market and to their other personal benefits. They did not repay the FCL availed and caused loss to the Bank of India to the tune of Rs.43.75 crores. The machinery imported by them as per the agreement signed by them for the primary security and since they did not import or buy any machinery out of the Bank's fund, release loan became unsecured loan. FIR was registered. Investigation proceeded. Statements of witnesses were recorded. On completing the investigation, charge-sheet was filed.

3. The Applicant preferred application for discharge before the Court of learned Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai. The said application was rejected vide order dated 19th August, 2014.

4. The Applicant preferred Criminal Revision Application No.1282 of 2014 before the Court of Sessions challenging the order dated 19th August, 2014. The learned Sessions Judge, vide order dated 20th February, 2017, partly allowed the revision application. Order dated 19th August, 2014 was set aside and the learned Magistrate was directed to rehear the application preferred by the Applicant by keeping in mind the observations made in the said order.

5. The learned Additional C.M.M. heard application for discharge afresh and again rejected the said application vide order dated 17th June 2017. The Applicant, thereafter, preferred Criminal Revision Application No.765 of 2017 before the Court of Sessions challenging the order dated 17th June, 2017 passed by the learned Magistrate. The learned Sessions Judge, vide order dated 23rd March, 2022, rejected the revision application.

6. The Applicant has invoked the inherent powers of this

Court under Section 482 of the Criminal Procedure Code challenging the orders passed by the learned Magistrate and the Sessions Court.

7. Learned Senior Advocate Mr. Mundargi, appearing for the Applicant, submitted as under:-

(i) There is no evidence to show the involvement of the Applicant in the crime. The Applicant has not participated in the alleged fraudulent transactions.

(ii) The Applicant was the Director of the Companies M/s. Patheja Brothers Forgings and Stamping Ltd. and M/s. Patheja Forgings and Auto Parts Manufacturers Ltd. However, he had resigned from the said companies on 27th September, 1994 and 29th September 1993. The said fact is verified by the requisite form under the Companies Act and communicated to the Registrar of Companies and also supported by the receipt of communicating said to the Registrar of Companies. The transactions in question, which are subject matter of the impugned proceedings, had purportedly occurred after the resignation of the Applicant.

(iii) No role has been ascribed to the Applicant in the questioned transaction with the complainant bank. The statements of witnesses does not attribute any overt act to the Applicant.

(iv) The Applicant has not signed any incriminating documents which would reflect his participation in the crime.

(v) Nothing incriminating was recovered from the Applicant. The Applicant was not named in the FIR.

(vi) The prosecution is relying upon certain documents containing the name of the Applicant appearing on those documents as Directors of the Company. Those were the documents of internal record and the correspondence with the bank. There is no document to show that after his resignation, the Applicant had participated in the disputed transactions with the complainant bank.

(vii) The Courts have referred to certain documents such as D-25, D-26, D-27, D-62 and D-67. Documents at D-25, D-26 and D-27 are the documents of credit proposal prepared by the Bank of India for working capital and the said documents have no connection with the foreign currency loan. Documents D-62 and D-67 are the seizure memos of the CBI. The said documents were seized by the CBI. None of these documents are prepared by the Applicant or company. These are bank's internal records and, in some documents referred by the bank, name of the Applicant is shown as Director.

(viii) It is not the case of the prosecution that the Applicant had acted as Director of accused companies with the complainant bank at the relevant point of time. After his resignation or during the disputed transactions, the name of the Applicant does not feature as Director in any of the documents put forth the accused company.

(ix) The learned Magistrate as well as learned Sessions Judge has, however, relied upon the said documents and considered them as incriminating evidence against the Applicant to show his involvement. The Applicant was the Director of the Company at the relevant point of time but, post his retirement, he discontinued to be Director and had not participated as Director in the purported transaction.

8. The Applicant has filed an additional affidavit in respect of the documents giving explanation about said documents, which are in the nature of internal records of the complainant bank. It is contended that there is no incriminating material in the form of documents to verify that the Applicant was involved in commencement of the alleged crime.

9. Mr. Patil appearing for the Respondent CBI submitted that the Court of learned Magistrate and the Sessions Court have assigned cogent reasons for rejecting the application for discharge. Both the Courts have analysed the nature of incriminating material, which is sufficient to proceed against the Applicant by framing charge. At the

stage of framing charge, the Court is required to see whether prima facie case is made out for proceeding against the Applicant. At this stage, the Court is not required to conduct mini trial to ascertain the guilt of accused. Although it is claimed by the Applicant that he ceased to be the Director of both the companies, on perusal of the documents, the role of Applicant is apparent. There are several documents, which indicate that the Applicant was Director even after the purported resignation. The documents on record also indicate that he is signatory to one of the document. He had participated in the meeting of the companies post his retirement during the commission of the crime. The case of the prosecution is that the Applicant is one of the conspirator in commission of the crime. The documents referred to above, such as D-22, D-27, D-62 and D-67, and various other documents, collected during the course of investigation, indicate that the Applicant has played the vital role and he was party to the crime. The documents collected during the investigation indicate that the Applicant was Director and guarantor of PBL. The annual report no.14 of PBL for the financial year 1994-95 is a public document available at ROC. On scrutiny of the said document, it is apparent that the stamp paper utilised for the said document was purchased by the Applicant for obtaining certified true copy of annual report of Patheja Brothers Forgings & Stampings Limited for the financial year 1994-95. The stamp paper was purchased on 11th October, 2010. The charge-sheet was filed on 15th April, 2004. The annual return for the financial year 1994-96 is the public document which is also available at the ROC. The said document is on non-judicial stamp paper purchased by the Applicant. Similarly, the annual report no.25 of PFL for the financial year 1992-93 is also a public document and the stamp paper was purchased by the Applicant. Sufficient oral and documentary evidence is available on record to show that the Applicant served as a Director in M/s. Patheja Brothers Forgings and Stamping Ltd. and M/s. Patheja Forgings and Auto Parts Manufacturers Ltd. and had been an authorized signatory to obtain bank account of M/s. PBL maintained at Bank of Bahrain and Kuwait which stand utilised and served as Director as on September, 1997 as per D-25, D48, D-79 and D 106 which were collected during the investigation. The Applicant has served as Director in PBL. As per D-I-17, a letter dated 15th September, 1997 has been issued by the Applicant on behalf of M/s. PFL to show that the Applicant was involved in the operations of said company even after 1993. Document D-106 indicates that the Applicant has served as Director of PBL and one of the Director of PBL and had been one of the authorised signatory for the said account of PBL maintained at Bank of Bahrain and Kuwait. Out of FCL funds amounting to USD 15 million (Rs.53,19,45,862/-), Rs.10 crores were remitted to the aforesaid bank account of M/s. PBL maintained at Bank of Bahrain and Kuwait and, thereafter, from the aforesaid Rs.10 crores, Rs.8,28,04,664/- were remitted to Global Trust Bank for regularization of bills purchased on 7th March, 1996 for a total value of

Rs.8,05,32,397/-. Thus, there is sufficient evidence to show the involvement of the Applicant in the crime. The prosecution must be given an opportunity to lead evidence and prove the charge during the trial.

10. Perused the documents on record, and the impugned orders passed by the Courts. The claim of the Applicant is that he ceased to be the Director of the Companies before the purported transactions. The transactions had occurred after he ceased to be the Director and had not participated in the transactions. The prosecution is relying upon several documents and it is their case that the Applicant was very much acting as a Director even pursuant to the alleged date of retiring from the said company. On several documents, the name of the Applicant is appearing. Prima facie case is made out by the prosecution to proceed and frame charge against the Applicant. At this stage, the Court is not required to hold detailed enquiry for appreciating the evidence. The learned Magistrate as well as learned Sessions Judge has assigned cogent reasons for rejecting the application on discharge on the basis of the evidence on record. Documents D-25, D-26 and various other documents, which are part of the file of the documents, are sufficient to proceed against the Applicant. Even after alleged retirement the involvement of Applicant is apparent from documents. The grounds urged by Applicant will have to be adjudicated during trial. There are incriminating circumstances against

Applicant which are sufficient to proceed against him. No case for discharge is made out. The courts have rightly rejected the application for discharge.

ORDER

(i) Criminal Application No.832 of 2022 is rejected and disposed off.

(ii) Observations made in this order are prima facie for adjudicating issues urged in this proceedings and trial court shall not be influenced by the same and proceed with trial in accordance with law.

(PRAKASH D. NAIK, J.)