IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3665 OF 2022

Vikram Anantrai Doshi And Anr. ....Petitioners
vs.
The State of Maharashtra And Anr. ...Respondents

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Mr. Harshad Sathe, a/w. Mr. Dileep Sathe, for the Petitioners.

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

Mr. Shreeram Shirsat, a/w. Mr. Tanveer Khan, Ms. Tanvi Mate, Mr. Shekhar V. Mane, Ms. Karishma Rajesh and Mr. Nishad Mokashi, for Respondent (CBI).

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CORAM : PRAKASH D. NAIK, J.

DATE : 25th JANUARY, 2024

P.C.:-

1. The Petitioners are challenging the order dated 5th August, 2022 passed in Criminal Revision Application No.453 of 2019 and order dated 20th February, 2019 passed in discharge application preferred by the Petitioners in CC No.928/PW/2009.

2. The case was registered on 28th October, 2004 on the basis of a written complaint lodged by the Chief Vigilance Officer (CVO) of Bank of Baroda against Shri R.C. Sharma, Chief Manager, Bank of

Baroda and against the Petitioners and certain other accused for offences punishable under Sections 120B r/w 409, 420 of the Indian Penal Code and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

3. The prosecution case is that loan was sanctioned by the Bank of Baroda on the request of M/s. Atcom Technologies Ltd. so as to take over 15% shares of the total working capital already sanctioned by the consortium of banks and for an additional working capital in the form of non-fund based credit. Upon sanction of the loan, the entire amount was to be transferred to two of the existing consortium banks, viz. UTI Bank and Federal Bank. The facilities which were released in favour of Atcom Technologies Ltd. were in violation of regulation of the Bank. The accused persons hatched a criminal conspiracy in sanction, release and utilization of the funds of the bank. Upon sanction of the requested working capital, total facilities came to be sanctioned by the Bank of Baroda were, cash credit of Rs.114.00 lakhs, WC demand loan Rs.456.00 lakhs, BG/LC of Rs. 480.00 lakhs and term loan Rs.360.00 lakhs – total of Rs.1410.00 lakhs. Out of this Rs.114.00 lakhs of the cash credit, Rs.456.00 lakhs of WCDL and Rs.360.00 lakhs of TL were to go as repayments to the existing liabilities with the UTI Bank and Federal Bank. The BG and LC of Rs.480.00 lakhs was the additional working capital facility sanctioned by the Bank of Baroda. While recommending the credit facilities to Atcom, the bank ignored the potential NPA status of the company's

account with other banks without fulfillment of terms and conditions of sanction. Shri R.C. Sharma, Chief Manager of Bank of Baroda unauthorizedly disbursed the sanctioned amount into the current account of the company instead of making direct disbursement to the UTI and Federal Bank. This has facilitated diversion of sanctioned amount to the overdue outstanding consortium account with SBI and Dena Bank. The sanctioned facilities were released in violation of sanction terms and conditions and not in accordance with the no objection certificate given by the existing consortium members. The consortium members refused to extend the charge on the assets of the company to the Bank of Baroda and refused to recognize the Bank of Baroda as consortium member. This had rendered the advance unsecured. The Directors of the company mis-utilized the release amount, causing a loss of Rs.9.92 crores to the Bank. The bank officer committed procedural irregularities and violated various rules and procedures of the bank. Directors of the Company requested the Bank of Baroda to sanction 15% of the total WC facility sanctioned by the consortium banks, so that much amount can be transferred to the UTI Bank and Federal Bank to take over the existing liabilities with these two banks. The borrowal account of Atcom Technologies Ltd. with the consortium of banks as well as with the term financial institutions were highly irregular and outstanding. In that condition, the accused approached the Bank of Baroda for sanction of loan. They concealed the fact of overdue outstanding. When the Bank of Baroda asked for the outstanding position with the existing consortium members, willfully and with the criminal intent, they misled the Bank of Baroda by furnishing wrong statements about the outstanding position by giving lesser amount as actual outstanding was. The primary security for the term loan was the first charge to be created on the fixed assets of the company ranking pari passu with the existing term lending institutions. The term loan was released and paid as per the sanction terms and conditions. The amount of Bank of Baroda were diverted which has caused wrongful loss to the Bank of Baroda. The transfer of funds of CC and DL to the current account was with a dishonest intention to further divert the funds from the current account. The sanctioned money was not used for the purpose for which it was sanctioned, i.e. for the repayment to UTI Bank and Federal Bank. The sanction terms and conditions were violated. The Bank of Baroda could not get the charge in pari passu with the other consortium banks. This diversion by the accused deprived Bank of Baroda of its security and the entire loan became unsecured. The Respondents had got LCs issued from the bank in favour of fictitious companies propped up by the accused and fictitious beneficiary companies had got letters of credits discounted to siphon out funds from these banks. These fictitious beneficiary companies got the LCs discounted by attaching their bogus bills and portion of the discounted proceeds were used for personal benefits of accused no.1 and another portion routed back to Atcom. Particulars of 10 fictitious companies are mentioned in the charge-sheet. Proprietors/directors of these fictitious companies issued false bills under their signatures and discounted these false bills backed by the

LCs. In two of these fictitious companies, accused nos. 1 and 2 were Directors for some period of time. An amount of Rs.1,48,50,000/- received from United Western Bank by accused no.1 was utilized towards purchase of property. The accused had obtained credit facility from the bank but had utilized fund for acquiring immovable property for their personal use. Charge-sheet was filed for offences punishable under Section 120B r/w. Sections 406, 420 467, 468, 471 of the Indian Penal Code. The charge against R.C. Sharma was dropped.

4. The Petitioners preferred Criminal Application No.2239 of 2009 before this Court for quashing the proceedings on the ground that there is settlement with the complainant. It was contended that the bank had issued no dues certificate. Vide order dated 22nd April, 2010, the application was allowed and the proceedings were quashed.

5. The order dated 22nd April, 2010, was challenged by Respondent CBI, before the Hon'ble Supreme Court. Vide order dated 19th September, 2014 the Supreme Court set aside the High Court's order and it was directed that the trial shall proceed in accordance with law.

6. The trial court framed the charge by order dated 15th October, 2016. The said order was challenged by applicants before Sessions Court by preferring Criminal Revision Application No.83 of 2017. Vide order dated 3rd April, 2018, the learned Session Judge set

aside the order framing charge on the ground that, learned Magistrate did not appreciate the material placed along with charge-sheet and the Court has not arrived on the conclusion that there is a prima facie case against the applicants. The matter was remanded back to the trial court for fresh consideration.

7. The trial court heard the application again. The said application was rejected vide order dated 20th February, 2019. The order of the trial court was challenged by the Petitioners by preferring Criminal Revision Application No.453 of 2019. The said application was rejected vide order dated 5th August, 2022.

8. Learned Advocate for the Petitioners submitted that the charge-sheet does not make out any offence against the Petitioners. The order of the trial court does not assign any reasons for rejecting the application for discharge. The Sessions Court has technically confirmed the trial court's order. The prosecution is relying upon the statement of Shri. R.C. Sharma, who was initially arraigned as an accused in this case. The current situation indicates that none of the persons concerned with the bank is implicated as an accused. The order of the learned Magistrate of the Sessions Court does not indicate as to how the Petitioners were involved in commission of the offences. There is no evidence to frame charges against the Petitioners. Only because the pari passu charge is not created, the loss was caused. The cheque was in possession of the bank. In the absence of Bank Officer, it is not clear as

to how the prosecution would be in a position to prove the charge under Section 420 of the Indian Penal Code. The person concerned with the Bank of Baroda was perpetually involved in functioning with the accused so far and he has been utilised as witness by the prosecution. The statement of Shri. Ashish Sharma itself indicates that he was instrumental in allegedly committing irregularities. The Petitioners cannot be prosecuted on the basis of the statement. The other banks have not filed the complaint. The charge under Section 409 of the Indian Penal Code will not be applicable in the present case. They were not the agents of the bank. It is not the case of the bank that as fictitious bills and letters of credits were prepared by the Petitioners, based on which monies were released on the Petitioners. The other banks have not raised the grievance and alleged that the fictitious companies of the Petitioners were propped up and there was no commercial activities. The complaint proceeds on the footing that loss was caused to the Bank of Baroda. The case of the prosecution is that the loss is to the tune of Rs.5.7 crores. Charge cannot be framed on inferences which are unsupported by the evidence. The complaint was lodged by Chief Vigilance Officer of Bank of Baroda for offences under P.C. Act aAgainst the Manager Mr. R.C. Sharma and Petitioners. At the time of filing charge-sheet, Mr. Sharma was exonerated, as no evidence was found against him. No role is played by Petitioners in commission of offences. The transaction was between Consortium Banks and Bank of Baroda. No dues certificate was issued by Bank. Both the courts committed error while rejecting applications preferred by Petitioners.

9. Learned Advocate for Respondent Nos. 2 submitted that the offence is of serious nature. Prima facie case is made out against the Petitioners. The Court is required to see that prima facie case is made out. The order dated 22nd April, 2010 was challenged by the Respondents before the Apex Court and vide order dated 19th September 2014, the Apex Court set aside the order of this Court by observing that the crime of this nature would definitely fall in the category of offences which travel far ahead of personal or private ground. There is sufficient evidence to proceed against the Petitioners. The learned Magistrate and the learned Sessions Judge have taken into consideration the evidence against the Petitioners while rejecting the applications for discharge.

10. Learned Advocate for the Petitioners, in rejoinder, submitted that the order dated 19th September, 2014 passed by the Apex Court, was dealing with the settlement arrived at between the parties. However, the Petitioners had now prayed for discharge. Considerations for discharge and the prayer for quashing the proceedings at the initial stage in exercise of powers under Section 482 of Criminal Procedure Code is different. The observations made by the Apex Court in the aforesaid order would not be an impediment to consider the application for discharge.

11. It is settled law that, at the stage of discharge, the Court is not required to conduct the detailed enquiry or appreciate evidence.

The Court has to see whether the charge is groundless and there is no evidence to proceed against the accused. Prima facie case is made out against the accused for framing of charge. The orders passed by the learned Magistrate as well as learned Sessions Judge does not warrant any interference. There is sufficient material against the accused to proceed against them. It appears that the Petitioners had earlier preferred application before the trial court which was rejected on 15th October, 2016. The order was challenged before the Sessions Court by preferring the revision application and vide order dated 3rd April, 2018, the trial court was directed to rehear the matter. The record indicates that the FIR was registered on the basis of report filed by one R.P. Bansal, Chief Vigilance Officer, Bank of Baroda, Mumbai, alleging that LCs beneficiary firms, had requested the LCs to be issued were companies existing only on paper without any commercial activity. On the basis of the FIR, investigation was conducted by the CBI. Statements of witnesses were recorded. Charge-sheet was filed for the offences under Sections 406, 467, 468, 471 r/w. 120B of the Indian Penal Code.

12. One of the contention of the Petitioners is that Shri R.C. Sharma was initially implicated as one of the accused. Subsequently, he was exonerated and he has been cited as a witness. Apart from the statement of the said witness, prima facie, there is evidence to show that there was criminal conspiracy with dishonest intention and the accused had misused the funds made available by Bank of Baroda, which was

transferred to their account in order to discharge their existing liability instead of utilizing the same for which funds were sanctioned same being utilised for some other purpose. Initially, the Petitioners had approached this Court by preferring Criminal Application No.2239 of 2009 for quashing the proceedings on the ground that the matter has been amicably settled between the parties and that consent terms were filed. This Court, vide order dated 22nd April, 2020, observed that the offence under Sections 406, 420 of IPC are compoundable with the permission of the Court. The bank had already given No Dues Certificate to the borrower. No fruitful purpose would be served if the same matter is sent for trial and proceedings were quashed. The order was challenged before the Apex Court by the CBI. The Apex Court observed that in the case at hand, the Respondents had got the LCs issued in the bank in favour of fictitious companies propped up by them and the fictitious companies got letters of credit, discharged the letters of bills, the list of 10 companies have been mentioned in the charge-sheet and, thus, the allegation of fictitious nature is there. It is manifest from the order of this Court that this Court had not adverted to the same. It is not a simple case where an accused has borrowed money from the bank and diverted it somewhere else and, thereafter, paid the amount. It does not fresco a situation where there is dealing between a private financial institution and an accused, and after initiation of the criminal proceedings, he paid the sum and got the controversy settled. It was further observed that availing of money from a nationalized bank in the manner, as alleged by the investigating agency, shows the vividly exposits fiscal impurity and, in a way, financial fraud. The modus operandi, as narrated in the charge-sheet, cannot be put in the compartment of an individual or personal ground. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kind of benefits, it cannot be regarded as a case having overwhelmingly and predominantly of civil character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the offence creates a dent in the economic spine of the nation. The cleverness which has been skillfully contrived, if the allegations are true, has a serious consequence. This crime has the potentiality to usher in economic crisis. Its implications have its own seriousness, for its creates a concavity in the solemnity that is expected in financial transactions. It is not a case where one can pay the amount and obtain a "no dues certificate" and enjoy the benefit of quashing of the criminal proceeding on the hypostasis that nothing more remains to be done. The collective interest of which the Court is the guardian cannot be a silent or a mute spectator to allow the proceedings to be withdrawn, or, for that matter, yield to the ingenuous dexterity of the accused persons to invoke the jurisdiction under Article 226 of the Constitution or under Section 482 of the Code of Criminal Procedure and quash the proceedings. The Court is expected to be on guard to these kinds of adroit moves.

13. The charge sheet indicate that applicants made applications

to the Bank of Baroda for sanction of various credit facilities, stating that they wanted to induct the said bank as a new consortium member to replace the existing members. They requested the said bank to sanction 15% of the total working capital facility sanctioned by the consortium of the banks so that, that much amount could be transferred to UTI Bank and Federal Bank to take over its existing liabilities with the two banks. It was revealed during investigation that the account of the company, with the consortium of banks as well as the finance institutions, was highly irregular and, in the said condition, the accused approached the Bank for sanction of loan. In the application to the Bank, the accused concealed the fact relating to the dues outstanding against them. When asked for the outstanding position with the existing consortium members, the accused willfully and with criminal intent to mislead to Bank of Baroda, furnished wrong statements about the outstanding position by giving considerably lesser amount as outstanding than the actual. The amount of loan was sanctioned on 24th January, 2003. As per the terms and conditions of the said term loan, the primary security for the same was the first charge to be created on the fixed assets of the company ranking pari passu with the existing Term Lending Institutions. The primary charge for the cash credit and working capital demand loan was the hypothecation of current assets such as stocks, stocks in trade, raw materials and book debts. One of the important terms and conditions was that the CC, WCDL and term loan amounts were to be directly paid to the company's account with the UTI Bank and Federal Bank so as to take over the liabilities as well as the securities mortgaged with the two banks. On 29th January, 2003 the Bank intimated the sanction to Atcom. Accused nos. 1 and 2, with the intention to escape personal liabilities, made accused no.3 and one Chirag Gandhi as Directors in Atcom and got all the loan documents, including the Demand Promissory Note signed by the said persons. The terms and conditions of the sanction was that the entire working capital of Rs.570.00 lakhs and the term loan of Rs.360.00 lakhs were to be directly paid to the UTI Bank and Federal Bank. Consequently, the term loan was released and paid as per the sanction terms and conditions. As alleged, Accused No.1 induced the Bank to release the sanctioned working capital funds to the Current Account and, from the said account, money was dishonestly diverted to his own accounts with SBI and Dena Bank to bring down the outstanding liabilities in those accounts. As per the chargesheet, Rs.114.00 lakhs of cash credit and Rs.456.00 lakhs were released into the Current Account on 27th March, 2003. Thus, the total funds released into the Current Account was Rs.560.00 lakhs, out of which, Accused No.1 dishonestly transferred Rs.352.00 lakhs to SBI and about Rs.200.00 lakhs to Dena Bank, which amounted to diversion of concerned bank funds dishonestly and caused wrongful loss to the said Bank.

14. The transfer of funds of CC and DL to the Current Account was with a dishonest intention to further divert the funds from the current account and for transfer of the said funds of CC and WCDL. Accused No.1 used the cheque leaf available with him for the Current

Account and substituted out the words "Current Account" and substituted them with "Cash Credit". In order to further divert the funds from the current account, the accused no.3 used to issue "Pay Yourself Cheques" by obtaining Bankers cheque favouring their account with SBI and Dena Bank. Though the accused no.1 and accused no.3 knew that the said working capital was sanctioned only for the purpose of taking over the liabilities of UTI Bank and Federal Bank, yet they dishonestly diverted the funds to SBI and Dena Bank. The sanctioned money was not used for the purpose it was availed of and the sanction terms and conditions were violated, as a consequence of which, the Bank could not get the charge pari passu with the other Consortium Banks. The diversion of funds by accused nos. 1 and 3 deprived the bank of its security and the loan became unsecured.

15. The Accused No.1 got letter of credits issued from SBI and Dena Bank in favour of fictitious Companies propped up by the accused and used the said LC's to siphon the funds from Banks.

16. The LC's beneficiary firms, favouring whom the accused had requested the LC's to be issued, were companies existing on paper without any commercial activity. The said fictitious companies got the LC's discounted by attaching their bogus bills and portion of these discount proceeds were used for personal benefits of accused no.1 and a certain portion was routed back to Atcom.

17. The trial court considered prima facie material to substantiate allegations against the accused. Statements of witnesses Dilip Velankar, Chief Manager, United Western Bank, Mr. R. Srinivasan, Manager, Punjab National Bank, Mr. Arvind Vitekar, Chief Manager, SBI, Mr. Suresh Phadnis, Deputy Manager, SBI, Mr. D.G. Bhat, Deputy General Manager of purchaser of Smart Sensor and Tranducers Ltd., Mr. Vikas Hari Borle, Mr. Vinodkumar Purohit, Mr. Vijay Vora, Mr. Ashvin Vora and Mr. R.C. Sharma shows that prima facie there is material to believe that, the accused have committed the offence.

18. Mini trial at the stage of framing charge is not permissible. In the form of statements of witnesses and documents brought on record prima facie are sufficient grounds to substantiate the allegations of concealment of alleged overdue outstanding with consortium banks, wrongful disbursement, scoring of cheques, debt of Bank of Baroda becoming unsecured, diversion of funds to purchase a flat and propping fictitious companies. The defence of the accused has to be considered during trial. Both the courts have analysed prima facie evidence and rejected the applications. No case is made out to interfere in impugned orders.

19. Hence, the petition is devoid of merits and deserves to be dismissed.

ORDER

(i) Criminal Writ Petition No.3665 of 2022 is dismissed.

(ii) Trial is expedited.

(PRAKASH D. NAIK, J.)