IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.340 OF 2023

ASHISH HARISHCHANDRA MISHRA ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

WITH
CRIMINAL REVISION APPLICATION NO.341 OF 2023

RAMLALI HARISHCHANDRA MISHRA ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Mr. Girish Kulkarni, Senior Advocate a/w Adv. Darshan Juikar a/w Adv. Laxminarayan Shukla a/w Adv. Pragya a/w Adv. Ameya Khot a/w Adv. Darshana Vora i/b. Legal Vision for the applicants.

Smt. Sangeeta D. Shinde, APP for the State-respondent.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 9, 2024.

JUDGMENT :

1. Heard Mr. Girish Kulkarni, learned Senior Advocate for the applicants and learned APP for the State.

2. These are Criminal Revision Applications under Section 397 of the Code of Criminal Procedure (hereafter "Cr.P.C.", for short) filed by the accused Nos.2 and 3 which by

consent are disposed of by a common judgment. The challenge is to the common order dated 01.08.2023 passed by the trial Court constituted under the Prevention of Corruption Act, 1988 (hereafter 'the PC Act' for short) below Exhibit 24 and 33 rejecting the applications for discharge made by the applicants under Section 239 of the Cr.P.C.

3. The accused No.1 is a public servant who at the relevant time was working as an Assistant Engineer in the Bombay Municipal Corporation. The applicant - accused No.2 is the wife of the accused No.1. The applicant - accused No.3 is the son of the accused No.1. The FIR was registered on 09.01.2014 under Section 13(1)(e) read with Section 13(2) of the PC Act along with Section 109 of the Indian Penal Code, 1860 (hereafter 'IPC' for short) which was registered by the Anti-Corruption Bureau at the instance of one Mr. Chandrakant Katkar. On the basis of the said FIR the respondent registered the C.R. No.1 of 2014. The FIR was registered after a preliminary enquiry. It is the contention of learned APP that the accused No.1 attended the enquiry only once. Later on the documents were

submitted by the accused No.1 through some acquaintance. So far as accused Nos.2 and 3 are concerned, learned APP submitted that they never attended the enquiry.

4. Be that as it may, pursuant to the registration of the FIR and upon completion of the investigation, a final report was filed on 08.03.2016. Learned Senior Advocate has taken pains to invite my attention to the relevant documents which form part of the charge-sheet. It is the contention that so far as accused No.2 is concerned, the documents on record are sufficient to demonstrate that her income is derived from her business of flour mill which she was operating legitimately. Learned Senior Advocate submitted that the income tax returns placed on record would indicate that all the properties purchased in her name are duly accounted for. It is submitted that on the basis of the income derived from the property/agricultural land in her name, the business of flour mill, the sale of the flats clearly demonstrates that the accused No.2 had sufficient independent source of income unconcerned with the income of accused No.1. Learned Senior Advocate submitted that

the accused Nos.2 and 3 were roped in only because they happened to be the wife and son of the accused No.1. Placing reliance on the provisions of Section 13(1)(e) read with Section 13(2) of the PC Act as well as Section 109 of the IPC, it is submitted that the evidence is absolutely insufficient to demonstrate the direct nexus between the applicants and accused No.1 in the alleged offences. In the submission of the learned Senior Advocate, the accusations are based only on surmises and there are no materials to establish direct, cogent and material connection of the applicants with the alleged offence. It is submitted that it is for the prosecution to establish by cogent materials that the allegations levelled against the accused are made out. Learned Senior Advocate therefore submitted that an application for discharge was made at Exhibit-24 and Exhibit 33 before the trial Court. Assailing the order passed by the trial Court dismissing the application for discharge, learned Senior Advocate submitted that the prosecution has made a gross mistake in assessing the income from the sale of Gala No.102, Soni Diamond as Rs.10,03,200/- while the same is recorded and duly shown in the relevant documents and or bank transactions to be Rs.15,00,000/-. It is further submitted that the prosecution has unjustifiably deducted the purchase price of the property from the selling price though the same was duly shown, reflected and disclosed in the ITR of the applicant. The learned Senior Advocate has painstakingly taken me through the documents to demonstrate that the prosecution had made a mistake in assessing the income from the rent of Room Nos.6, 7 and 8 in Nayaran Bhuvan, Kandivali West as Rs.12,22,897/- while the same is recorded and duly shown in the relevant documents and or bank transactions to be Rs.13,29,952/-. Likewise the learned Senior Advocate made an attempt to pick-holes in the prosecution case in respect of the various transactions thereby contending that the prosecution made gross errors in calculating the income, expenses and assets of the applicant though the entire income, expenses and assets of the applicant are duly accounted for in the bank transactions and the ITR of the applicant.

5. Learned APP on the other hand relied on the

accusations in the FIR and in support of the accusations invited my attention to the materials on record to submit that these materials are sufficient to proceed against the accused and no case for discharge is made out. My attention is invited to the observations of the trial Court. Learned APP relied upon a chart so far as the applicants – accused Nos.2 and 3 are concerned. It is also the contention of learned APP that funds belonging to the accused No.1 are diverted in the bank account in the name of Amey Public Charitable Trust in which the accused are the trustees. The details of the transfers are set out in the chart to the tune of lakhs of rupees. Learned Senior Advocate in support of his submissions relied upon the decision of this Court in Prakash Ramaji Ambagade and another vs. The State of Maharashtra in Criminal Application (apl) No.1577 of 2007.

6. I have heard learned counsel and perused the materials on record relied upon and also the impugned order. The perusal of the FIR and the materials on record will reveal that there are ample materials against accused

Nos.2 and 3 to *prima facie* indicate that the income of the accused No.1 which was disproportionate to his known sources of income was utilised by accused Nos.2 and 3. On the basis of these materials, at this stage it is difficult to come to the conclusion that the accused Nos.2 and 3 have independent sources of income justifying the discharge. There are adequate materials on record to indicate that the applicants herein have purchased properties in their name which is disproportionately more than their known source of income. It is for this reason that the offence is registered against the accused under Section 13(1)(e) read with 13(2) of the PC Act along with Section 109 of the IPC.

7. The accused No.1 married the accused No.2 sometime in the year 1977. The check period is for the duration between 12.10.1976 to 31.05.2011. The chart indicates that the legitimate income of the accused is accepted by the prosecution. Further, under various heads, the prosecution has rejected the explanation offered regarding the legitimate sources of income in respect of the dividends on the shares, the agricultural income, sale of shares to the

extent of Rs.23,83,749/-. So far as the income from the dividend from the shares during the check period is concerned, though the accused No.1 indicated that he had received cheques every year which came to be deposited in Janaseva Sahakari Bank (Borivali) Limited, however, there are no details on record about the cheques and the mode in which the dividend received was furnished. It has then come on record that the accused Nos.1 and 2 had jointly purchased the property admeasuring 8 H 11 R at Newale Rural, Taluka Palghar, District Thane on 09.03.1998. The agricultural income for the period April 1998 to May 2011 taken to be half share of the agricultural income, is shown as Rs.29,95,462/-. However, the 7/12 extract and other documents issued by the Talathi will reveal that upto the year 2011 only grass was growing on the said land.

8. Similarly, though a claim is made about agricultural income from sale of mangoes and coconuts, there are no receipts placed on record to indicate the factum of such sale. Some receipts were produced regarding the sale of the chikoo fruit which was accepted as legitimate income.

According to me, a detailed analysis of the materials, as if this Court is conducting a mini trial, is not permissible at this stage.

9. Then there are details regarding the purchase of a flat in the name of accused No.1 and the income derived after letting it out on rent. Accused No.1 claims to have received rent from letting out the flat. No bills or receipts are produced on record to support the stand that the income was received from renting out the flat. The chart relied upon by the respondent reveals the legitimate income claimed by the accused No.2 which is accepted and the reason for the denial of the income on behalf of the present applicants. There are also materials to indicate that funds to the tune of lakhs of rupees belonging to the accused No.1 are diverted in the bank account standing in the name of Amey Public Charitable Trust in which the accused are the trustees.

10. There are ample materials on record *prima facie* indicating that the ingredients of the alleged offence under Section 13(1)(e) read with Section 13(2) of the PC Act

along with Section 109 of the IPC are made out. It is not possible for me to conduct an indepth inquiry and render a finding that the applicants have purchased the property from legitimate sources which, according to me is in the domain of the trial Court. The decision relied upon by the learned Senior Advocate in the case of **Prakash Ramaji Ambagade and another** (supra) is distinguishable on facts. This Court was dealing with a case where the applicants therein were facing a prosecution for commission of offence of collecting assets by a public servant disproportionate to his known source of income. The public servant, the original accused No.1 and husband of the applicant therein died during the pendency of the proceedings. In such circumstances this Court was of the opinion that if it is the case that main offence of amassing illegal wealth disproportionate to the known source of income cannot be proved by the prosecution against the public servant, accused No.1 therein, having regard to the nature of the allegations made against his wife, offence of abetment of the offence can obviously be not proved against the person who is not a public servant. The allegations therein were against the wife of the public servant that she abetted the commission of offence by her husband by intentionally aiding him to amass the wealth. The intentional aiding was in the nature of holding in her name the assets purchased by her husband using ill-gotten money. The fact that funds used for purchasing assets was supplied by the husband which the deceased public servant was required to prove and in such circumstances this Court held that it cannot be proved in the absence of deceased public servant and therefore, offence of abetment of the nature alleged against his wife, the non-public servant, cannot also be proved. It is in those circumstances and in the facts of that case this Court discharged the non-public servant.

11. The present is a case where it is the specific case of the prosecution that the applicants, that is the non-public servants are holding assets purchased in their name from the ill-gotten money of the accused No.1. The case is that accused No.1 amassed illegal wealth disproportionate to his

known sources of income which was then utilised for purchase the property/shares in the name of the applicants. In such view of the matter I do not find this a fit case to discharge the applicants. I have perused the order of the trial Court. I see no reason to interfere with the order passed by the trial Court in exercise of this Court's jurisdiction under Section 397 of the Cr.P.C.

12. The Criminal Revision Applications are consequently rejected.

(M. S. KARNIK, J.)