IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 410 OF 2024

Pawan Radheshyam Kejriwal } ****....Applicant/ Orig. Accused No.6****

: Versus :

The State of Maharashtra

(Palghar Police Station) ****}....Respondent****

Mr. Sujit B. Shelar *with Mr. Pranav More, for the Applicant.*

Ms. Anuja S. Gotad, *APP for the Respondent-State.*

PI, Mr. Suresh Choudhari, ACB from Palghar Police Station present.

CORAM : SANDEEP V. MARNE, J.

Dated : 13 November 2024.

P.C. :

1) The revisionary jurisdiction of this Court is invoked under the provisions of Section 397 of the Criminal Procedure Code for setting up a challenge to the order dated 24 May 2024 passed by the District Judge-II, Palghar rejecting the application filed by the Applicant for his discharge in Special Case No.3/2013.

2) Applicant is arraigned as Accused No.6 in Special ACB Case No.03/2013 for offences punishable under Sections

420, 465, 468, 471 read with Sections 34, 120(B), 109 of the Indian Penal Code and under Section 63(3)(5) of the Bombay Sales Tax Act, 1959 and under Sections 13(1)(c)(d) and 13(2) of Prevention of Corruption Act, 1988.

3) Prosecution case is that, Accused No.3-Suresh Nair is the Managing Director and Accused Nos. 4 and 5 are Directors of M/s. Aswathi Industries Ltd. It is alleged that a fraud was detected in Palghar Sales Tax Office relating to complaints of undue sales tax refund and accordingly investigations were conducted in January 2010 which revealed assessment of M/s. Aswathi Industries from 1 April 2001 to 31 March 2002 was made by the then Sales Tax Officer, Mr. S.P. Kulkarni, in which he had sanctioned refund of Rs.4,45,351/- vide order dated 10 April 2003. Applicant/Accused No.6 acted as Tax Consultant of M/s. Aswathi Industries and represented the Company during the said proceedings by producing various documents including the relevant 'C-Form'. During the course of investigations at the office of the Company, its Director produced C-Form issued by M/s. Batliboy Environmental Engineering Limited Company, Bangalore showing interstate sale by M/s. Aswathi Industries of Rs.1,94,70,662/- and payment of concessional central sales tax at the rate of 4% thereon. Upon careful perusal of the said C-Form it was revealed that separate paper was pasted on the said C-Form for showing sale worth of Rs.1,94,70,622/-.

Accordingly, summons was served on M/s. Batliboy Environmental Engineering Limited Company, Bangalore who produced the original C-Form showing transaction of Rs.3,64,208/- which amount was altered to Rs.1,94,70,622/-. Similarly, it was found that the date on the C-Form was also altered. It is therefore alleged that though the actual goods sold by M/s. Aswathi Industries was Rs.3,64,208/-, the C-Form was fabricated by pasting another paper thereon for showing inflated figure of Rs.1,94,70,622/- thereby causing loss to the public ex-chequer of Rs.20,75,985/-.

4) Since Applicant/Accused No.6 represented the Company and produced the relevant C-Form, it is alleged that the Applicant was a part of the conspiracy and accordingly has been arraigned as an Accused No.6 in Special ACB Case No.3/2013.

5) It appears that the two Directors of the Company, Accused No.4 (*Rita Nair*) and Accused No.5 (*Ritu Kejriwal*) filed applications for discharge at Exhibits-61 and 65 which came to be allowed by the learned Judge by order dated 2 March 2001 and accused Nos.4 and 5 have been discharged from the proceedings. Applicant filed application at Exhibit-129 for his discharge on the ground that he is a mere practicing Advocate and tax consultant and has no concern with the documents of the Company. The learned Judge has however proceeded to

reject Applicant's application for discharge by order dated 24 May 2024, which is the subject mater of challenge in the present Revision Application.

6) I have heard Mr. Shelar, the learned counsel appearing for the Revision Applicant who would submit that the Applicant is unnecessarily implicated in the present case merely because he acted as a Tax Consultant of the Company. That merely because Applicant represented the Company in proceedings before the Sales Tax Officer, the same would not *ipso-facto* mean that the Applicant has forged any document. That in his capacity as Tax Consultant, the Applicant merely produced whatever documents that were provided to him by the Directors of the Company and that it is too farfetched to assume that the Applicant actually forged the relevant C-Form. He would submit that there is absolutely no material on record to infer an act of forgery against the Applicant. That the learned Judge has erred in relying on statements of Mr. Mayeenkar and Mr. Chavan working in Applicant's office for rejecting the discharge application without appreciating the position that mere access to the data maintained in the computers of the Applicant's office cannot lead to automatic presumption that the Applicant committed any act of forgery. He would submit that in absence of any relevant material available against the Applicant, there is no possibility of securing his conviction and conduct of trial

against the Applicant would be abuse of process of law. He strongly relies upon order dated 2 March 2021 discharging the two Directors of the company, Rita Nair and Ritu Kejriwal. He would accordingly pray for setting aside the order passed by the learned Sessions Judge and for discharge of the Applicant.

7) The Revision Application is opposed by Ms. Gotad, the learned APP appearing for Respondent-State. She would submit that there is sufficient material against the Applicant to bring home the charge leveled against him. That the case involves clear act of forgery where C-Form pertaining to previous year has been fabricated by pasting another paper at the relevant place by inflating the figure of sale for cheating the Government and for causing unlawful gain to the Company, its Directors and the Applicant. That Applicant being a Tax Consultant is bound to know the act of forgery since C-Form was pasted with another paper with different figures of sales. The Applicant therefore cannot seek to dissociate himself with the C-Form admittedly produced by him before the Officer during the course of assessment proceedings. She would also take me through the statements of two employees of the Applicant-Mr. Mayeenkar and Mr. Chavan who have merely stated that the Applicant used to make alterations in the entries made by them in the figures of Balance Sheet, sales purchase statements etc. of various Companies on the computer. That there is sufficient material

available on record to subject the Petitioner to trial. She would therefore pray for dismissal of the Revision Application.

8) I have considered the submissions canvassed by the learned counsel appearing for the parties and have gone through the findings recorded by the learned Judge in the impugned order as well as the records of the case. The case involves allegation of forgery, cheating and corruption by the directors and tax consultant of the Company in connivance with the officers of the Sales Tax Department. The prosecution case reveals that a C-Form was issued by M/s. Batliboy Environmental Engineering Limited Company, Bangalore which was originally for sale transaction of Rs.3,64,208/- and it is alleged that the said figure of sale transaction is altered by pasting a paper on the C-Form at the relevant place by inflating the value to Rs.1,94,70,622/- for the purpose of showing additional sale by Rs.1,91,06,414/- for the purpose of payment of concessional duty at the rate of 4% against payable duty at the rate of 15.3% and thereby causing loss to the public ex-chequer of Rs.20,75,985/- and corresponding gain to the accused.

9) The main plea of the Applicant is that he is merely a practising Advocate and tax consultant and has merely relied upon documents provided to him by the Company and its Directors during the course of assessment proceedings. It

is sought to be submitted that the relevant C-Form is recovered from the office of the Company and the FIR itself makes it clear that the same was handed over to the Investigating Officer by the Directors of the Company. This is how the Applicant seeks to distance himself from the C-Form in respect of which forgery is alleged.

10) The prosecution relies upon the original C-Form issued by M/s. Batliboy Environmental Engineering Limited Company, Bangalore for proving the act of forgery. Mr. Shelar would however submit that even if the allegation of forgery is assumed to be correct, there is no material on record to infer that the Applicant was associated with the act of forgery. I am unable to agree. The prosecution case is built on the allegation of criminal conspiracy hatched by the Company's Directors and Sales Tax Officials in connivance with the Applicant. If the prosecution succeeds in proving that the relevant C-Form is indeed forged, whether the Applicant is a part of conspiracy in such forgery or whether he is associated with the other part of conspiracy in relying on forged documents for the purpose of causing loss to public exchequer and corresponding gain to the accused would be borne out after assessment of evidence during the course of trial. Even if it is assumed that the Applicant did not himself forge the C-Form by pasting a paper thereon, but he has admittedly produced the same before the Assessing Officer

during the course of assessment proceedings. Whether the Applicant knew and whether it was possible for him by exercise of due diligence, to know that what he was producing was a forged document, will also be borne out after assessment of evidence. What is produced before the Assessing Officer in the present case is a C-Form with another paper pasted thereon. Ms. Gotad has taken me through the copy of the said C-Form and it will be for the Court to decide whether it was possible for the Applicant to notice forgery in the document and whether he actually knew that what was being produced by him is a forged document. Therefore, the Applicant cannot seek discharge on the ground that there is no material to infer that the Applicant himself has forged the document. However, it is not that the prosecution admits that the Applicant has not himself forged the document. The prosecution wants to prove that the Applicant was a part of conspiracy in forging the document and has accordingly relied upon statements of two of his employees (*Mr. Mayeenkar and Mr. Chavan*) to prove that the Applicant used to tinker with the figures in various records by assessing the same on his Laptop. Therefore, prosecution needs to be given an opportunity to prove the allegation of Applicant's participation in the alleged act of forgery.

11) In the peculiar facts of the case, it is difficult to hold at this juncture that the Applicant's role in the present case

was only that of a professional. Ms. Gotad would submit that the Applicant himself was the Director of M/s. Aswathi Industries at the same point of time. His wife Ritu Pawan Kejriwal was a Director at the time of commission of offence who has been discharged by the learned Judge by order dated 2 March 2021. It therefore cannot be contended that the Applicant's role in securing undue benefits for the Company is restricted purely as a professional. The exact complicity of the Applicant in commission of the crime would be borne out after assessment of the evidence on record. There is sufficient material for the purpose of raising grave suspicion against the Applicant. It is too early to record a positive finding that the prosecution would not be in a position to secure Applicant's conviction on the basis of material available before it. Therefore subjecting Applicant to trial would not amount to abuse of process of law.

12) I therefore find the impugned order of the learned Judge to be unexceptional. The Revision Application is devoid of merits. The Revision Application is accordingly **dismissed** without any order as to costs.

13) It is however clarified that nothing observed in the order shall influence the learned Judge during the course of trial.

NEETA SHAILESH SAWANT

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[SANDEEP V. MARNE, J.]