

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.209 OF 2013

Mandar Mahesh Goswami
Age 39, Indian Inhabitant, residing
at 1301, Brooke ville, Mogul Lane,
Mahim, Mumbai 400 016

...Applicant.

Versus

1. The Inspector of Police,
Anti Corruption Bureau, CBI,
Tanna House, Nathalal Parekh
Marg, Mumbai.

2.The State of Maharashtra

...Respondents

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Mr. Mahesh Jethmalani, Sr. counsel along with Mr.
Kuldeep S. Patil, Mr. Gunjay Mangala Mr. H.E. Palwe,
Mr. Vivek Gore for the Applicant.

Mr. Anil C. Singh, A.S.G.-C.B.I. for Respondent No.1
Mr. V.B.K. Deshmukh a/w Smt. A.A. Mane, APPs for
Respondent No.3

CORAM:-M.L. TAHALIYANI, J.

DATED : -MARCH 17, 2015.

ORAL JUDGMENT :

The Applicant has been charge-sheeted by C.B.I. A.C.B,
Mumbai for the offence punishable under section 120B of the IPC
r/w sections 7 and 8 of the Prevention of Corruption Act, 1988

(hereinafter referred to as “the Act). In all there are two accused. The accused No.1 Jawahar Kishichand Jagiasi is the prime accused in the case. The accused No.1 Jawahar Kishichand Jagiasi is a chartered accountant by profession and the Applicant (accused No.2) was a prosecutor appearing for C.B.I. in Sessions Court as well as other Courts in Mumbai.

2. The complainant Mr. Amod Sharma was working as Executive Director, Air India. A case under the Act was registered against him by C.B.I. A.C.B., Mumbai. Part of the investigation was in progress. The complainant therefore, approached the accused No.1 Jawahar Kishichand Jagiasi for preparation of balance sheet of his assets and liabilities. After two to three meetings with the accused No.1, it is alleged, the accused No.1 had stated before the complainant that he had good connections with some of the C.B.I. Officers and that he can manage to weaken the case of complainant pending investigation before the C.B.I. The accused No.1 had allegedly demanded Rs.1 Crore for doing the said work. The complainant showed his inability to pay Rs.1 Crore. Accused No.1 therefore, asked him to pay Rs.1 Crore in four installments of Rs.25 lakhs each. The complainant did not want to pay the said amount

and therefore, he filed a complaint in C.B.I. A.C.B. alleging that the accused No.1 had demanded money from him for influencing a public servant by corrupt or illegal means. The complaint made by the complainant was verified by recording conversation between the complainant and accused No.1. After verification an offence under section 8 of the Act was registered against the accused No.1.

3. In view of the verification of the complaint it was decided to lay a trap to apprehend the accused No.1 while accepting the first installment of Rs.25 lakhs. Accordingly a trap was laid and the accused No.1 was caught while accepting currency notes from the complainant. At this stage it may be noted here that few of the currency notes at the upper level and bottom level of the bundles were genuine currency notes and rest of the notes were printed notes normally used by children to play games. A requisite panchanama in respect of pre-trap activities and post-trap activities was prepared.

4. During the course of investigation, it was revealed to the investigating officer that the Applicant was also involved in the alleged offences alongwith accused No.1. Therefore, an attempt was made to record the conversations between accused No.1 and the

Applicant. Transcription of both the conversations – one between the complainant and accused No.1 and second between accused No.1 and the Applicant was done. Reading of second conversation revealed that the Applicant was in touch with the accused No.1.

5. During the course of further investigation it was disclosed by the complainant that there was a meeting between the complainant on the one hand and accused No.1 and the Applicant on the other at Cafe Coffee Day, Shivaji Park. During the course of said meeting the Applicant was alleged to have said that he could soften the case against the complainant.

6. After completion of investigation charge-sheet was filed against both the accused. As stated above as far as accused No.1 is concerned, sections 8 of the Act and 120B of the IPC will be applicable to his case. The Applicant is charge-sheeted for the offence punishable under section 120B r/w sections 7 and 8 of the Act.

7. The Applicant had made an application before the Trial Court for discharge on the ground that there was no sufficient material to prosecute him. The application has been rejected by the trial Judge on the ground that the Court is not required to go into the

details of evidence at the time of framing of charge. No doubt the area of examination of material collected by the investigating officer is very limited at the time of framing of charge. However, at the same time there must be sufficient material to frame charge against the accused. The only material against the Applicant is the transcription of conversation between the Applicant and accused No.1 and further statement of the complainant regarding the meeting at Cafe Coffee Day at Shivaji Park, Dadar. As far as transcription is concerned it can be seen that the accused No.1 wanted to talk with the Applicant regarding the case of the complainant. It can further be seen that there was no response from the Applicant. There is nothing in the transcription to indicate that the Applicant had taken any interest in the case involving the complainant.

8. As regards meeting at Cafe Coffee Day, it can be seen that only allegation against the Applicant is that he had told the complainant that he could soften the case against the complainant. There is nothing on record that the Applicant had demanded or attempted to demand illegal gratification from the complainant for himself or for influencing any other public servant.

9. The learned counsel Mr. Mahesh Jethmalani has submitted that material submitted by the C.B.I. A.C.B. is not sufficient to frame charge and even if whole case, as disclosed by the charge-sheet, against the Applicant is accepted to be true and correct, that may not be sufficient to frame the charge against the Applicant. Learned Additional Solicitor General Mr. Anil Singh has submitted that the Trial Court was not required to go into the details of the evidence. In this regard it may be noted here that transcription of the recording of talk between the accused No.1 and the Applicant does not help the C.B.I. A.C.B. in any manner. The only piece of evidence is the alleged statement made by the Applicant before the complainant that the Applicant could soften the case against the complainant. There are no allegations that he had demanded money or had attempted to demand money from the complainant. There is no material at all to show that there was meeting of minds of the Applicant and accused No.1 and that both of them had decided to take illegal gratification from the complainant for influencing the investigating officer of the case. The charge cannot be framed on the basis of surmises and conjectures. The Court also cannot insist for the full proof evidence at the time of framing of charge. However,

the circumstantial evidence collected by the investigating officer must at least indicate that there was a conspiracy between the Applicant and accused No.1. The conversation of the Applicant with accused No.1 does not disclose complicity of the Applicant. In fact, the Applicant did not want to talk to the accused No.1.

10. The order of the learned Trial Judge does not indicate that he had taken into consideration the material placed before him for discharge. Had he considered the material probably he would have discharged the Applicant. The material collected by the investigating officer is nothing more than what has been stated by me hereinabove. After having considered the material on record I am of the view that the material collected by the investigating officer is not sufficient to frame the charge either under section 120B of the IPC or section 7 of the Act.

11. Before I part with this order it is necessary to be stated here that though it was contended before the Trial Judge that the Applicant was not a public servant when he committed the alleged offence, the said point was not raised before this Court.

12. On merits it is abundantly clear that the Applicant is entitled for discharge. Hence, I pass the following order :

(a) The Revision Application is allowed.

(b) The order passed by the learned Special Judge in C.B.I. Special Case No. 62 of 2012 below Exh. 16 dated 16th May, 2013 is set aside. The Applicant stands discharged of the offences punishable under section 120-B Indian Penal Code and section 7 and 10 of the Prevention of Corruption Act.

(c) The bail bonds of the applicant, if any, shall stand cancelled.

13. Application accordingly stands disposed of.

(JUDGE)