

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 6 OF 2020

KALPESH JAYRAM KOSHTI) APPLICANT

V/S.

1. CENTRAL BUREAU OF INVESTIGATION

2. THE STATE OF MAHARASHTRA) RESPONDENT

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Mr. B.B. Tiwari i/by. BBT Legal, Advocate for the applicant.

Ms. Ameeta Kuttikrishnan, Advocate for respondent no.1.

Mr. A.D. Khamkhedkar, APP for State-respondent no.2.

Coram : Sandeep K. Shinde, J.

Judgment Reserved on : 2nd December, 2021.

Judgment Pronounced on : 6th December, 2021.

JUDGMENT :

1. This application under Section 397 read with Section 401 of the Criminal Procedure Code questions, the propriety, correctness and legality of the order dated 27th

September 2019, by which the learned Sessions Judge, CBI, Greater Mumbai, refused to discharge the applicant from the CBI Special Case No.4/2018.

2. Prosecution case is that, Central Bureau of Investigation, Economic Offences Wing, Mumbai registered the FIR under Section 120B read with Sections 420, 465, 467, 468, 471 of the Indian Penal Code on 31st August, 2017 on the basis of written complaint of Shri. D.G. Kallatti, Deputy General Manager of CBI, against M/s. Ashoka Property Developers and M/s. Ashish Communication Systems, its Directors/Guarantors and thirteen others, including two bankers and the applicant-accused no.11.

3. Complainant would allege, that accused entered into criminal conspiracy in the year 2011 to cheat, the Central Bank of India, Peddar Road Branch, Mumbai, to the tune of Rs.17 crores by creating false and fabricated documents and further dishonestly suppressing material information, in respect of the immovable properties, which were offered as collateral security either by its over-

valuation, or otherwise for availing credit facilities and misutilising the same.

4. In, so far as the applicant is concerned, it is prosecution's case that, he is the owner of M/s. Ahmadabad Express Newspaper. His Press is at Ahmedabad, where eight employees were working with him. One, Ravikumar Ashokkumar Bhil was working as a Office Boy in the Press. The accused, with the malafide intentions instructed, Ravikumar Bhil, to open bank accounts, to manipulate the transactions, for making accommodation entries. Afterwhich, Ravikumar Bhil, opened two bank accounts, in the name of M/s. Ahmedabad Sales Corporation in ING Vyasa Bank and M/s. Hindustan Enterprises. Under the instructions of the applicant, Ravikumar Bhil, used to transfer money in various bank accounts, withdrew cash and hand over to various angadiyas (cash courier). In that way, prosecution's case is that, M/s. Aashish Communication Systems, belonged to Ashish Singh (accused no.2), who malafidely availed cash credit limit to the tune of Rs.2.25 crores, overdraft Rs.5 crores and Rs.5 crores as a term loan from the

complainant bank. M/s. Aashish Communication Systems transferred huge amount of money to the various accounts, one being the Account opened by Ravikumar Bhil at the instructions of the applicant. Money was transferred from the account of M/s. Aashish Communication Systems in the account of M/s. Ahemdabad Sales Corporation in ING Vyasa Bank. In all Rs.3,23,75,641/- were transferred within a month from the loan amount disbursed to M/s. Aashish Communication Systems in the account of M/s. Ahemdabad Sales Corporation. In furtherance of the conspiracy on 21st December, 2012 amount of Rs.1,35,00,000/- was transferred in the account of the co-accused, Janardhan Pandey and remaining amount was withdrawn in cash and handed over to Satish Sahu, a co-accused.

5. Investigation has unfolded that, the applicant had directed Ravikumar Bhil to open another bank account in the name of M/s. Hindustan Enterprises in Indusind Bank. The said amount was used for siphoning the crime proceeds from M/s. Aashish Communication

Systems to the tune of Rs.80,80,000/-. In that way, in investigation, four facts were disclosed;

(i)that though, crime proceeds were credited in the bank accounts of M/s. Ahemdabad Sales Corporation, and M/s. Hindustan Enterprises, these accounts were opened and operated by Mr. Bhil (applicant's employee) as per the directions of the applicant.

(ii) statement of Ravikumar Bhil recorded under Sections 169 and 164 of the Criminal Procedure Code would disclose the said fact.

(iii)statement of Ganesh Mokal, Assistant Manager of Kotak Mahindra Bank, confirms that money was transferred to the Account of M/s. Ahemdabad Sales Corporation from the account of M/s. Ashish Communication System, and that amount of Rs.1,35,25,000/- was transferred to the account of M/s. Flextough Metal in IDBI Bank, which belongs to the co-accused.

(iv) no business transactions were held between M/s. Ashish Communication Systems and M/s.

Ahemdabad Sales Corporation, M/s. Hindustan Enterprises.

6. Now the question is, whether these were grounds for proceeding against the applicant-accused.

7. The learned Counsel for the applicant, submitted that, there is no evidence at all on record, disclosing or even implying complicity in the crime. Counsel would submit, that the amount allegedly credited in the two bank accounts of, M/s. Ahemdabad Sales Corporation and M/s. Hindustan Enterprises in Indusind Bank, were admittedly operated by Ravikumar Bhil. It is submitted that, although Ravikumar Bhil, was the employee of the applicant, yet except the statements of Ravikumar Bhil under Sections 161 and 164 of the Criminal Procedure Code, there is no material on record to validate the statement of Ravikumar Bhil. In support of his contention, learned Counsel has relied on the judgment of this Court in the case of Laxmi Koli Babita V/s. State of Maharashtra, 2005 All MR (Cri.) 571. In the cited case, as it appears from the facts narrated therein that, there was absolutely no evidence

against the petitioner, except the statement of the co-accused, that was pressed into service on behalf of the prosecution. The learned Counsel therefore argued, the facts of the case and the facts in the cited judgment, were almost identical. It is therefore submitted that, in absence of an independent evidence, it cannot be said there is ground for proceeding against the applicant. Counsel, would therefore argue that, impugned order be quashed and set aside, and applicant be discharged.

8. It is settled law that, the Judge while considering the question of framing the charges under Section 227 of the Criminal Procedure Code, has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not, a prima-facie case against the accused has been made out.

9. The statement of witness recorded under Section 164 of the Code, is not substantive evidence and though it can be used only to corroborate or contradict that witness, the fact remains that, applicant is owner of Ahmedabad Express Newspapers. Indisputedly, Mr. Bhil

was his employee. If that be so, it is inconceivable that, Mr. Bhil would open two Bank accounts, one in the name of Ahemdabad Sales Corporation and another, Hindustan Enterprises and would receive lacs and crore of rupees, soonafter, the accounts were opened. Therefore, in view of the facts of the case and attendant circumstances, there is no reason to discard and disbelieve the statement of Mr. Bhil, which indeed discloses, applicant's complicity in the crime. Revision Application, therefore deserves no consideration. It is rejected.

(Sandeep K. Shinde, J.)