

Special Case No.44/2017

CNR No.MHPU01-012382-2017

CBI Vs. Ajit Gokhale and others

ORDER BELOW EXH.136

1] This is an application filed by accused Nitin Kale under Section 227 of Cr.P.C. for discharge him from the offence under Section 120-B r.w. section 420, 465, 467 and 471 of Indian Penal Code.

2] It is the case of prosecution that the accused persons hatched conspiracy with other accused and the Branch Head of Bank of Maharashtra, Nasik and succeeded to avail the cash credit facility for Rs.4.95 crores under false invoices and false valuation report of the property. Thereafter, funds have been diverted to the account of accused Nitin Kale. Therefore, the FIR was registered. The matter is investigated and filed charge-sheet.

3] According to accused he has no concern with the account of M/s Ishwari Enterprises. The said account became NPA because of business and financial problems. It does not mean that the borrower has committed any offence. The Bank has sanctioned the loan under their authority after verification of all documents. The Bank officers are ready to settle the matter. It indicates accused have not committed any offence. The sufficient security has been given to the Bank. There is no material to say that this accused has committed the offence of cheating and preparing the forged documents under conspiracy. He requested for discharge.

4] Senior Special Prosecutor filed say at exh.138 and

submitted that the valuation report given by Mr. Gurunath Kulkarni in respect of the property in question and report given by accused if considered it indicates the very report given by accused is under conspiracy. The Banker should have personally visited the premises but he has not visited the premises and given the report under conspiracy. The accused have material role to avail the credit facility in the name of M/s Ishwari Enterprises by submitting the false documents of the property. The conduct of each and every accused indicates the act of sanctioning the cash credit limit is nothing but intentional act under the conspiracy. Therefore, application deserves to be rejected.

5] Heard learned advocate for accused and Mr. Manoj for CBI at length.

6] The statement of witness Shri. Eknath Hari Zore, Pratap Mohanty and Shrikant Argade discloses prima facie that the value of the property was not like the value shown in the report D-6. The very statement of the witness Mr. Zore indicates that the accused Bank valuer given the report in exaggerated manner as a part of the conspiracy to advance the cash credit facility to the non-existing firms.

7] Learned senior special prosecutor Mr. Manoj urged that in the present case the report of Mr. Gurunath Kulkarni and report given by accused and statement of witnesses if taken into account it would give the effect that the report given by the accused is nothing but an act under conspiracy. He further urged that while dealing with this application court has to see whether there is material available on record to proceed against accused and if it is then court has to reject the application and frame the charge. In view of statements of

aforesaid witnesses I find some substance in the argument of senior special prosecutor.

8] The statement of witness Smt.Sheetal and Pradip discloses that the accused persons have used false and fictitious invoices to avail the cash credit facility which were prepared at the office of accused Nitin Kale. It indicates there is involvement of accused Nitin Kale in the commission of offence otherwise he would not have arranged such false and fictitious documents in favour of borrowers.

9] It is admitted fact that as per the subsequent valuation conducted by Mr. Gurunath Kulkarni, one of the approved valuer, the realizable value of the same property was shown of Rs.6,41,00,000/- (D-18). It is in the year 2016. Whereas at the time of sanctioning the loan the value of the said property was shown Rs.20,70,59,290/-. It indicates the accused must have managed the valuer in order to get more loan from the Bank.

10] It appears from the statement of Shrikant Argade that the credit facility was availed by the accused borrowers on behalf of Nitin Kale and funds were diverted to the account of Nitin Kale i.e. Max Parivartan Ltd. and Max Multicon Ltd..

11] The properties mortgaged by the borrowers were purchased by using the cheques of Max Parivartan Ltd. and Max Multicon Ltd. It indicates buyers of the property mortgaged the property with the Bank are benami transactions and having no intention to repay the loan. Very fact accused Nitin issued the cheque for purchasing the property, it indicates he involved in the conspiracy along with other accused to cheat the Bank.

12] It appears from the statement of Mr.Shrikant Argade

that there is diversion of funds to the account of Nitin Kale and account of his relatives from the account of M/s. Ishwari Enterprises. This much evidence is enough to say that, there is involvement of Nitin Kale in the commission of aforesaid offences.

13] Accused submitted the case of **Satishchandra Vs. State of Gujarat, Criminal Appeal No.9/2019, Supreme Court** of India wherein it is observed the mere inability of the applicant to return the loan amount cannot give rise a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this mens rea which is the crux of the offence.

14] I would like to say there is ample evidence on record to say that the accused persons have prepared the false invoices to avail the credit facility. They have managed the valuation report to get the more amounts from Bank. The amount has been siphoned from one account to another account and not utilized for the purpose for which it was sanctioned. It indicates since beginning accused persons had dishonest intention to cheat the Bank. Therefore, the ratio laid down in the case of Satishchandra is not helpful to accused.

15] Aforesaid material indicates there is involvement of accused persons in the offence under section 120-B, 420, 465, 467 and 471 of Indian Penal Code.

16] The accused is not the public servant. Therefore, there is no question to frame the charge against them under Prevention of Corruption Act.

17] Thus, I find no substance in the application. Hence, in the interest of justice I pass following order -

[5]

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ORDER

Application exh.136 is rejected.

Date - 27/02/2019

sd/-
(Pralhad C.Bhagure)
Special Judge (CBI-ACB cases),
Pune.

I affirm that the contents of this PDF file order are same word for word as per original order

Name of Steno : Smt.B.R.Jakka, Stenographer grade 1
Court Name: : Shri.Pralhad C.Bhagure
Special Judge CBI, ACB, Pune.
Order signed by PO : 27/02/2019
Date of PDF : 02/03/2019
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