

Special Case No.45/2017**CNR No.MHPU01-12382-2017****CBI Vs. Ajit Gokhale and others****ORDER BELOW EXH.110**

1] This is an application filed by accused Shreekant Atmaram Dhamne under Section 227 of Cr.P.C. for discharge from the offence under Section 120-B r.w. section 420, 465, 467 and 471 of Indian Penal Code and under Section 13(2) r.w. 13(1)(d) of Prevention of Corruption Act.

2] It is the case of prosecution that the accused being a valuer entered into criminal conspiracy with other accused and the Branch Head of Bank of Maharashtra, Nasik with an object to cheat the Bank in pursuance of object of criminal conspiracy by abusing his powers dishonestly prepared highly exaggerated valuation report of Rs.16,73,26,690/- dtd. 3/6/2013 of the said mortgaged property i.e. gat no.170(part) and thereby caused to sanction the cash credit facility of Rs.4.95 crores as working capital for their non-existing business of building material suppliers and general traders which was merely floated on the paper. Therefore, prosecution has filed the charge-sheet against accused.

3] It is the contention of accused that, he is innocent valuer and valued the property by considering the all circumstances related to the property gat no.170(part) at village Jalochi, Tal.Baramati, Dist. Pune. The Banker has considered the subsequent valuation report of Gurunath Kulkarni which was

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showing the value of the property was Rs.6,41,00,000/-. The said valuation of the property is after the account of borrower became NPA. It is not the fair value. The value was prepared after 3 years of the report of accused. It cannot be comparative valuation report for any purpose. The valuation report is not binding on the Bank. The accused has valued the property after considering all aspects and facilities attached to the property. He has not gained any monetary benefit from any borrower or any commission. He has clean track since years together. He is not involved in any illegal act. In fact the report of Mr. Kulkarni is erroneous. There is no sufficient material to frame the charge against innocent valuer. He requested for discharge.

4] Senior Special Prosecutor filed say at exh.114 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 accused should have personally visited the premises but he has not visited the premises and given the report under conspiracy. There is sufficient material to frame the charge against accused. application deserves to be rejected.

5] Heard learned advocate for accused and accused in person at length. Accused has furnished the written notes of argument. The sum and substance is that there is no material to say that accused is part of the conspiracy and therefore according to him it is necessary to discharge from the aforesaid offences. To support his argument he pressed in to service following cases -

- a] Central Bureau of Investigation, Hyderabad Vs K. Narayana Rao, (2010) 9 SCC 512.
- b] State of Maharashtra Vs. Priya Sharan Maharaj, AIR 1997 SC 2014
- c] State of MP Vs. SB Johari, AIR 2000 SC 665
- d] State of Orissa Vs. Debendra Nath Padhi, 2005 SC 359
- e] State of MP Vs. Mohan Lal Soni, AIR 2000 SC 2583
- f] Soma Chakravarty Vs. State, AIR 2007 SC 2149

In the matter of Narayan Rao it is observed that a few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy.

In the case of Priya Sharan it is observed that at the stage of framing the charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed an offence or that there is no sufficient ground for proceeding against him and not for the charges by arriving at the conclusion i.e. not likely to lead to conviction.

In the cases of SB Johari, Devendranath, Mohan Lal Soni, Soma Chakravarty it is observed that at the time of deciding discharge applications the Judge to consider whether there is sufficient ground for proceeding against accused or not, if there is no sufficient ground then Court has to give reasons and discharge the accused.

6] Learned senior special prosecutor Mr. Manoj urged that in the present case the report of Mr. Gurunath Kulkarni and report given by accused if taken into account it would give the effect that the report given by the accused is nothing but a act under conspiracy. He further urged that while dealing with these

applications 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. He further urged that the Court cannot go into root of the matter while deciding the application. The court is not supposed to see the probabilities while deciding the application but Court has to consider the material on record. To support his argument he pressed in to service following very relevant cases -

- i] State of M.P. Vs. S.B. Johari & others, (2000) 2 Supreme Court Cases 57
- ii] State of Maharashtra, etc. Vs. Somnath Thapa, 1996 Cri.L.J. 2448
- iii] Niranja Singh Karam Singh Punjabi Vs. Jitendra Bhimraj Jijja, and other, AIR 1990 Supreme Court, 1962
- iv] Union of India Vs. Prafulla Kumar Samal & another, AIR 1979 Supreme Court, 366
- v] State of Bihar Vs. Ramesh Singh, AIR 1977 Supreme Court, 2018

7] It is admitted fact that accused is approved valuer and works on the Panal of Bank of Maharashtra, Nasik. It is an admitted fact accused has given the valuation report D-6 and shown the distress value of the property was Rs.16,10,46,115/- in the year 2013. In D-6 accused referred he has inspected the property gat no.170 (Part) but his application discloses he has appointed one Bhardwaj to inspect the premises. It seems that he has not referred the true facts in the valuation report about the visit of premises. Such a conduct indicates he is involved in the conspiracy to dupe the Bank.

8] It is admitted fact that as per the subsequent valuation conducted by Mr. Gurunath Kulkarni, one of the approved valuer, the

distress value of the same property was shown of Rs.5,34,19,000/- (D-19). It is in the year 2016.

9] According to accused, the valuation report of Mr. Gurunath Kulkarni is erroneous and it cannot be comparable valuation report to the report D-6. According to him, at the time of report given by Mr. Kulkarni there were various factors which reduces the value of the property like demonetization, RERA, GST etc.. However, in my view, difference between two reports is very high. Because of aforesaid incident there is no possibility to reduce the prices in a manner as stated by accused.

10] According to accused, he has given his fair opinion about the value of the property. He has not earned anything from the borrowers. First of all, I would like to say that, the borrower has availed the cash credit facility of Rs.4.95 crores as working capital for their non-existing business of building material suppliers and General Traders which was merely floated on paper. The valuation report is one of the material document to see the value of secured property. So it is base for the Banker to advance the cash credit facility. It is not the formal document but it is very vital document in the process of loan. The report itself indicates it is not given in normal course but it is an intentional act to give the chances to the borrowers to avail more cash credit facilities.

11] The application of accused itself indicates that Mr. Ajit Gokhale was in touch with him and he was telephoned him and stated it is urgent matter and he should give the report urgently. The accused has not visited the property and appointed one Mr.

Bhardwaj to visit the property. In fact accused himself should have visited the property and then and then only report should have been prepared. Thus, such a conduct that though property was not inspected by him but giving the report D-6 saying he himself visited the property indicates he is part of the conspiracy and he has issued the report at the instance of Mr. Ajit Gokhale to expedite the loan proposal and at the instance of principal borrowers who has availed cash credit facility in the name of non-existing firm.

12] According to accused, the report D-19 cannot be a document to say that the valuation of property at D-6 is in exaggerated manner. I am not agree with the submission of accused. The reason is that the subsequent valuation report discloses the value of the property was Rs.5,34,19,000/- in year 2016. Whereas the report in question discloses the value of the property was Rs.16,10,46,115/- in year 2013. Whether the report of Mr. Gurunath Kulkarni is erroneous or not, it would be considered after full fledged trial of the matter. At this juncture the court is not supposed to use the logic and various parameters for deciding genuineness of valuation report. At this juncture there are two reports before this Court. The prima facie report of accused indicates it is given at the say of principal accused Ajit Gokhale and it is really in lot of exaggerated manner. This indicates the accused was the part of conspiracy.

13] The statement of witness Shri. Eknath Hari Zore Jt. Registrar, Pratap Mohanty and Sheetal Ingale 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 given the report in exaggerated manner as a part of the conspiracy to advance the cash credit facility to the non-existing firms. No doubt there is no material to show that the accused has taken the commission or any monetary benefit but it is not required while ascertaining the role of accused in the commission of offence.

14] Thus, in view of aforesaid material i.e. valuation report D-6, valuation report D-19, the statement of witness namely Eknath Hari Zore, Pratap Mohanty and Sheetal Ingale, facts and circumstances leads me there is sufficient material to proceed against accused. There is no substance in his argument of accused. Thus, in the interest of justice I pass following order -

ORDER

Application exh.110 is rejected.

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

Date - 27/12/2018

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

Name of Steno : Smt.Bharati Rajesh Jakka
Court Name: : Shri.Pralhad C.Bhagure
Special Judge CBI, ACB, Pune.
Order signed by PO : 27/12/2018
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