

Special Case No.45/2017**CNR No.MHPU01-12382-2017****CBI Vs. Ajit Gokhale and others****ORDER BELOW EXH.127**

1] This is an application filed by accused Nitin Kale 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.

2] It is the case of prosecution that accused persons means bank employees and borrowers guarantors hatched conspiracy and as part of conspiracy accused persons succeeded to avail cash credit facility in the name of Shell Companies and thereby cheated the Bank. Accordingly, investigation has been conducted and charge-sheet is filed.

3] Accused submitted that there is no ground to frame charge. The borrower has availed cash credit facility of Rs.4.95 crores under due process of law. M/s. Krishnai Associates paid the loan installments regularly but later on due to business crises the account become NPA. There was no intention of the accused to cheat the Bank. The borrower has paid the part of the interest of loan. The property has been mortgaged properly. Its value is more than Rs.23 crores. The Bank has given offer to settle the matter. It indicates accused had not cheated the Bank. Accused Nitin Kale is neither partner of M/s. Krishnai Associates nor owner of the same. He has no concern with the cash credit facility. Therefore, accused requested to discharge him from the aforesaid offences.

4] Senior Special Prosecutor filed say at exh.129 and

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submitted that accused Nitin Kale entered into agreement with Banker Ajit Gokhale and thereby cheated the Bank by taking the loan in the name of his wife is shown partner and owner of Shell Companies M/s Krishnai Associates. The funds credited to account of M/s Krishnai Associates has been diverted to the account of relative of Mr.Nitin Kale. Nitin Kale is the person behind all proposals for loan of the borrowers. Nitin Kale is the person who purchased the property from his own funds with intention to mortgage for the loan of M/s. Krishnai Associates. Thereafter funds have been diverted to the account of relatives of accused Nitin Kale. There is sufficient material to prove the involvement of the accused in the aforesaid offences. Therefore, he requested to reject the application.

5] I have gone through the investigation papers very carefully and cautiously. It appears from the statement of Pratap Mohanti that accused no.1 has sanctioned finance to Rina Nitin Kale in the name of M/s Krishnai Associates, partnership Firm is of close relatives of accused Nitin Kale means his wife.

6] It appears from the investigation papers that Gat no.170 of village Jalochi was valued by valuer for Rs.20,70,59,290/- on 01/6/2013 whereas its face value conducted by Bank after the account of accused became NPA discloses its value as Rs.6,41,00,000/-. It seems that the borrower has managed the valuation report to get more loan.

7] At this juncture it is very relevant to refer the statement of Kishor Kulkarni and Shrikant Argade. It appears from the statement of Kishor Kulkarni that accused no.1 being a Banker has exceeded his jurisdiction time to time and by ignoring circulars and Rules and Regulations he has sanctioned loan proposal of the co-

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accused Rina Nitin Kale without any proper scrutiny. He has given detail statement regarding accounts of the borrowers and he has also stated irregularities committed by the accused while performing his duties as Banker. It also indicates how amount has been siphoned to Shell Companies. This can be done only and only when there is some blessings of the Banker and such a blessings will be available when they entered into agreement to commit the offence with the borrowers. Therefore, statement of Kishor Kulkarni and Shrikant Argade is epso-facto to shows that all accused are involved in the conspiracy and thereby Banker overlooked all the irregularities and permitted co-accused to siphon the amount to various shell companies.

8] It appears from the investigation papers that Rina Kale and Pravin were the partners of M/s. Krishnai Associates. Rina Kale is wife of Nitin Kale. It appears the loan amount has been transferred from the account of M/s Krishnai to the account of M/s. Ishwari Enterprises which was of relative of accused Nitin Kale.

9] It appears from the investigation report that the funds of Max Parivartan and M/s. Max Multicon have been utilised to purchase the property gat no.170 and thereafter the said property was mortgaged for the loan of M/s Krishnai Associates and again funds were diverted to the firm of accused Nitin Kale.

10] It appears from the statement of witnesses Smt.Sheetal and Mr.Pradeep that the false invoices of suppliers namely Jiya Building Material and Suppliers and DTC used for availing the credit facility. These invoices were prepared at the official computer of accused applicant Nitin Kale by the office staff. It cannot be done without instructions of accused Nitin Kale. The very conduct of

accused indicates he is involved in the criminal conspiracy.

11] Accused submitted the case of **Satishchandra Vs. State of Gujarath, 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.

12] 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.

13] Thus, at this juncture, there is sufficient material to frame the charge against accused. Hence, in the interest of justice I pass following order -

ORDER

Application exh.127 is rejected.

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

Date – 27/02/2019

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
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