

Special Case No.46/2017**CNR No. MHPU01-012384-2017**

CBI Vs. Ajit Gokhale and others

ORDER BELOW EXH.128

1] This is an application filed by accused Nitin Kale under Section 227 of Criminal Procedure Code and thereby requested to discharge him from the offences punishable 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 along with Banker entered into the agreement / criminal conspiracy and by considering the forged document as a genuine the Banker did various irregularities and illegalities and thereby sanctioned the huge amount in favour of accused borrowers Marutrao Shankarrao Kale on behalf of M/s Parth Traders. Santosh is another partner of the said firm. The act of accused is with dishonest intention to cheat and ultimately they succeeded to cheat the Bank. The accused persons have managed valuation report for getting more loan than value of the property. They have prepared false invoices. Therefore in view of report filed by Mr. Pratap Mohanty, investigation is conducted and chargesheet is filed.

3] It is the contention of accused that he is not the owner or partner of M/s. Parth Traders who availed cash credit facility under due process of law. M/s Parth Traders has paid loan installments regularly. However, due to business problems their account became NPA and therefore without any material and reasons the Bank officers filed false report. The banker are ready to settle the matter. It indicates accused have not cheated the Bank.

Accused has no concern with the said cash credit facility, invoices and valuation report. Therefore, accused requested to discharge him from the aforesaid offences.

4] SSP filed the say at Exh.130 and submitted that accused knowingly and intentionally committed the offence of cheating by submitting forged document in favour of borrowers for sanctioning credit facility. The amount sanctioned to M/s Parth Traders was diverted to the account of relative of accused Nitin Kale. The invoices of supply of material are false. The property for mortgaging to the loan has been purchased from the funds of Mr.Nitin Kale who himself availed the various loan facilities. The accused no.2 is father of Nitin Kale and Santosh is brother-in-law of Nitin Kale. There is sufficient material to proceed against accused hence application deserves to be rejected.

5] It appears from investigation papers that accused no.1 was working as a AGM at Bank of Maharashtra, Pune Branch. During his tenure accused Nitin Kale and others obtained Cash Credit facility from Pune branch.

6] Nitin Kale is a person who again approached to accused No.1 at Nashik when he was working as a Assistant General Manager, Nashik Branch and obtained Cash Credit facility initially in the name of M/s Parth Traders, by showing his father was partner of the said firm.

7] It appears from the investigation papers that valuation report of the property was apparently shown valuation in the exorbitant manner.

8] It appears from the statement of Smt. Sheetal and Pradeep that the accused Nitin Kale has been involved in the

criminal conspiracy to grant C.C. facility in favour of Parth Traders. It appears false purchase orders given by Jiya Building Material and Atharv have been accepted by accused No. 1 without verified its genuineness which have been produced by these borrowers. These false invoices are prepared in the office computer of M/s Kale Infra Projects Pvt.Ltd. of Nitin Kale i.e. applicant. Submitting the false vouchers for getting loan itself indicates that the accused had dishonest intention to cheat the Bank and he is part of conspiracy.

9] 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.

10] I would like to say there is ample evidence on record 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.

11] Thus, prima facie from the statement of complainant and witnesses it appears there is sufficient material to frame charge against accused. Therefore, I do not find any substance in this application. In the result, I pass following order -

ORDER

Application exh.128 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.
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