

**Special Case No.47/2017****CNR No. MHPU01-012385-2017**

CBI Vs. Ajit Gokhale and others

**ORDER BELOW EXH.128**

1] This is an application filed by 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 borrowers along with Bankers, guarantors and accused Nitin Kale entered into the agreement / criminal conspiracy and by preparing forged document i.e. invoices of material which banker considered as a genuine and committed other irregularities and illegalities and thereby sanctioned the huge amount in favour of borrowers. The act of accused is with dishonest intention to cheat and ultimately they succeeded. Therefore in view of report filed by Mr. Pratap Mohanty, investigation is conducted and chargesheet is filed.

3] It is the contention of accused he has no concern with M/s Shravani Associates. He is not the owner or partner of the said firm. That the credit facility for Rs.4.95 crores has been sanctioned to M/s. Shravani Associates under due process of law. M/s. Shravani Associates mortgaged property to the Bank along with valuation report submitted by the Bank valuer. Thereafter, it paid regular installment of loan and interest but because of crises in market account become NPA and therefore Bank has filed false case. Mere

non-payment of loan does not amounts the criminal act of borrowers. The Bank offered to settle the matter. It indicates they are innocent. Therefore, they requested to discharge from the aforesaid offences.

4] SSP filed the say at Exh.130 and submitted that borrowers knowingly and intentionally committed the offence of cheating by submitting forged document to the Banker and thereby succeeded to avail the cash credit facility. The amount sanctioned to M/s. Shravani Associates has been diverted to the account of Nitin Kale. The valuation report was managed by the borrowers and Mr.Nitin Kale. The property gat no.170 was purchased from the funds of Firm of Nitin Kale. The funds have been transferred to the Firm of Nitin Kale. Accused are relatives of Nitin Kale who availed various loan facilities and cheated the Bank. 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. 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 in the name of his relatives means applicants in the name of Shell company namely M/s. Shravani Associates.

6] It appears from the complaint that accused no.1 has knowingly and intentionally considered the forged Shop Act License

as a genuine and in fact the said Shop Act License was not issued by the Labour Department. But it was prepared by the borrowers itself. It indicates there is involvement of the accused borrowers in the commission of offence otherwise they would not have submitted the false record for obtaining cash credit facility.

7] It appears from the investigation papers that valuation report of the property was apparently shown valuation in the exorbitant manner. However, accused no.1 has relied on such document without making any further inquiry. Accused no.1 being AGM should have given visit to M/s. Shravani Associates, but he has not given pre-sanction visit to firm and sanctioned Cash Credit facility. It appears from complaint and statement of witnesses that company of accused persons are merely floated on paper and not actually working. It indicates the accused entered into conspiracy to cheat the Bank and therefore they have managed such a document for availing cash credit facility.

8] It appears the property mortgaged on behalf of M/s. Shravani Associates was purchased from the funds of accused Nitin Kale. The property was mortgaged and thereafter again when loan is sanctioned the loan was diverted to the account of Nitin Kale. The very fact indicates accused Nitin Kale involved in the conspiracy to cheat the Bank.

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 prudent 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.  
Order signed by PO : 27/02/2019  
Date of PDF : 02/03/2019  
Order uploaded on : 02/03/2019