(2008) 02 AHC CK 0010

In the Allahabad High Court

Case No : Criminal M.A. No. 2427 of 2008

Diwakar Singh and Another — APPELLANT

Vs

Central Bureau of Investigation — RESPONDENT

Date of Decision : 26-02-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 19(3)

Citation : (2008) 2 ACR 1170

Hon'ble Judges : Amar Saran, J

Bench : Single Bench

Advocate : Shiv Nath Singh, Satyam Singh and Rakesh Prasad, for the Appellant; G.S. Hajela, V.K. Misra and A.G.A., for the Respondent

Judgement

Amar Saran, J.—Heard learned Counsel for applicants, Sri G.S. Hajela, learned Counsel for the C.B.I. and Sri V. K. Misra, learned A.G.A.

2. The charge-sheet submitted by the C.B.I. and the order dated 5.9.2007 taking cognizance on the basis of the charge-sheet u/s 120B/420/467/468/471, I.P.C. and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, SBI, ACB, Lucknow has been challenged in this application u/s 482, Cr. P.C.

3. It has been vehementally contended that the applicant had never denied his liability to having accepted the loan and in fact he has been paying back and has substantially repaid the amount before submission of the charge-sheet.

4. However, a perusal of the documents shows that it cannot be said that no prima facie offence whatsoever has been disclosed in the charge-sheet. It has been specifically mentioned in the charge-sheet that there was a conspiracy between the applicants and the other accused. Sri A. K. Singh Dixit, Branch Manager, SBI, Colonel Ganj, disbursed the housing loan of Rs. 6,00,000 to the applicants during 2003-04, out of which Rs. 5,85,000 was disbursed within 1.5 months. The applicants'' loan account was introduced by the co-accused G.R.

Tewari, Proprietor of G.R. Associates, Allahabad. The three applicants submitted fake income tax returns. The investigation has revealed that the entire loan was sanctioned without pre or post-sanction survey and without adhering to the banking norms. The loan amount was not utilised towards the purpose it was sanctioned as no constructions were found at the given address and the total outstanding balance in respect of the loan was Rs. 5,39,000. It may further be noted that due to this conspiracy involving many of such cases there was a loss to the public exchequer to the tune of Rs. 1,74,4300 in which various accused persons including the applicants are said to be involved.

5. The contention of the learned Counsel that the bar u/s 19(3)(c) of the Prevention of Corruption Act preventing courts staying proceedings under the Prevention of Corruption Act should apply only to the public servants and that the applicants were private persons. However, this argument is of no avail to the applicants when they have been found involved in a conspiracy with other accused persons one of whom is a public servant to indulge in criminal acts causing loss to the public exchequer.

6. One last contention of the learned Counsel for the applicants is that no detailed reasons was given by the court below for summoning the applicants vide the impugned order dated 5.9.2007. In the case of Dy. Chief Controller v. Roshan Lal (XLVI) 2003 ACC 686: 2003 (2) ACR 1327 , it has been held that the learned Magistrate is not required to give detailed reasons for passing an order summoning the accused. I also find sufficient discussion in the summoning order. Thus, there is no substance in this contention also.

7. It is also argued that the bank has filed a civil suit in regard to the recovery of the loan amount, hence no criminal proceedings be instituted against the applicants. In this regard, the decision in Trisuns Chemical Industry Vs. Rajesh Agarwal and others, may be referred wherein it has been held that simply because an act involves civil liability, is not sufficient to denude it of its criminal outfit if the circumstances also suggest commission of a criminal offence.

8. In view of the aforesaid, there is no force in this application and the same is therefore rejected.

9. However, in the facts and circumstances of the case, I direct that if the applicants appear within 3 weeks from today and apply for bail before the courts below, the same shall be disposed of expeditiously considering the circumstances that the applicants have not disputed the liability and repaid a substantial amount thereof.

