
(2013) 07 BOM CK 0033

In the Bombay High Court

Case No : Criminal Application (APL) No. 143 of 2013

Hiralal

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 851

Hon'ble Judges : M.L. Tahaliyani, J

Bench : Single Bench

Judgement

M.L. Tahaliyani, J.—Admitted. Heard finally by consent of parties. This is an Application u/s 482 of the Code of Criminal Procedure, 1973. In all, there are three applicants. They are accused in Special Case No. 33/2003 pending in the Court of Special Judge, Nagpur. There are in all seven accused in the charge-sheet. Accused No. 1 Purushottam Mahadeorao Naranje was working as a Senior Peon in the Office of National Academy of Direct Taxes, Nagpur (henceforth abbreviated to "the Academy"). The accused No. 2 Hiralal; accused No. 3 Sanjay Chopra; accused No. 4 Santosh; accused No. 5 Mohan; accused No. 6 Balsare and the accused No. 7 - Omprakash, are the suppliers of various materials to the said Academy. It is alleged that the applicants and other accused had entered into a conspiracy to raise false bills without supplying the goods and get payment against those false bills. The applicants and other accused, it is alleged, by adopting this modus operandi caused loss to the extent of about Rs. 29 lakhs to the Academy. The accused No. 1 - Purushottam Naranje has been charge-sheeted for the offences punishable under the Prevention of Corruption Act and rest of the accused have been charge-sheeted for the offences of abetment and forgery. After filing of the charge-sheet in the Court of Special Judge, an Application for discharge was submitted on behalf of the applicants, who are accused Nos. 2,4 and 5 and the accused Nos. 3 and 6. The said Application was decided by the learned Special Judge by his order dated 19th October, 2005. The Applications of the applicants and other accused were rejected by the said order. The applicants, thereafter, moved this Court by way of Revision Application. The

said Application was later on withdrawn unconditionally. The accused No. 3 Sanjay Chandraprakash Chopra had separately moved this Court by filing Revision Application No. 261/2005. His Revision Application was decided on 12th September, 2011. This Court by the said order had remanded the matter back to the Special Court and directed the Court to decide the Application of accused No. 3-Sanjay Chopra considering all the material placed before the Court. The accused No. 3, therefore, moved the learned Special Judge (Trial Court). His Application was granted by order dated 2nd July, 2012 and he was discharged. The applicants, in view of grant of discharge Application of accused No. 3 Sanjay Chopra, had moved the Special Judge again for discharge by their Application dated 4th August, 2012. The said Application was rejected by the learned Special Judge on 18th September, 2012. It was submitted before the learned Special Judge that since accused No. 3 was similarly situated and his Application was entertained and was granted, the learned Spl. Court might also entertain the Application of the applicants and grant the similar order. The learned Special Judge, however, declined to grant the Application on the ground that the Application of the applicants for discharge had already been heard and decided. The learned Special Court also took the view that the Application of accused No. 3-Sanjay was heard afresh because his matter was remanded back to the trial Court by this Court.

2. As such, the basic difference between the applicants and accused No. 3 was that the applicants had withdrawn their Application from this Court whereas the Application of accused No. 3 was remanded for fresh hearing on the available material.

3. I have gone through the various orders passed by the trial Court. The first ever order passed by the trial Court is of the year 2005. The second order passed by the trial Court is in respect of the present applicants, in which the trial Court has taken the view that the Application was not maintainable as the discharge application was already heard by his predecessor. It was contended before the learned trial Court that since the Application of accused No. 3 Sanjay had been decided on merits, the applicants are entitled for the same treatment before the trial Court. The trial Court turned down the plea on the ground that accused No. 3 Sanjay's Application was heard as the trial Court was directed by this Court to give fresh hearing to accused No. 3 -Sanjay.

4. I have heard learned counsel Mr. A.S. Mardikar for the applicants and learned Special Public Prosecutor Mr. S.B. Ahirkar for the CBI/respondent. I have also gone through the facts of the case and the material collected by the respondent. As stated earlier, the main allegations against the applicants and others are that they had entered into a conspiracy to raise false bills in office of Director of the Academy and get payment of those bills without supplying the goods. The applicants have not denied that they had issued bills. The applicants have also not denied that they have received cheques from the Academy. It is also admitted position that the cheques were encashed by the applicants in their

respective accounts. The only question which needed examination was, as to whether there was a prima facie material to accept that the goods were not supplied to the Academy. I have gone through the first ever order passed in the year 2005 and I find that this issue is not at all considered by the learned trial Judge. This issue has been examined by the trial Judge while deciding the second Application of accused No. 3-Sanjay. Since the learned trial Court has decided one of the discharge applications afresh due to orders of this Court, it will be just and proper to ask the learned trial Court to re-examine the case of the applicants also. It will not be appropriate for this Court to give any finding or express any opinion on the factual aspects as to whether there is a prima facie material to say that the goods were supplied or otherwise. For all these reasons, I pass the following order:

ORDER

The Application is partly allowed.

The order passed by the learned Special Judge, Nagpur dated 18th September, 2012 is set aside. The learned trial Judge (Special Court) is directed to hear the Application of the applicants/original accused Nos. 2, 4 and 5 afresh, in view of the order of learned trial Court in the matter of Application of accused No. 3-Sanjay Chopra.

The present Application is disposed off accordingly.