
(2015) 01 BOM CK 0008

In the Bombay High Court

Case No : Criminal Application (apl) No. 1577 of 2007

Prakash Ramaji Ambagade and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 29-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 482

Penal Code, 1860 (IPC) — Section 109

Prevention of Corruption Act, 1988 — Section 13(1)(e), 13(2)

Citation : (2015) ALLMR(Cri) 1564

Hon'ble Judges : S.B. Shukre, J.

Bench : Single Bench

Advocate : A.S. Manohar Advocate, for the Appellant; A.K. Bangadkar, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

S.B. Shukre, J.—Heard. Admit. Heard finally by consent.

2. Initially, this application was filed by Prakash Ramaji Ambagade and Smt. Nalini Prakash Ambagade, the accused no. 1 and 2 in the charge-sheet filed against them by the Anti Corruption Bureau, Nagpur, for the offence punishable under Section 13(2) read with Section 13(1)(e) of Prevention of Corruption Act and under Section 109 of Indian Penal Code.

3. Applicant no. 1, who is now dead and who was accused no. 1, was the husband of applicant no. 2, original accused no. 2. Accused no. 2 has been roped in the charge-sheet on the allegations that being wife of accused no. 1, she abetted accused no. 1, her husband, during the period from the year 1973 to the year 2001, to amass huge wealth which was disproportionate to his known source of income. The value of the disproportionate assets of accused no. 1, as estimated by the prosecution, was of Rs.29,30,642/-. In these disproportionate assets, it was alleged, the shares of assets held in the name of accused no. 2 was Rs.7,63,372/-. It was alleged by the prosecution that applicant no. 2 or

accused no. 2, by holding these assets worth Rs.7,63,372/-abetted accused no. 1, her husband, in commission of the offence of accumulating assets disproportionate to his known source of income.

4. Both the accused had filed an application (Ex.9) seeking their discharge under Section 227 of Code of Criminal Procedure from the said case. It was, however, rejected by the Judge of the Special Court by the order passed on 3.5.2007. Therefore, both the accused preferred the present application under Section 482 of Code of Criminal Procedure seeking their discharge from the case and seeking quashing of criminal proceedings.

5. During the pendency of the present application, original accused no. 1, who was applicant no. 1, passed away and, therefore, his name came to be deleted from the cause title of the application. Now, the application is being prosecuted only by his wife, accused no. 2.

6. The present applicant no. 2, who is accused no. 2, is a non-public servant and is facing a prosecution for commission of offence of collecting assets by a public servant disproportionate to his known source of income. The public servant, the original accused no. 1 and husband of present applicant, is no more alive and, therefore, learned counsel for applicant no. 2 submits that the offence alleged against the applicant cannot be proved. Though, learned APP disagrees, he could not show to me as to how the offence of abetment as alleged against the applicant no. 2 could be proved in the absence of the public servant, deceased applicant no. 1 or accused no. 1. If it is the case that the main offence of amassing illegal wealth disproportionate to the known source of income cannot be proved by the prosecution against the public servant, i.e. accused no. 1, having regard to the nature of allegations made against applicant no. 2, offence of abetment of the offence can obviously be not proved against the person who is not a public servant, i.e. accused no. 2. Allegations against applicant no. 2 or accused no. 2 are that she abetted the commission of offence by her husband, the accused no. 1, by intentionally aiding him to amass the wealth. The intentional aiding was in the nature of holding in her name the assets purchased by her husband using ill-gotten money. The fact that funds used for purchasing assets were supplied by the husband, the deceased public servant, has to be proved first in this case. It cannot be proved in the absence of deceased public servant and, therefore, offence of abetment of the nature alleged against his wife, the non-public servant, cannot also be proved.

7. In the case of Sri Amara Krishna Mohan Rao, Uppugunduru, Prakasam District and Others Vs. The State of Andhra Pradesh--> the learned Single Judge of Andhra Pradesh High Court has also taken the same view, as expressed by me in the earlier paragraph. The learned Single Judge has held that the question of prosecuting a non-public servant for an offence covered by the provisions of Anti Corruption Act arises only if there is a possibility of ascertaining the commission of the main crime by the public servant and if this possibility is not there, there would be no chance of upholding the same charge as against the non-public

servant as well.

8. Of course, in the instant case, trial as against original accused no. 1 is yet to be abated, as no formal order in this regard appears to have been passed by the trial Court. But, only for that reason, this Court would not be prevented from passing appropriate order so that justice is done, as rightly submitted by learned counsel for applicant no. 2. Ultimately, *raison d'être* of the power of the Court under Section 482 of Code of Criminal Procedure is to enable the Court to pass such orders as are necessary to meet the ends of justice in situations where recourse cannot be taken to express provisions of law or where it is necessary to do so for preventing miscarriage of justice. It is an admitted fact that the original accused no. 1 has already died and, therefore, there would be no option available than to pass an order of abetment of trial as against original accused no. 1. That order, for some reasons, has not been formally made by the trial Court in this case and since it has not been made, now it can be passed by this Court while exercising its jurisdiction under Section 482 of Code of Criminal Procedure. Such an order is, therefore, being passed in this judgment.

9. Even otherwise, on *prima facie* worth of the case, I find that learned counsel for applicant no. 2 is right when he submits that the allegations made against the original accused no. 1, even if accepted as they are, would not be sufficient to constitute an offence of commission of abetment of amassing illegal wealth and I am of the view that prosecution has failed to collect sufficient evidence to make the Court believe that there are sufficient grounds to proceed in the case.

10. The allegation against the present applicant no. 2 or original accused no. 2 is that by possessing assets worth Rs.7,63,372/-in her name, she has committed offence of abetment of crime of collecting disproportionate assets by her husband, the original accused no. 1. This would mean that prosecution evidence collected to support the allegation against accused no. 2 must show that during the relevant period, that is from the year 1973 to the year 2001, accused no. 2 had no income worth the name to enable her to be on her own in purchasing the assets. But, the material available on record does not show that accused no. 2 had no independent source of income during the relevant period.

11. There is a letter dated 21.3.2002 sent by the Deputy Commissioner of Police to the Income Tax Department, which is forming part of the charge-sheet, which shows that the Deputy Commissioner of Police had requested the Income Tax Department for supplying of all the Income Tax Returns filed by original accused no. 2 till the date of the letter. It is not known whether all the Income Tax Returns were accordingly sent to the Deputy Commissioner of Police, as all the Income Tax Returns of original accused no. 2 had not been filed along with the charge-sheet. Prosecution has produced on record Income Tax Returns of accused no. 2 for only two assessment years, i.e. 1999-2000 and 2000-2001. Bare perusal of these Income Tax Returns would show that accused no. 2 had an independent source of income and even during those two assessment years, she was earning handsome income. For the assessment year 1999-2000,

total income earned by her was of Rs.1,52,000/-and for the assessment year 2000-2001 the total income earned was of Rs.1,40,192/-. This would only show that the applicant or accused no. 2 was capable of acquiring self financed assets in her own name. At least, some of the assets shown in the charge-sheet, as standing in her name, could have been acquired by her by using her said income.

12. According to learned counsel for the applicant, the applicant had been filing Income Tax Returns since the year 1983 and onwards continuously. He submits that even though the prosecution has not produced on record copies of previous Income Tax Returns, the applicant has filed on record the copies of the previous Income Tax Returns and these Income Tax Returns would show that the applicant had been earning consistently substantial income so as to enable her to acquire various assets in her own name without depending on anybody's income.

13. I have perused these Income Tax Returns filed on record by the applicant which are for the previous years, and which start from the assessment year 1983-1984. These are public documents and, therefore, as held in the cases of Rukmini Narvekar Vs. Vijaya Satardekar and Others, and Harshendra Kumar D. Vs. Rebatilata Koley Etc., they can be looked into by the High Court in exercise of its power under Section 482 of Code of Criminal Procedure for doing justice in the matter. These Income Tax Returns, although demanded by Deputy Commissioner of Police as per his letter dated 21.3.2002, have not been produced on record by the prosecution and no explanation has been given by the prosecution as to why they were not forming part of charge-sheet. It could have certainly explained in the charge-sheet the reason for their non-production. But the fact that no such explanation has been given by the prosecution, it would be appropriate to infer that the prosecution has not produced copies of these Income Tax Returns only because they do not support the allegations against the present applicant no. 2 or original accused no. 2 and this will provide a reason for this Court to look into the Income Tax Returns filed on record by applicant no. 2 to satisfy itself as to whether the inference being so drawn is correct or not.

14. Reverting back to the Income Tax Returns, I find that for the assessment year 1983-84, total income of the present applicant was of Rs.40,441/-and it also shows she was the owner of Stridhan worth Rs.51,000/-, 103 tolas of gold, 5 kg. of silver, two buffaloes and three cows. This Income Tax Return also shows that the applicant had additional income drawn from dairy farming and gifts, which was of Rs.1,46,500/-. For the assessment year 1984-85, total income of the applicant was Rs.41,244/-which includes her income from the agricultural and allied activities. For the assessment year 1985-1986, income of the applicant was Rs.38,838/-. The Income Tax Returns for the subsequent years filed up to the year 1990 disclose that applicant's total income hovered in between Rs.33,000/-to Rs.40,000/-. After the year 1990, her income saw an upward rise. From the year 1991-1992 and onwards, her income ranged from Rs.65,000/-to Rs.85,000/-and it reached its peak in the year 1999-2000 when admittedly her income was of Rs.1,52,103. It further rose in the year 2001-2002 to

Rs.2,33,381/-. These Income Tax Returns surely disclose that the applicant has always been earning considerable income of her own. Therefore, the only conclusion would be that the applicant, at least from the year 1983 and onwards, was capable of acquiring assets in her own name by financing from her own funds.

15. In the charge-sheet, in all 9 assets standing in the name of applicant no. 2 have been shown as culpable. Out of them, 8 assets have been purchased in between the year 1989 and the year 1997 and their admitted values are such as fall within the means and capacity of applicant no. 2 as disclosed by declared earnings in the Income Tax Returns discussed above. There is only one asset acquired in the year 1978, which is the ninth asset shown to be culpable. It is an agricultural land prized at Rs. 30,000/- in which she has half share along with her father. But, the property has been purchased by her father. If such is the position emerging from the material available on record, there was heavy burden upon prosecution to collect some evidence to show that the applicant, for purchasing assets worth Rs.7,63,372/-, used not to resort to her own income but income of her deceased husband with an intention to aid her deceased husband, original accused no. 1, to commit the alleged offence of collecting disproportionate assets punishable under Section 13(2) of the Prevention of Corruption Act. However, upon perusal of entire charge-sheet, I could not see any such material to enable me to come to a conclusion that this applicant had aided original accused no. 1 to purchase assets in her own name and that this applicant was in reality only a Benamidar, who allowed her name to be used as a facade for the real transaction behind it, which was culpable. Learned APP also could not show to me presence of any such material on record of the case. If such is the case, I do not think that the allegations made against the present applicant, even when accepted as they are, would be sufficient to prima facie make out the offence alleged against her.

16. Learned Single Judge of this Court in the case of Smt. Kamlesh Jain w/o Sureschandra Jain v. C.B.I., Nagpur, [Cri. Appln. NO. 52 of 2006 decided on 9.3.2010] after considering the law laid down by the Hon'ble Apex Court on the factors governing discharge of the applicant in such cases as in the cases of (i) Century Spinning and Manufacturing Co. Ltd. and Others Vs. State of Maharashtra, ; (ii) Niranjana Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, ; (iii) Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others, and (iv) Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra, has summarised the parameters which must be considered by the Court while dealing with an application seeking discharge under Section 227 of Code of Criminal Procedure, as follows:

It seems well settled that at the Sections 227, 228 stage the Court is required to evaluate the materials and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the evidence of all the ingredients constituting the alleged offence. The Court may for this limited purpose even at that initial stage accept all that the prosecution states as gospel

truth even if it is opposed to common sense or the broad probabilities of the case. 17. Following these parameters, I find that there is no material available on record from which it can be said that there exists something on record which prima facie constitutes the offence alleged against applicant no. 2 or which even leads to a reasonable suspicion founded upon some reasonable ground that the present applicant may have used funds illegally collected by her husband for purchasing assets in her own name and may have allowed her husband to use herself as a Benamidar in those transactions. Only by saying that the applicant has abetted commission of offence under Section 13(2) read with Section 13(1) (e), would not be enough and some material would have to be shown by the prosecution to substantiate the allegations. When the material collected during the course of investigation is accepted as it is and is considered together with the documents produced on record by applicant no. 2 for the limited purpose of ascertaining whether or not there are sufficient grounds to frame the charge, as held in the case of Niranjana Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja, supra, the necessary ingredients of commission of offence of abetment of a crime are not made out. Therefore, even on the criterion of prima facie worth of the prosecution case, present applicant no. 2 deserves to be discharged from the case.

18. In the result, I am of the view that this application deserves to be allowed and is allowed accordingly. Trial of the case in Special Case No. 12 of 2003 as against original accused no. 1 Prakash Ramaji Ambagade stands abated. Accused no. 2, the present applicant, Smt. Nalini Prakash Ambagade, stands discharged from the case.

Property seized from custody of both the applicants including the documents be released to the applicant, after usual period of appeal is over.