

(2016) 04 BOM CK 0154

In the Bombay High Court

Case No : Criminal Revision Application No. 154 of 2013

Ramesh

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227
Penal Code, 1860 (IPC) — Section 109, 120B, 34, 465, 466, 471, 477A
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2016) ALLMRCri 4358 : (2017) 1 BomCR(Cri) 777

Hon'ble Judges : Z.A. Haq, J.

Bench : Single Bench

Advocate : Shri S.S. Voditel, Advocate, for the Applicant; Shri S.S. Doifode, A.P.P, for the Non-Applicant

Final Decision : Allowed

Judgement

Z.A. Haq, J.(Oral)—Heard learned advocates for the respective parties.

2. Rule. Rule made returnable forthwith.

3. The applicant has filed this revision application challenging the order passed by the Special Judge rejecting the application filed by the applicant praying that he be discharged from the prosecution for the offences punishable under Sections 465, 466, 471, 477-A, 120-B and 109 r/w 34 of the Indian Penal Code and for the offence under Section 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988.

4. The relevant facts are as follows :

Special (ACB) Case No. 02 of 2003 is filed against six persons (including the applicant) for the offences punishable under Sections 465, 466, 471, 477, 477A read with Sections 120-B and 109 of the Indian Penal Code and for the offence under Section 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988.

According to the prosecution, the applicant who was posted as Resident Deputy Collector, Buldana at the relevant time, facilitated the illegal allotment of land on lease in favour of Malkapur Education Society. The gist of the charges against the applicant is that while forwarding the proposal for allotment of the land to the Collector, Buldana, the applicant deliberately suppressed the relevant entries in the revenue record to facilitate the allotment of the land on lease and that while granting lease of the land the value of the land was wrongly computed.

According to the applicant, F.I.R. No. 3035 of 1998 was lodged on 5th February, 1998 and the applicant was not shown as accused. The applicant retired on 29th February, 2000 and the charge sheet was filed on 31st January, 2002 against the applicant also. The applicant contends that the charge-sheet is filed against the applicant without seeking sanction as required by Section 19 of the Prevention of Corruption Act, 1988 and this is done as according to the prosecution, the sanction is not required after superannuation of the applicant.

5. By the judgment delivered on 7th April, 2016 (today), I have allowed Criminal Revision Application No. 67 of 2013 filed by co-accused Prakash Murlidhar Bhisikar who was posted as Collector, Buldana at the relevant time. I have come to the conclusion that the accusations and the documents placed on the record do not contain necessary ingredients to constitute the offences punishable under Sections 465, 466, 471, 477, 477A read with Sections 120-B and 109 of the Indian Penal Code and for the offence under Section 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988.

6. The accusations against the applicant that he has deliberately suppressed the relevant revenue record while forwarding the proposal regarding the allotment of the land to the Collector, Buldana, does not make out any offence against the applicant. The record shows that the applicant had discharged his official duty and has acted on the basis of the report submitted by his subordinate and on the basis of the documents which showed that the concerned land belong to the State Government. Though it is alleged that the applicant had deliberately suppressed the relevant entries of the revenue records while forwarding the proposal to the Collector, Buldana, the learned APP has not been able to show from the record that the documents submitted by the subordinates of the applicant showed that the concerned land belonged to the Ministry of Defence, Government of India. Though it is alleged that the valuation of the concerned land was deliberately shown on the lower side at Rs. 9,694/- to facilitate the allotment of the land on nominal rent of Re.1/- per year as per Rule 7 of the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971, the non-applicant has not been able to show the correct and actual valuation as per the State Government. Moreover, the charge against the applicant that because of the allotment of the land on lease for 15 years on nominal rent @ Re.1/- per year has resulted in huge financial loss to the State Government is fallacious and self-contradictory considering the stand of the State Government that the concerned land belongs to the Ministry of Defence, Government of India. If the

concerned land belongs to the Ministry of Defence, Government of India, how it can be said that huge financial loss is caused to the State Government.

7. The learned Special Judge has not adverted to the relevant aspects, specially as to whether the accusations made against the applicant make out the offence for which he is being prosecuted. The learned Special Judge has observed that the prosecution alleges that the applicant has acted dishonestly while taking decision, has followed corrupt practices and has caused wrongful loss to the State Government and these aspects cannot be considered unless the evidence is recorded. The learned Special Judge has observed that the prosecution has adduced sufficient oral and documentary evidence on record, which makes out prima-facie case and therefore, the applicant cannot be discharged. With the above general observations, the application is rejected by the learned Special Judge. I find that the learned Special Judge has not considered the matter in the right perspective and has not adverted to the relevant aspects.

8. In my view, the prosecution has failed to establish that the ingredients necessary to prosecute the applicant for the offences punishable under Sections 465, 466, 471, 477-A and 109 of the Indian Penal Code and for the offence under Section 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988 exist. Therefore, the prosecution against the applicant for the above offences cannot be continued and he has to be discharged from the prosecution.

9. Hence, the following order :

- i) The order passed by the learned Special Judge in Special (ACB) Case No. 2 of 2003 on application (Exh.71) on 25th September, 2012 is set aside.
- ii) The application (Exh.71) filed by the applicant is allowed.
- iii) The applicant is discharged from the Special (ACB) Case No. 2 of 2003 pending before the Special Judge, Buldana.
- iv) Rule is made absolute in the above terms.
- v) In the circumstances, the parties to bear their own costs.