

(1994) 09 BOM CK 0045
In the Bombay High Court
Case No : Criminal Rev. App. No. 56 of 1994

The State of Maharashtra

APPELLANT

Vs

Ramkrishna Dorkar

RESPONDENT

Date of Decision : 01-09-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Penal Code, 1860 (IPC) — Section 109, 21, 34
Prevention of Corruption Act, 1988 — Section 5(2)

Citation : (1995) CriLJ 2521 : (1995) 1 MhLj 558

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : Shri V.M.Deshpande, app, for the Appellant; Shri Avinash Gupta, for the Respondent

Judgement

1. Taking exception to the order of discharge passed by Special Judge, Akola in Special Case No. 8/87 State of Maharashtra v. Ramkrishna and others, on 7-12-1993, the State of Maharashtra has filed this present revision application u/s 397 read with Section 401 of Code of Criminal Procedure, 1973 (for short Cr. P.C.). The grievance of the revision applicant State of Maharashtra is that, Special Judge, Akola has committed serious error of jurisdiction and also grave error of law in discharging the accused respondent for an offence punishable u/s 5(1)(e) read with Section 5(2) of Prevention of Corruption Act, 1947 read with Sections 109 and 34 of Indian Penal Code.

2. The learned Additional Public Prosecutor has urged before me that the Special Judge, Akola was not justified in holding that no noticed or opportunity was given to the accused Non-applicant by the Investigating Officer. He further submitted that the sanction order passed by the Competent Authority does not suffer from any infirmity. Prima facie case having been made out, the Special Judge, Akola ought to have charged accused and proceeded with the trial instead of discharging him by the impugned judgment. According to the prosecution case, the accused non-applicant joined the Government service in the year 1951 as a

Clerk in Revenue Department and then was promoted from time to time and ultimately he retired from the Government in the year 1988. Thus, according to the prosecution, the Non-applicant is a public servant and since disproportionate income from the source of his earning was detected, the accused non-applicant was guilty of the offence u/s 5(1)(e) read with Section 5(2) of the Prevention of Corruption Act, 1947. The main charge against the accused non-applicant is that, accused Non-applicant was possessed of the assets valuing about Rs. 4,29,987.09. The income of non-applicant accused from the known sources was Rs. 4,79,238.19 and he had incurred expenditure of Rs. 1,25,902/- for the maintenance of his family and in this view of the matter the accused Non-applicant could have saved Rs. 3,53,325.57. However, as stated above, the accused non-applicant was found to possess moveable and immovable properties worth Rs. 4,29,987.09, he had income disproportionate to the known sources of income of the accused non-applicant. According to the prosecution, after completion of investigation the matter was sent for sanction to the Competent Authority and the Commissioner, Amravati Division on 25-3-1987 passed the following sanction order.

SANCTION ORDER :

Ref : Shri Ramkrishna Narayan Dorkar, the then Entertainment Duty Inspector (now Naib Tahsildar, Darwaha, District Yavatmal.).

Read : Record of investigation of Cr. No. 363/80, under Sections 5(1)(e) r/w 5(2) of Prevention of Corruption Act and Section 109, 34, I.P.C. of P.S. City Kotwali, Akola.

Where during the period from 12-3-51 to 24-6-80 Shri Ramkrishna Narayan Dorkar was working as Clerk, Sub-Inspector, Prohibition and Excise and Entertainment Duty Inspector, Akola and as such he was public servant within the meaning of Section 21 of Indian Penal Code.

And on 24-6-1980, P.I.A.C.B., Akola registered an offence vide P.S. City Kotwali, Akola Cr. No. 363/80 u/s 5(1)(e) r/w 5(2) P.C. Act and Section 109, 34, I.P.C., and conducted the investigation which revealed that Shri Ramkrishna Narayan Dorkar, the then Entertainment Duty Inspector Akola now Naib Tahsildar, Darwaha District Yavatmal acquired and possessed disproportionate property, to his known source of income in common intention with his father Shri Narayan Gotaji Dorkar and mother late Gayabai Narayan Dorkar, who expired in April, 1978 who were residing with him, to the tune of Rs. 76,657.55. The total income of Shri Ramkrishna Narayana Dorkar, the then E.D.I. now Naib Tahsildar from his all known sources from the date of entry into his service i.e. from 12-3-51 to 24-6-1980 was Rs. 4,79,328.19 paise and expenditure was Rs. 1,25,902.68 paise and as such his probable saving from the aforesaid known sources of income was Rs. 3,53,335.51 paise.

And whereas the accused Ramkrishna Narayan Dorkar, the then E.D.I. now Naib Tahsildar, Darwaha District Yavatmal, and on his behalf his father Narayan Gotaji

Dorkar, mother late Smt. Gayabai Narayan Dorkar and his dependent and family members Sau. Pushpalata Ramkrishna Dorkar (wife), Anil Ramkrishna Dorkar (son), Subodh Ramkrishna Dorkar (son) were found in possession of assets of Rs. 4,29,987.06 paise and thus Shri Ramkrishna Narayan Dorkar and on his behalf his father Narayan Gotaji Dorkar and his mother late Smt. Gayabai w/o Narayan Dorkar and others as mentioned above have possessed the properties as above out of that, property worth Rs. 76,651.55 is disproportionate to his known sources of income for which Shri Ramkrishna Narayan Dorkar, E.D.I. now Naib Tahsildar, Darwha District Yavatmal, could not satisfactory account and by abuse of office of Public servant and by corrupt and illegal means derived upon pecuniary advantages and possessed assets disproportionate to the known sources of his income and thus committed offence of criminal misconduct u/s 5(1) (e) r/w 5(2) of Prevention of Corruption Act II of 1947 and 34, 109, IPC.

And whereas, the said Shri Ramkrishna Narayan Dorkar, the then E.D.I. Akola now Naib Tahsildar, Darwha district Yavatmal, is alleged to have committed an offence punishable under 5(1)(e) r/w 5(2) of Prevention of Corruption Act II of 1947.

And whereupon perusal of the papers of investigation of Cr. No. 363/80 u/s 5(1) (e) r/w 5(2) of P.C. Act r/w 34, 109, IPC of P.S. City Kotwali, Akola, I.N.L. Lakhanpal, Commissioner Amravati Division, Amravati, am of the opinion that the said Shri Ramkrishna Narayan Dorkar, the then E.D.I. now Naib Tahsildar, Darwha, District Yavatmal should be prosecuted for the offences constituted by the acts herein mentioned above and revealed during the said investigation and punishable as stated above.

Now, therefore, I.N.L. Lakhanpal, Commissioner, Amravati Division, Amravati, an authority competent to remove the said Shri Ramkrishna Narayan Dorkar, the then E.D.I., Akola now Naib Tehsildar, Darwha, district Yavatmal from his post, do hereby accord sanction for the prosecution as required by Section 6(1)(c) of the Prevention of Corruption Act II of 1947, to prosecute the said Shri Ramkrishna Narayan Dorkar, then Entertainment Duty Inspector, Akola, now Naib Tahsildar, Darwha district Yavatmal for the offences constituted by the aforesaid facts and punishable as mentioned above.

Sd/- N. L. Lakhanpal, (N. L. Lakhanpal) Commissioner, Amravati Division, Amravati."

Dated 25th March, 1987.

3. Before the Special Judge, Akola, the accused moved an application for his discharge mainly on two grounds;

(i) That before passing the sanction order, no opportunity was given to the accused to satisfactorily explain the alleged disproportionate assets.

(ii) The Investigating Officer also did not give any notice to the accused Non-applicant for explaining satisfactorily account of disproportionate assets.

4. The Special Judge, Akola, after hearing the learned counsel for the parties and examining record held that both the aforesaid grounds taken by non-applicant accused for discharge merited acceptance and consequently the Special Judge, Akola vide his order dated 7-12-1993 discharged the accused Non-applicant.

5. It may be observed that the Special Judge, Akola considered the argument of the Additional Public Prosecutor before that Court that some eight statements were submitted by I.O. and certain information was called from the Non-applicant accused by I.O. and thus sufficient opportunity was given to him and on consideration of the entire matter on the basis of the record held that the information sought for and the correspondence can not be said to be complying with the requirement of calling for explanation from the accused non-applicant to satisfactorily explain disproportionate asset. The Special Judge, Akola also found that no show cause notice or memorandum was given by the Investigating Officer to the accused seeking his explanation. The sanction order referred to hereinabove was also not found legal and valid by the Special Judge, Akola.

6. I have heard the learned counsel for the parties.

7. The contention raised by Additional Public Prosecutor before me was that the information sought for by Investigating Officer vide his statements 1 to 7 shows that accused was called upon to explain the disproportionate assets which were found. Additional Public Prosecutor was not able to convince me that the sanction order dated 25-3-1987 was legal and proper in the face of the judgment of this Court in *Ishwar Piraj v. State of Maharashtra* 1993 MLJ 152.

8. Mr. Gupta, the learned counsel for the Non-applicant accused strenuously submitted that the conclusions arrived at the Special Court, Akola are proper and in accordance with the material on record and therefore do not justify any interference by this Court in its revisional jurisdiction.

9. In *Ishwar Piraji v. State of Mah.* (cited supra), this Court has held that it is incumbent upon the Sanctioning Authority to record and hold that the accused could not satisfactorily account for those disproportionate asset. A necessary corollary is, therefore, that no sanction could be granted in the case of the offence u/s 5(1)(e) of the Prevention of Corruption Act, unless the sanctioning authority accords an opportunity to the concerned accused to explain satisfactorily the disproportionate asset found and then holds and records that prima facie the accused has not been able to satisfy or account for the disproportionate assets. It is not disputed by the learned Additional Public Prosecutor, nor it could be disputed on the face of the sanction order dated 25-3-1987 that Sanctioning Authority did not issue any notice to the accused non-applicant, nor called for any explanation from him about the disproportionate assets which he possessed and which was found. The Additional Public Prosecutor conceded that it has been recorded by the Sanctioning Authority in this sanction order dated 25-3-1987 that the accused has failed to explain satisfactory account for disproportionate assets but without giving him a

notice. In this view of the factual and legal position, it is apparent that the sanction order dated 25-3-1987 is not proper, valid and legal, and therefore, the proceedings against the accused could not have proceeded and commenced in the absence of valid and legal sanction order, and therefore, it cannot be said that the Special Judge, Akola was unjustified in discharging the accused of the aforesaid offence.

10. Adverting to the argument of Additional Public Prosecutor that certain information in the statements 1 to 7 was sought for by the Investigating Officer from accused, it can be observed that his argument of the learned Additional Public Prosecutor is also not properly placed. It is true that certain information was sought for from the accused applicant by I.O. which is reflected from his statements 1 to 7, but that cannot tantamount to asking the accused non-applicant to explain satisfactorily the disproportionate assets found from the Non-applicant accused. It is not disputed by the Additional Public Prosecutor that no memorandum or show cause notice in terms seeking explanation from the accused applicant to explain disproportionate assets was given and served upon him by the Investigating Officer. In *Ishwar Piraji v. State* (cited supra), this Court has specifically held that where the accused is charged of the offence u/s 5(1)(e), an opportunity must be given to the accused to explain the disproportionate assets. The opportunity contemplated should be fair, reasonable and sufficient. By seeking information in the statements 1 to 7, it cannot be said that accused while furnishing that information could have also explained the disproportionate assets alleged against him. The way the Investigating Officer has proceeded, naturally has prejudiced the right of the accused of furnishing explanation in the case where he was accused for the offence u/s 5(1)(e) and in this view of the matter also the conclusion arrived at by Special Judge, Akola discharging the accused for the offence under Sections 5(1)(e) and 5(2) of Prevention of Corruption Act and Sections 109 and 34 of Indian Penal Code cannot be said to be unjustified.

11. In the revisional jurisdiction, this Court would not interfere with the order of discharge unless it is demonstrated that the impugned order suffers from glaring error or is perverse. The reasons given by the Special Judge, Akola discharging the accused of the aforesaid offence are well founded and, therefore, do not call for any interference in the present revision application.

12. The upshot of the aforesaid discussion is that this revision application is devoid of any merit and as such is dismissed.

13. Petition dismissed.