

CBI, GUJARAT

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v.

DILIP MULANI & ANR.

(Criminal Appeal No.1252 of 2019)

AUGUST 20, 2019

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[A. M. KHANWILKAR AND DINESH MAHESHWARI, JJ.]

Code of Criminal Procedure, 1973: Discharge application – Respondent No.1 was named as an accused for committing offence punishable under s.120-B IPC and ss.7, 12, 13(2) r/w s.13(1)(d) of Prevention of Corruption Act, 1988 – Discharge application filed by respondent No.1 – Trial court rejected the discharge application – Respondent No.1 filed revision application before the High Court – High Court allowed the revision application – On appeal, held: Trial Court had adverted to relevant evidence which in its opinion pointed towards the involvement or the complicity of respondent No.1 in the commission of the alleged crime – High Court without analyzing any factual aspects of the matter proceeded to record that it is a case of no evidence against respondent No.1 and allowed the discharge application – The approach of the High Court is unacceptable – Impugned judgment is set aside and the parties are relegated to the High Court for reconsideration of the revision application on its own merits.

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1252 of 2019

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From the Judgment and Order dated 29.11.2017 of the High Court of Gujarat at Ahmedabad in Criminal Revision Application No. 846 of 2016

K. M. Nataraj, ASG, Mukul Singh, Ms. Snidha Mehra, Debasis Rout, Hemant Arya, Chakitan V.S. Papta, Arvind Kumar Sharma, Advs. for the Appellant.

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S. V. Raju, Sr. Adv., Mohan Jayakar, Abhay Dhadiwal, Devashish Jagirdar, Mehul M. Gupta, R. P. Gupta, Ms. Deepanwita Priyanka (for Aniruddha P. Mayee), Advs. for the Respondents.

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A The following Order of the Court was passed :

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1. Leave granted.
 2. Heard counsel for the parties.
- B 3. This appeal takes exception to the judgment and order dated 29.11.2017 passed by the High Court of Gujarat at Ahmedabad in Criminal Revision Application (Against order passed by Subordinate Court) No.846 of 2016, whereby the High Court was pleased to set aside the decision dated 08.07.2016 of the Trial Court rejecting the discharge application filed by respondent No.1 (Accused No.5), Dilip Mulani.
- C 4. Respondent No.1 has been named as an accused for having committed offence punishable under Section 120-B of the Indian Penal Code and Sections 7, 12, 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988.
- D 5. The Trial Court while rejecting the discharge application filed by respondent No.1 adverted to relevant facts, as can be discerned from paragraph Nos. 13 and 14 of the judgment dated 08.07.2016. The same read as thus:-

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- E “13. Here in the present case, after registering the FIR, though investigation has been carried out by the Investigating Officer wherein it reveals that Shri Anand Singh Mall was posted as Assistant Commissioner of Customs, Shri Anand Singh Mall was looking after all the works related to export, import and refund.
- F As Assistant Commissioner on Air Cargo Complex, it was his duty to sanction the SAD refund claim cheques in favour of the importers. Now, so far at the involvement of the present applicant accused is concerned, Rs.3.5 lacs and Rs.1.5 lacs of bribe money has been paid to Shri Anand Singh Mall. In the said transaction as per the investigation paper, the role of the present application accused is established. As per the investigation, One Shri R.C.Pagaria, Incharge of M/s Khimji Punja Freight Forwarders Private Limited, Delhi, had received Rs.5 lacs on 28/08/2010 through M/s. Purnima Angadia from the company’s Head Office at Mumbai, and as per the direction of Shri Mehul Zaveri, Shri R.C.Pagraria, had paid Rs.3.5 lacs to Shri Kishan Rajwar whose
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telephone number was given by Shri Anand Singh Mall during conversation. In this regard, the diary in which Shri R.C. Pagaria had written about the receipt of Rs.5 lacs from his Mumbai Office and delivery of Rs.3.5 lacs to Shri Kishan Rajwar, have also been recovered during the investigation. Not only that but during the search at the office of accused Shri Mehul Zaveri at Ahmedabad, one expenditure note book was also seized in which entry dated 29/07/2010 addressed to Shri Dilipbhai Mulani shows "A.Mall ad hoc as per the list attached show to D.M.Rs.3,50,000.-" From the above evidence, it transpires that on 29/07/2010, Shri Mehul Zaveri had sent Rs.3,50,000/- to his Mumbai Office for effecting the payment to Shri Anand Singh Mall at Mumbai, but, as Shri Anand Singh Mall wanted the delivery of the amount at Delhi while discussing with Shri Mehul Zaveri on 18/08/2010. Shri Mehul Zaveri intimated Shri Dushyant Mulani one of the Director of M/s Khimji Punja Freight Forwarders Private Limited, Mumbai unit he has sent "1.5" to Shri Dilipbhai which is to be handed over to Shri Anand Singh Mall. During the said conversation Shri Mehul Zaveri also said that he had already been given "3.5" at Delhi which was sent by Shri Dilip Mulani from Mumbai. He also told that he wants to clear dues regularly and told about making parking as required by Shri Mall. The conversation in entirety show that the conversation were for delivery of Rs.3.5 lacs and Rs.3.5 lakhs to Shri Anand Singh Mall which was not his legitimate dues. From the above conversation, the rule of the present applicant accused Shri Dilip Mulani is clearly established which incriminating him in the said offences. Further during the investigation, the voice of Shri Anand Singh Mall and Shri Mehul Zaveri, in all the conversation, have been identified by the witnesses who are well acquainted with their voice, and this fact can be proved after leading the prosecution evidence and for that the full fledged trial is required to prove the guilt of the present applicant accused.

14. Further, the alleged payment of illegal gratification of Rs.1,50,000/- to Shri Mall has been corroborated by the receipt entry of dated 19/10/2010 available in the expenditure note book maintained by Shri Mehul Zaveri which was seized during search at his office. The said entry in the note book is also mentioned as "Anand Mangal- Trans to B.M. @ APO Rs.1,50,000/-". Further, from the telephonic conversation dated 21/10/2010 between Shri

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- A Mehul Zaveri has stated to have sent Rs.1.5 lakhs to the present applicant Shri Dilip Mulani for payment to Shri A. Mall From the above entry in expenditure note book, and telephonic conversation in transcription that the present applicant accused Shri Dilip Mulani in conspiracy with Shri Mehul Zaveri had abated the offence of bribery and had arranged for the payment of illegal gratification of Rs.3.5 lacs to Shri Anand Singh Mall at Delhi through his nephew Shri Krishna Rajwar and also Shri Mehul Zaveri in conspiracy with Shri Dilip Mulani and Dushyant Mulani had arraigned for delivery of illegal gratification of Rs.1.5 lacs to Shri Anand Singh Mall at Mumbai. From the above acts on the part of the present applicant accused has not been charge-sheeted only on the basis of Managing Director of M/s. Khimji Punja Freight Forwarders Private Limited, Ahmedabad, but he has played an active role in the present offences. So, here in the case on hand looking to the charge-sheet and documentary evidence along with the statement of witnesses, there is a *prima facie* case against the present applicant accused to frame the charges as alleged against him.”
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Again in paragraph No.16, it concluded as follows :

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- F 16. Further, it is submitted by the LA for the applicant accused that so far the charge against the applicant accused under the offence of criminal conspiracy is concerned, there must be meeting of minds to commit some illegal act, and here in the present case, the basic ingredient of the offence of criminal conspiracy is hatched in secrecy. Further more, the acts, omissions and conduct of the accused are required to be considered and to arrive at the conclusion as to whether the accused was involved in the conspiracy or not? The same can be decided only at full-fledged trial.”
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6. Respondent No.1 carried the matter before the High Court by way of revision application. The High Court *vide* impugned judgment has set aside the order passed by the Trial Court and instead allowed the

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discharge application by observing as follows, as noted in paragraph 19 A of the impugned judgment. The same reads thus :

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19. I have minutely gone through the entire charge-sheet papers as well as the reply filed by the C.B.I. and the contents of the impugned order. As per the arguments made by the learned advocates for both the parties, the question as to whether the sufficient evidence with regards criminal conspiracy by the present applicant is produced on record by prosecution or not to show that there was meeting of minds and agreement between the accused to commit the said offence in so called conspiracy. So far as the main ingredient of the criminal conspiracy is concerned, it is a base of the law to have an agreement and meeting of minds. I have minutely perused the telephonic conversation as well as the reply and documents, statements of the witnesses and at which place that agreement was made by the present applicant which is not prima facie disclosed in charge-sheet papers. So far as abetment regarding illegal gratification and bribery are concerned, I have also perused the ingredients of Sections 107 and 108 of the Indian Penal Code. So far as the main ingredients of both the provisions of law are concerned, it is the duty of the prosecution to establish real evidence to show that under which circumstances the present applicant has abetted. It is true that originally in the FIR, name of the accused is not mentioned as alleged by the applicant but it is established law that when the name of the accused is not mentioned in the FIR, even though the case of the prosecution cannot be resulted in fatal. But, it is required to be considered that it is the duty of the prosecution to produce sufficient and cogent evidence regarding involvement of the accused. In the present case, the prosecution has relied upon the statements of the witnesses and so called name which is disclosed whose statement is not recorded to show that the investigation is defective and even from the documents produced on record i.e. receipt, conversation etc. could not connect the present applicant-accused in the alleged offence cited by the prosecution in the charge-sheet.

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If we may say so, this is the only relevant analysis of the correctness of the decision of the trial Court.

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- A 7. After having considered the arguments canvassed by both the sides, we refrain from examining the argument in support of the discharge application on merits. We deem it just and proper to set aside the impugned judgment passed by the High Court which, in our opinion, to say least is perverse. To observe sobriety, we say no more.
- B 8. The High Court noted that it is a case of no evidence against respondent No.1, whereas the Trial Court had adverted to relevant evidence which in its opinion pointed towards the involvement or the complicity of respondent No.1 herein in the commission of the alleged crime. It would have been a different matter if the High Court was to analyze the factual aspects taken note of by the Trial Court and then record its finding that the facts so stated by the Trial Court are not borne out from the record. If such a finding was to be recorded by the High Court, we would have had the advantage of considering the correctness of the view so taken by the High Court. However, as aforesaid, the High Court, in the present case, without analyzing any factual aspects of the matter proceeded to record that it is a case of no evidence against respondent No.1 and allowed the discharge application of respondent No.1.
- C 9. The approach of the High Court, in our opinion, is unacceptable and does not stand the test of judicial scrutiny.
- D 10. We accordingly, set aside the impugned judgment and order and remand the revision application by restoring it to the file of the High Court to its original number. The parties are relegated before the High Court for reconsideration of the Criminal Revision Application on its own merits in accordance with law.
- E 11. We make it clear that we have not expressed any opinion either way, on the merits of the discharge application. The High Court may deal with all aspects in that regard as per law and shall decide the Revision Application expeditiously. We must remind the High Court that as per the provisions of Section 19 of Prevention of Corruption Act, in particular, the progress of trial cannot be interdicted in any manner and is required to be completed expeditiously.
- F 12. The appeal and pending applications are accordingly disposed of in the above terms.