

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1489-1490 OF 2019

(Arising out of SLP (Criminal) Nos.8968-8969 of 2019

(Arising out of Diary No.23350/2017)

Central Bureau of Investigation (CBI) Etc.Appellant(s)

Versus

Mrs. Pramila Virendra Kumar
Agarwal & Anr.Etc.

...Respondent(s)

J U D G M E N T

A.S. Bopanna,J.

Delay condoned.

2. Leave granted.

3. The appellant Central Bureau of Investigation (CBI) is before this Court assailing the order dated 14.12.2015 passed by the High Court of Judicature at Bombay in Criminal Revision Application Nos. 284/2013 and 323/2013. Through the said order the High Court has

allowed the Criminal Revision Application No. 284/2013 and discharged the accused No. 2 and further the Criminal Revision Application No. 323/2013 filed by the appellant herein was dismissed.

4. The brief facts limited to the disposal of these appeals is that the first respondent in both these appeals, namely, Smt. Pramila Virendra Kumar Agarwal and Shri Virendra Kumar Agarwal were charged under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 ('P.C. Act' for short) and Section 109 of IPC. The respondent No. 1 in SLP (CrI.) D.No. 23350/2017 is the wife of the respondent No.2. They are charged as accused No. 2 and accused No. 1 respectively and are proceeded against in CBI, ACB Special Case No. 21/2010. In the said proceedings both the accused filed separate applications seeking their discharge. The application of accused No. 1 Shri Virendra Kumar Agarwal was registered as Exhibit 13 while that of accused No. 2 Smt. Pramila Virendra Kumar Agarwal was registered as Exhibit 20. The Special Court on

consideration of the application for discharge has allowed the application of accused No. 1 – Shri Virendra Kumar Agarwal through the order dated 15.01.2013 and discharged him from the offences charged against him under FIR No. RC 49(A)/2007:CRI:ACE:Mumbai. Insofar as the application filed by accused No. 2 - Smt. Pramila Virendra Kumar Agarwal the Special Court through the order dated 22.02.2013 had rejected the application.

5. In that background the appellant herein – CBI claiming to be aggrieved by the discharge of accused No. 1 had filed the Criminal Revision Application No. 284/2013 before the High Court. The accused No. 2, Smt. Pramila Virendra Kumar Agarwal claiming to be aggrieved by the rejection of her application for discharge had filed the Criminal Revision Application No. 323/2013 before the High Court. Since both the Criminal Revision Applications were arising out of the same proceedings before the Special Court, in Special Case No. 21/2010, the High Court had clubbed and considered the same and disposed of through the common order dated

14.12.2015 by which the Revision Application of the accused No. 2 was allowed while the Revision Application of the appellant herein assailing the discharge of accused No. 1 was dismissed. It is in that light the appellant herein – CBI has instituted these appeals assailing the said common order dated 14.12.2015.

6. Heard Shri K.M. Natraj, learned Additional Solicitor General, for the appellant and Ms. Sonia Mathur, learned Senior Advocate, for the private respondents as also Shri Nishant Katneshwarkar, learned standing counsel for the State of Maharashtra and perused the appeal papers.

7. The learned Additional Solicitor General at the outset would point out that the High Court though had taken up both the Revision Applications and disposed of the same through the common order and in the operative portion has allowed the application of accused No. 2 and dismissed the Revision Application of the appellant herein, the order impugned does not indicate any reasons for consideration and disposal of the Revision Application whereby the appellants had challenged the discharge

order of accused No. 1. It is further contended that the reasons as assigned by the Special Court as also the High Court for discharge of the accused on the ground that they were not provided opportunity to explain and the explanation offered is not a part of the charge sheet is not justified. It is contended that in the criminal investigation such procedure is not contemplated and as such both the Courts have committed an error. It is also contended by the learned Additional Solicitor General that the Special Court as well as the High Court has erred in concluding that the sanction for prosecution is not done in accordance with law since that aspect can only be considered during trial and not in the manner as has been done presently since the contention was of defective sanction and not that the proceedings was without sanction. It is his case that the proceedings were initiated against the private respondents herein based on information received and when the investigation revealed disproportionate assets the charge sheet was filed in that regard. The correctness of the charge is to be established with evidence during trial and in that circumstance the

discharge granted based on certain assumptions is not justified.

8. The learned senior counsel for the private respondents on the other hand sought to contend that the initial order of discharge of accused No. 1 by the Special Court and the subsequent order of discharge of accused No. 2 by the High Court is on proper consideration and the same do not call for interference. It is contended that though the prosecution has sought to charge the private respondents herein alleging that they had during the check period i.e. 01.01.1994 to 21.10.2007 accumulated assets to the tune of Rs. 1,06,89,194/- disproportionate to the known source of income, the agency has wrongly clubbed the assets of both the private respondents merely because they are husband and wife. It is contended that both of them are employed and have their separate earning and as such the clubbing of the assets would not be justified. It is contended, in that circumstance if the individual assets of the accused No. 1 and 2 are taken into consideration

the charge of accumulation of disproportionate assets would not be justified. In that light it is contended that the Special Court as also the High Court having appreciated these aspects has found the charge to be not justified. The learned senior counsel has further sought to refer to the details of the income during the check period as also the assets of each of the accused to contend that the charge is not justified and in that circumstance if the provisions in Section 13(1)(e) of the P.C. Act is kept in view the charge was without basis. It is also the contention of the learned senior counsel that the sanction order is without application of mind and is *non est* since such sanction order has also been granted in the background of clubbing the income of two public servants who had independent source of income and were assessed to tax independently. Hence the learned senior counsel sought to sustain the order passed by the High Court which is impugned herein.

9. In the background of contention as urged, a perusal of the order would indicate that the High Court

has not separately considered the correctness or otherwise of the order passed by the Special Court, one while rejecting the discharge application of the accused No. 2 and the other while allowing the discharge application of accused No. 1. However, a perfunctory consideration has been made by raising the question for consideration as to whether the Investigating Officer was under obligation to record explanation offered by the accused and whether such explanation should be part of the charge sheet and in that light a question is also raised as to whether the sanctions for prosecution were defective.

10. While addressing the same the High Court has referred to the decisions of this Court wherein it is held that the investigation must be fair and reasonable and that the Enquiry Officer must not act under any preconceived idea of guilt of the accused person. The judgment of the Bombay High Court in the case of **N.P Lotlikar vs. C.B.I** was referred to indicate that it was held therein that mere possession of assets is not an

offence but failure to explain or account for the same would amount to an offence. The said decision was also relied upon since it was held therein that before registration of offence an opportunity ought to have been given to the accused to explain the source of funds for acquiring and possessing the assets. Having taken note of the same the learned Judge of the High Court has also taken note of the submission of the learned Special Prosecutor who had pointed out that during the investigation the accused were called and their statements were recorded. However, not being satisfied with the submission to that effect, the learned Judge was of the opinion that the Investigating Officer ought to have given specific opportunity to the accused for submitting an explanation. Thus, having considered the same to be a lapse it was held that if sanctions for prosecutions were sought in that circumstance, the Sanctioning Authority would not have an opportunity to see the explanation and, therefore, sanction also would be defective.

11. Firstly, it is to be taken note that as contended by the prosecution, in the course of the investigation the accused have been summoned and their statements have been recorded which by itself is for the purpose that they were required to provide an explanation with regard to the assets which were according to the prosecution disproportionate to the known source of income. The said procedure to be followed in the course of investigation does not contemplate the consideration of the explanation in the nature of a mini trial, if not satisfactory, even before the charge sheet is filed based on the material collected and the statement recorded in the course of investigation. The details indicated in the charge sheet after making reference to the income and expenditure is as hereunder:

A)	The value of the assets of the beginning of the check period as per Statement "A"	1,30,000/-
B)	The value of the assets at the end of the check period as per Statement "B"	1,34,45,426/-
C)	The total assets found during the check period (B-A)	1,33,15.426/-
D)	The total income found during the check period as per Statement "C"	51,02,106/-

E)	The total expenditure during check period as per Statement "D"	24,75,874/-
F)	Likely saving during check period (D-E)	26,26,232/-
G)	The Disproportionate assets (C-F) Viz 209.50%	1,06,89,194/-

12. Even if it is accepted that the above statement is on clubbing the income and assets of the husband and wife who have individual source of income, the very details furnished by the CBI before the High Court by splitting it in the individual capacity will also *prima facie* indicate the nature of the income and the disproportionate assets allegedly possessed by them at Rs.47,93,946/- and Rs.56,75,812/- respectively. The High Court in fact has not adverted on that aspect to arrive at a conclusion that in that circumstance even if the case as put forth by the investigating agency is taken as correct the same would not constitute an offence and, therefore, they are to be discharged, which in fact is the nature of consideration required. Further the Special Court also has merely stated that it has perused the documents and a reference in that regard is made to the document at Serial No. 3, namely, the Agreement of Sale

of Flat No. A 305, Shiv Geeta Co-operative Housing Society Ltd., Vasai. In any event the conclusion reached therein had been assailed before the High Court but the High Court has not adverted to those aspects of the matter.

13. Further the issue relating to validity of the sanction for prosecution could have been considered only during trial since essentially the conclusion reached by the High Court is with regard to the defective sanction since according to the High Court, the procedure of providing opportunity for explanation was not followed which will result in the sanction being defective. In that regard, the decision in the case of **Dinesh Kumar vs. Chairman, Airport Authority of India**, (2012) 1 SCC 532 relied upon by the learned Additional Solicitor General would be relevant since it is held therein that there is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The absence of sanction no doubt can be agitated at the threshold but the invalidity of the sanction

is to be raised during the trial. In the instant facts, admittedly there is a sanction though the accused seek to pick holes in the manner the sanction has been granted and to claim that the same is defective which is a matter to be considered in the trial.

14. In the above background, the impugned order would indicate that the High Court has not adverted to the charge made against the accused wherein the charge against the accused No. 2 is also of abetting the commission of offence by the accused No.1 and in that regard the conclusion reached by the High Court is not that the charge is not sustainable for the reasons recorded by it. In fact, neither there is any reasons recorded nor application of mind to that aspect. Insofar as the question raised and considered by the High Court, no credence whatsoever has been given to the case of the prosecution that the statement of the accused has been recorded which also forms the basis of the charge sheet and the explanation thus accorded by the accused does not provide satisfactory answer for the charge of

disproportionate assets. In that regard the High Court has proceeded at a tangent and has on that basis also arrived at the conclusion that the sanction for prosecution is not proper.

15. Further it is noticed that the High Court has recorded that the statement of the accused made to the police during investigation is not admissible and the procedure adopted during investigation is found to be defective. Such conclusion would arise for consideration only during trial and if the statement made is retracted and there is no other material or evidence on record to establish the charge. Hence the very manner in which the High Court has proceeded to consider the matter is erroneous and the conclusion reached is unsustainable. The private respondents/accused in any event would have the opportunity of putting forth their defence in the trial and as such all contentions in that regard are to be left open and any of the observations herein are limited to the consideration of the applications for discharge and the same shall not prejudice the case of the accused. It

is for the said reason we have not thought it appropriate to advert more into the contentions relating to the charge except for noticing the charge made relating to the disproportionate assets without stating on its correctness or otherwise.

16. In that view, the order dated 14.12.2015 passed by the High Court and order dated 15.01.2013 passed by Special Court are set aside. The proceedings in Special Case No.21 of 2010 is restored to file of the Special Court. All contentions on merits of both the sides are left open to be urged before the Special Court in accordance with law.

17. Accordingly, the appeals are allowed with no order as to cost. All pending applications shall stand disposed of.

.....J.
(R. BANUMATHI)

.....J.
(A.S. BOPANNA)

**New Delhi,
September 25, 2019**