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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO.28 OF 2022

KASHINATH J. SHETYE

....APPLICANT

Versus

THE STATE OF GOA, THR.

THE CHIEF SECRETARY

AND 6 ORS.

....RESPONDENTS

Mr. Kashinath Shetye, Applicant in person.

Mr. Pravin Faldessai, Advocate for Respondent-State.

Ms. Asha Desai, Special Public Prosecutor for the Respondent Nos. 2 and 3.

CORAM:

BHARAT P. DESHPANDE, J

RESERVED ON:

25th September, 2024.

PRONOUNCED ON:

15th October, 2024

ORDER :

1. Heard Mr. Kashinath Shetye, the Applicant in person, Mr. Pravin Faldessai, Additional Public Prosecutor for Respondent-State and Ms. Asha Desai, Special Public Prosecutor for Respondent Nos. 2 and 3.

2. This is a revision filed challenging the order dated 03/10/2020 passed in Criminal Miscellaneous Application No.155/2019 by the learned Sessions Court thereby rejecting an

application filed under Section 156(3) of the Criminal Procedure Code, 1973 (Cr.P.C. for short).

3. While rejecting such application, the learned Sessions Court which is also a Special Court under the Prevention of Corruption Act, 1988 observed that the said Court cannot direct registration of FIR or carry out investigation to the Anti-Corruption Bureau or to the Central Bureau of Investigation, directly.

4. Mr. Kashinath Shetye, the Applicant appearing in person would submit that the impugned order needs interference in the revisional jurisdiction as first of all it nowhere discusses as to whether there is any material disclosed in the complaint showing the existence of cognisable offence so as to register the crime. Secondly, it is his contention that learned Sessions Court being a Special Court under the Prevention of Corruption Act is having original jurisdiction and can exercise powers of the Magistrate which includes the powers conferred under Section 156(3) of Cr.P.C.

5. He would further submit that the concerned Court was required to decide whether there exists any material to direct the

concerned investigating agency to register the offence or to investigate, and only then to consider its own power. Since the learned Trial Court failed to exercise such jurisdiction available with it, the only option is to remand the matter by quashing aside the impugned order.

6. The learned Counsel appearing for the Central Bureau of Investigation as well as the Anti-corruption Bureau would submit that there is no permission obtained under section 17 A for launching prosecution and accordingly, the observations of the learned Trial Court is justified.

7. The Applicant along with a few others lodged a complaint in the matter of corruption, fraud, and cheating in connection with Gera Builders and the Economic Corporation of Goa, thereby causing loss to the exchequer. Such complaint was addressed to various authorities, including the Chief Secretary, Police Inspector of Central Bureau of Investigation, Superintendent of Police, Director of Vigilance, Police Inspector of Anti-Corruption Bureau, Superintendent of Anti-corruption, Bureau and Collector North Goa. Such complaint was lodged on 15/07/2019 by giving details of the alleged commission of

offence punishable under Sections 420, 409, 468, 471, 120–B read with 34 of the Indian Penal Code as well as Section 7 to 12 of the Prevention of Corruption Act, with a prayer to register the offence and carry out the investigation.

8. Since there was no response to such complaint lodged, the Applicant along with others approached the Special Court under the provisions of the Prevention of Corruption Act by filing an application under section 156(3) of the Cr.P.C. Various documents were enclosed, including the fact that the Applicant approached the concerned authorities for grant of sanction under section 17 of the Prevention of Corruption Act.

9. Such application was decided by the learned Special Court vide order dated 13/10/2020, which is challenged in the present proceedings.

10. The first contention of Mr. Shetye is that there is no finding as to whether allegations made out in the application under section 156(3) Cr.P.C are having any substance and whether any cognizable offence is made out so as to direct the concerned authorities to investigate.

11. The impugned order, if perused, would go to show that there is no observation and or finding to the fact, as to whether any case is made out for directing investigation to be carried out by the concerned authorities. In fact, the learned Special Court failed to even touch the allegations made in the said application, against various officers.

12. The second contention of Mr. Shetye is also justified as the Special Court simply refused to entertain such application on the ground that the said Court has no powers to direct the Anti-Corruption Bureau/Central Bureau of Investigation to carry out investigation. In this respect reliance is placed in the case of ***Central Bureau of Investigation Vs. State of Rajasthan & Anr., 2001 (3) SCC 333.***

13. Mr. Shetty, while placing reliance on the case of ***Dr. A. S. Narayan Rao Vs. The Central Bureau of Investigation, 2012 SCC OnLine 2261*** in Writ Petition (Criminal) 1626/2011 decided on 20/04/2012 by the Delhi High Court According to him, the Special Court under the Prevention of Corruption Act is the original Court having jurisdiction to consider whether investigation could be directed in a given

circumstance. The learned Delhi High Court discussed the Apex Court's decision in the case of ***Central bureau of investigation Vs. State of Rajasthan (supra)*** and then discuss the powers under Sections 3, 4 and 5 of the Prevention of Corruption Act, wherein appointment of a Special Judge for trying the special cases is provided. It is in paragraphs 8, and 9 as under:-

8. Section 3, 4 & 5 of the PC Act provide for the power to appoint Special Judges, cases triable by the Special Judge and the procedure and power of the Special Judge. Sub-Section 3 & 4 of Section 5 provides as under:

"5. Procedure and powers of special Judge. –

(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973, shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge; and for the purposes of the said provisions, the Court of the special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a special Judge

shall be deemed to be a public prosecutor.

(4) In particular and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of Sections 326 and 475 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to the proceedings before a special Judge and for the purposes of the said provisions, a special Judge shall be deemed to be a Magistrate."

9. *The jurisdiction of the Special Judge is to try cases committed within its jurisdiction whether investigated by the local Police or the CBI. Thus, the officer of the CBI files a report under Section 173 Cr.P.C. before the Special Judge as an officer in-charge of the Police Station. Once the officer of the CBI files the charge-sheet under Section 173 Cr.P.C. before the learned Special Judge as an officer in-charge, he would be deemed to be the officer in-charge of the Police Station to whom under Section 156(3) Cr.P.C. the learned Special Judge can give directions to register FIR. Thus, to this extent, the finding of the learned Special Judge that in view of the decision of the Hon'ble Supreme Court in*

CBI Vs. State of Rajasthan the Special Court has no jurisdiction to direct registration of FIR under Section 156(3) Cr.P.C. to the CBI in a case of corruption is erroneous.

14. I am in full agreement with the observations of the learned Single Judge in the case of **Dr. A. S. Narayana Rao (supra)** on the above aspect.

15. As discussed earlier, the impugned order is clearly silent as to whether any case is made out for issuing directions, the matter needs to be remanded by quashing the impugned order so that the Special Court can consider as to whether ingredients of the offences alleged are made out so as to exercise the powers under section 156 (3) of Cr.P.C. Similarly, the Special Court is having original jurisdiction and has the power of a Magistrate. The observations in the case of **Central Bureau of Investigation Vs. State of Rajasthan (supra)** will not be of any hindrance to issuing directions, if justified.

16. For all the above reasons, the revision needs to be allowed by quashing the impugned order and remanding the matter to the Special Court to decide it.

17. The revision stands allowed. Impugned order is quashed and set aside. The matter is remanded to the Special Court to decide the application afresh.

18. It is needless to mention that this Court has not gone into the merits of the said complaint.

19. Parties shall act on an authenticated copy of this order.

BHARAT P. DESHPANDE, J.