



S.S.Kilaje

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 316 OF 2015

Milind Purushottam Damle

... Applicant

*Versus*

Union of India and Anr.

... Respondents

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Mr. H.G.Dharmadhikari a/w. D.A.Bhalerao, Harshika Arunkumar for the Applicant.

Mr. Amit Munde, Special P.P. a/w. Jai Vohra, Mr. Balaji Gurave and Mr. Shantanu Nakashe for Respondent – CBI.

Mr. S.R.Agarkar, APP for the Respondent-State.

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CORAM : SHIVKUMAR DIGE, J.

RESERVED ON : 27<sup>th</sup> APRIL, 2026.

PRONOUNCED ON: 11<sup>th</sup> JUNE, 2026

**P.C. :**

1. This Criminal Revision Application is preferred against the common order of rejection of discharge application of the applicant passed by the learned Special Judge of CBI at Thane below Exhibit-34 in Special CBI Case No. 18 of 2012.

2. It is prosecution's case that initially CBI filed the FIR at New Delhi dated 01.02.2005 under Section 120(B) of Indian Penal Code, 1860 (for short "IPC") read with 13(2), 13(1)(d) of Prevention of Corruption



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Act, 1988 (for short “P.C. Act”) against the applicant and others on the alleged ground that the applicant being a public servant conspired with the co-accused and the two EOUs (Export Oriented Units) and granted them licence under Section 58 and 65 of Customs Act with retrospective effect which caused a huge loss to the Government Exchequer. The Government of India did not accord sanction for prosecution. Therefore, the CBI filed Closure Report in the said case. During investigation of said case, the CBI conducted house search of the applicant at Thane and found amount disproportionate to his known source of income. Accordingly, the CBI filed FIR dated 14.07.2005 under Section 13(1)(e) read with 13(2) of P.C. Act against applicant and under Section 109 of IPC against his wife. It is alleged that applicant while functioning as a Government servant during the check period from 01.04.2000 to 02.02.2005 has acquired and amassed wealth to the extent of Rs.54,67,633.06 in his own name and in the name of his wife, which is beyond his known source of income. He was not able to satisfactorily account for the said amount and has therefore, allegedly committed the offences above referred. Initially, the applicant had filed discharge application before the Special Judge CBI, Rohini Court, Delhi, which was rejected. The said order was challenged before the Delhi High Court. During pendency of the Petition, the charge was framed against the applicant. The applicant had filed petition before



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the Hon'ble Apex Court to transfer the case from CBI Court, Delhi to Thane. Thereafter, the matter was transferred to CBI Court at Thane. The applicant filed petition before this Court against framing of charge. This Court permitted the applicant to file fresh discharge application. After filing the said application, it was rejected. The present revision application is against the said order.

3. It is contention of learned counsel for the applicant that the applicant has been falsely implicated in this case. There is no provision in the Code of Criminal Procedure for filing second FIR in respect of a cognizable offence noticed to have been committed during the investigation of the case in respect of cognizable offence resulting from the first FIR. It is settled law that investigating agencies are barred from filing second FIR. CBI did not obtain any permission from the designated Court dealing with the case resulting from the first FIR. In fact, the seizure effected by CBI in the first FIR was beyond the authorisation issued by the designated Court and the search warrant issued by the Investigating Officer- CBI while searching the residence of the applicant at New Delhi and Thane respectively was without authorisation. Learned counsel further submitted that seizing bank lockers and freezing bank accounts of the applicant, his wife and his in-laws is illegal, unlawful and contrary to the law. Learned counsel further submitted that the income during the



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check period of the applicant and his wife has been shown as of Rs.40,49,391/-. The investment of Rs.4,47,000/- of the applicant as on 01.04.2000 was not taken into consideration. The investment of Rs.2,21,529/- of the accused No.2 i.e. wife of applicant as on 01.04.2000 was also not taken into account by the Investigating Officer. The investments of Rs. 26,500/- and Rs. 16,500/- in the name of his sons Parth and Siddharth respectively was not taken into account as on 01.04.2000. Learned counsel further submitted that the investments made during the check period were not in existence on 02.02.2005 and have been wrongly shown as income. Learned counsel further submitted that expenses of stamp duty were not paid by accused No.2 in respect of Flat No. D/302, Sarovar Darshan Towers, Thane. In fact, the expenses of the stamp duty were borne by the builder. The investigating officer has wrongly shown it as income of the applicant and his wife. Learned counsel further submitted that the wife of applicant is Chartered Accountant. She has an independent source of income but her income is not considered properly. The income of both his sons have not been considered. There is no material available on record to prove the case against the applicant. But these facts are not considered by the learned Special Judge and requested to allow the application.



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He relied on :-

- (1) *Ashok Kumar Aggarwal Vs. CBI*<sup>1</sup>
- (2) *Nanjappa Vs. State of Karnataka*<sup>2</sup>
- (3) *State of Goa Vs. Babu Thomas*<sup>3</sup>
- (4) *Srinivasulu Vs. State*<sup>4</sup>
- (5) *Madan Mohan Singh Vs. State*<sup>5</sup>
- (6) *Major Som Nath Vs. UOI*<sup>6</sup>
- (7) *Mohd. Aqbai Ahmed Vs. State*<sup>7</sup>
- (8) *N.P.Lotlikar Vs. CBI*<sup>8</sup>
- (9) *Ishwar Piraj Kalpatri Vs. State*<sup>9</sup>
- (10) *Tirath Prakash Vs. State*<sup>10</sup>
- (11) *State Vs. K. Ponmudi*<sup>11</sup>

4. It is contention of learned SPP that applicant has been charged for amassing disproportionate assets of Rs.54,67,633.06. Learned SPP further submitted that the cash amount of Rs.13,55,050/- was found in house of the applicant at Thane and Rs.3,97,000/- was recovered from his official residence in New Delhi. Rs.10 lakhs were found in the locker at Rupee Bank maintained in the joint name of accused No.2 and her mother Smt. Shobhana Sarvate. Learned SPP further submitted that Rs.9 lakhs were found in the locker No. 33 at Oriental Bank of Commerce maintained in the name of accused No.2. No satisfactory explanation was given about these huge cash amounts. There is sufficient material available against the

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1 2016 SCC OnLine Del 214  
 2 (2015) SCC 186  
 3 (2005) 8 SCC 130  
 4 (2023) 13 SCC 705  
 5 1954 (1) SCC 939  
 6 1971 (2) SCC 387  
 7 1979(4) SCC 172  
 8 1992 SCC OnLine Bom 438  
 9 1992 SCC Online Bom 400  
 10 2001 SCC Online Del 646  
 11 2006 SCC Online Mad 1596



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applicant to go on with the trial. Trial has commenced. The evidence of sanctioning authority is partly recorded. Learned Special Judge has passed well reasoned order and requested to reject the application.

5. I have heard both the learned counsel. Perused impugned order and documents produced on record. It is contention of the applicant that second FIR is not maintainable. Admittedly, an FIR under Sections 13(1)(d) and 13(2) of P.C. Act and 120-B of IPC was initially registered against the applicant and others, but Central Government did not accord sanction for prosecution. While investigating first FIR, the Investigating Officer found that the applicant has amassed property disproportionate to his known source of income. Accordingly, offence under Sections 13(1)(e) and 13(2) of P.C. Act and Section 109 of IPC was registered against the applicant and his wife accused No.2. Both the offences are totally different, having distinct ingredients and different cause of action. Hence, it cannot be said that the present FIR is an outcome of the first FIR and allegations in both the FIRs are same. It is contention of learned counsel for the applicant that income of his sons and wife have not been considered. It appears from the record that opportunity was given to the applicant to give explanation and after considering the said explanation, chargesheet has been filed against the applicant. Moreover, to consider the income of wife and two sons, evidence is required. The sanction is



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accorded against the applicant by the Sanctioning Authority. The evidence of the Sanctioning Authority is part heard. It appears from record that huge cash amounts of Rs.13 lakhs and Rs.3,97,000/- were found in house of the applicant. It is contention of the applicant that Rs.13 lakhs belongs to his father-in-law. In my view, evidence is needed to prove it. Cash amount of Rs.19 lakhs was found in bank locker of the accused No.2. It is stated that out of said amount Rs.14 lakhs belongs to her client and Rs. 5 lakhs belongs to her father. At this prima facie stage, this explanation cannot be considered. Post 2018 Amendment in P.C. Act, the statutory frame work places the eventual burden upon the public servant to satisfactorily account for the wealth in his possession. The discharge can be considered if the prosecution case is demonstrably groundless or suffers from fundamental or mathematical fallacies. It is settled law that calculation of dis-appropriate assets cannot be done with mathematical scientific precision. A reasonable margin of error upto 10% can be allowed for inflation, variance in valuation and minor omissions. If the disproportion falls within this margin, the Court can find the charge to be groundless. From chargesheet it shows that adequate material is available against the applicant to continue with the trial. I have gone through the case laws cited by the learned counsel for the applicant. The facts of cases cited and present case are different. Hence, not applicable. Learned



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Special Judge has passed well reasoned order. No interference is required in it and I pass following order. **ORDER**

(i) The Revision Application is rejected.

**(SHIVKUMAR DIGE, J.)**