(2008) 08 OHC CK 0105

In the Orissa High Court

Agrani Export Private Limited — APPELLANT

Vs

State of Orissa — RESPONDENT

Date of Decision : 12-08-2008

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 102, 482

Citation : (2008) CLT 1208 (Suppl Crl) : (2008) 2 OLR 888 : (2008) OLR 1208 (Suppl Crl)

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—The petitioner is a private limited company incorporated under the provisions of the Companies Act, 1956 represented through its Managing Director - Abhishek Kar. The petitioner - company applied for a term loan and packing credit loan to the State Bank of India, Chhatrapur Branch. The bank authorities, being satisfied and after following due procedure, sanctioned credit facility on 13.7.2007 as per Annexure-2 to the petition.

It is the case of the petitioner-company that while the petitioner-company was operating the said loan account and enjoying the credit facility, the Investigating Officer in Crime Branch P.S. Case No. 13 of 2007, corresponding to G.R. Case No. 2073 of 2007 pending before the Court of the learned S.D.J.M., Bhubaneswar, directed the State Bank of India, Chhatrapur Branch to stop operation of the loan account of the petitioner-company and accordingly, the petitioner-company has been prevented from operating the said loan account.

2. This fact was intimated to the petitioner-company by the Chief Manager of the Bank. The petitioner-company, thereafter, found that the said criminal case has been initiated against the Proprietorship concern in the name and style of M/s. Anu Nuts and Fruits. In the meantime, charge sheet has been submitted in the said case against the accused persons and the said Proprietorship concern, who, according to the petitioner-company, are in no way connected with the petitioner-

company. Being aggrieved by the action of the freezing of the loan account of the petitioner-company, it has preferred this application u/s 482 of the Code of Criminal Procedure (for short, ''the Code'') seeking a direction to the bank to allow the petitioner-company to operate the account.

I have heard learned Counsel for the petitioner-company as well as the learned Counsel for the State in extenso.

3. During the course of hearing, the question arose as to whether action u/s 102 of the Code can be taken against the petitioner-company by freezing its loan account though neither the said petitioner-company nor its Directors are accused persons in the criminal case.

Though learned Counsel for the State submitted that the loan account has nexus with the allegation made against M/s. Anu Nuts and Fruits, no document has been produced before this Court in support of the said contention. Learned Counsel for the State further contended that the loan has been granted on obtaining securities from the Directors of the petitioner-company and the said amount has been obtained by the Directors from the Proprietor of M/s. Anu Nuts and Fruits. The fixed deposits which have been offered as security for the loan were also provided by the Proprietor of M/s. Anu Nuts and Fruits.

4. Though the learned Counsel for the State was directed to obtain specific instruction in support of the above contention, more specifically, the date of the said fixed deposit receipts, but no such materials have been produced before this Court.

It appears from the sanction letter of the Bank that co-lateral securities of immovable properties as well as term deposit receipt amounting to Rs. 10 lakhs (rupees ten lakhs) standing in the name of Shri Ganga Narayan Kar have been offered as security for the loan. A copy of the said term deposit receipt was produced by the learned Counsel for the State from which it appears that the said term deposit was made on 18.7.2007. However, nothing has been brought before this Court as to how the said loan account has a direct nexus with the crime alleged to have been committed in the criminal case by M/s. Anu Nuts and Fruits.

5. Section 102 of the Code requires that the properties sought to be seized or frozen must be either stolen properties or they should have been found to have some nexus with the alleged offence which is under investigation by the concerned Police Officer. Intention of freezing a bank account during the course of investigation is not to allow the account holder to operate the said account and thereby withdraw the amounts from the said account. It is, therefore, clear that money in deposit in a bank account, if has any nexus with the alleged .offence can be ceased or the account may be frozen. A loan account is always an account of liability of the loanee and the money transacted in such account belongs to the Bank lend to the borrower, to be repaid as per the loan agreement. The said amounts in the loan account which are available to be withdrawn cannot be

construed to be as asset of the loanee.

6. In the facts of the instant case, therefore, the prosecution intended that the term deposit receipt offered as a security for the loan should not be encashed. However, the Bank advancing the loan has the first charge over the term deposit receipt, which has been given as a security for the loan advanced.

In view of the above discussion, it is found that the Investigating Officer by exercising power u/s 102 of the Code could not freezed the loan account of the petitioner-company, rather it could have directed the bank authorities not to get the term deposit encashed, which was given as security for the loan which is alleged to be the property of M/s. Anu Nuts and Fruits, the Proprietor of which firm, is an accused in the criminal case.

7. In view of the above, this Court finds that the action of freezing the loan account of the petitioner-company cannot be sustained in law and, accordingly, directs that the petitioner-company will be permitted to operate the loan account, which has been freezed.

The CRLMC is accordingly allowed.