(2005) 12 MP CK 0004

In the Madhya Pradesh High Court

Case No : Writ Petition No. 11735 of 2005

Ashok Kumar Jain APPELLANT

Vs

Central Bureau of Investigation and Another RESPONDENT

Date of Decision : 14-12-2005

Acts Referred:
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 7

Citation : (2006) 2 MPJR 253

Hon'ble Judges : Shantanu Kemkar, J

Bench : Single Bench

Advocate : Ajay Mishra, with Mr. S.P. Mishra, for the Appellant; K.K. Singh, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Shantanu Kemkar

By filing this petition under Articles 226 and 277 of the Constitution of India the petitioner has challenged the direction issued by the first respondent Central Bureau of Investigation (for short ''OBI'') to the second respondent Union Bank of India (for short ''Bank'') to freeze and not to allow the petitioner to operate his saving account no. 5702.

On 20.5.2004, the petitioner was working on the post of Branch Manager of the United India Insurance Co. Ltd. at Bhopal. On the said date he was caught red handed demanding and accepting bribe of Rs. 20,000/- by the CBI and was produced before the Special Judge, CBI Cases, Bhopal for necessary legal action. On completion of the investigation, the CBI filed charge-sheet against the petitioner u/s 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, (for short ''Act'') before the said Court. As a consequence, on 21.5.2004 the petitioner was suspended from service by his employer the United India Insurance Co. Ltd.

On the basis of search of petitioner''s house conducted by the CBI another case was registered against the petitioner for offence u/s 13(2) read with Section 13(1)(e) of the Act for possessing assets disproportionate to his known sources of income.

The petitioner alleged that on 10.9.2005 he presented a cheque no. 105433 for encashment but it was not encashed by the Bank and was returned to him by the Bank informing that his account has been frozen under the instructions from the CBI and its operation is not allowed by CBI. Feeling aggrieved the petitioner has filed this petition.

Shri Ajay Mishra, learned senior counsel appearing for the petitioner submitted that the CBI had no authority directing the Bank prohibiting it from making payments from the account of the petitioner. He submitted that u/s 102 of the Code of Criminal Procedure (for short ''Cr.P.C.'') no such power vests in the Police Officer or CBI and the Police Officer or CBI cannot direct the Bank to freeze the account of an accused. In support he relied on Purbanchal Road Service Vs. The State, and R. Chandrasekar Vs. Inspector of Police, Fair Land Police Station Salem and The Dy. Superintendent of Police, C.B., C.I.D., . He also contended that in the said bank account the petitioner''s employer is remitting his subsistence allowance on which the petitioner, his wife and two school going children are dependant. In the circumstances he prayed for quashment for the impugned direction issued to the Bank by the CBI.

Shri K.K. Singh, learned counsel appearing for the CBI contended that issuance of such direction is permissible u/s 102 of the Cr.P.C. He contended that the direction was issued so as to verify the source of funds of the petitioner and also to ensure that there may not be any outflow of illegally earned money. He also submitted that if the petitioner if facing difficulty by not getting his subsistence allowance, he may request to his employer to pay the said amount in cash or for depositing the same in some other bank. However, he has not disputed that in regard to the case of possessing assets disproportionate to his known sources of income, charge-sheet has not been filed by the CBI as yet.

The petitioner''s challenge to the order issued by the CBI to the Bank on the ground that the CBI cannot issue such direction placing reliance on M/s Purbanchal Raod Service Vs. State (supra) cannot be accepted as the said judgment passed by Gaohati High Court has been overruled by the Supreme Court in the case of State of Maharashtra Vs. Tapas D. Neogy, . In this case the Supreme Court after considering the divergent views taken by different High Courts with regard to the power of seizure u/s 102(1) of the Cr.P.C. and whether the bank account can be held to be "property" within the meaning of the Section 102(1) of the Cr.P.C. held that the bank account of the accused or any of his relation is "property" within the meaning of Section 102 of the Cr.P.C. and a Police Officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence for which the Police Officer is investigation into. The Supreme Court also observed that corruption in public officers has become so rampant that it has become difficult to cope up with the same. Then again the time consumed by the Courts in concluding the trial is another factor which should be borne in mind in interpreting the provisions of Section 102 of the Cr.P.C. and the underlying object engrafted therein, inasmuch as if there can be no order of seizure of the bank account of the accused then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdrawn by the accused and the Courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer. As regards the ease of R. Chandrasekar (supra) the same is distinguishable on facts. In the said case it was observed that the petitioner was not involved in the offence and the offence was registered against one Prabhakaran.

In view of the aforesaid and having regard to the case registered against the petitioner, the direction issued by the CBI for freezing the petitioner''s saving account cannot be said to be illegal or arbitrary. As regards the subsistence allowance it is open for the petitioner to request his employer to pay the subsistence allowance it is open for the petitioner to request his employer to pay the subsistence allowance in cash or deposit the same in any other bank so as to avoid any financial difficulty.

The petition being devoid of any merits is dismissed with no orders as to costs.

