(2003) 07 AHC CK 0149

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 1961 of 2002

Kamal Infosys Ltd. APPELLANT

Vs

State of U.P. and Another RESPONDENT

Date of Decision : 29-07-2003

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 397, 482

Citation : (2004) 2 BC 444

Hon'ble Judges : P.K. Chatterji, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.K. Chatterji, J.—This application has been filed by the applicant against the order dated 9.9.2002 passed by Special Judicial Magistrate, Central Bureau of Investigation, Lucknow (hereinafter referred to as C.B.I.) thereby rejecting the application for release of the Bank Account of the applicant.

2. The facts, in brief, are that the applicant was business associates of Uttar Pradesh Development Systems Corporation Ltd., a Government Undertaking known as UPDESCO and was imparting computer education and training to the students, general public and Government employees. An agreement was executed between UPDESCO and Kamal Infosys Pvt. Ltd, the applicant on 20th July, 1998 and the applicant was made business associates of UPDESCO. As per terms and conditions of the said agreement an A/c No. 21033 was opened at Union Bank of India, Secretariat Branch, Lucknow. Thus, the applicant claims his genuine Account No. 21033. The realisation of franchise fee/licence fee, royalty and interest-free refundable security deposits from the franchises at such rates/ percentages as may be decided by the Executive Committee and the share of UPDESCO and business associates i.e, the applicant was in the ratio of 40% and 60% respectively as per agreement. Thus, the applicant had 60% interest in the running of the aforesaid business. In the said account No. 21033 only the royalty on course fee collected throughout U.P., licence fee and payment for course

material, etc. are deposited and day-to-day necessary expenses for running the computer training institution are being made out from this Account. The UPDESCO as per agreement transfers certain amount into the account of applicant at A/c No. 21033 and money deposited in the account is deposited only by the Government agencies. During investigation of Century Scam matter, the CBI instructed the Union Bank of India for stopping payment in the A/c No. 21033 vide latter dated 17.4.2001.

3. The contention of the applicant is that the Account No. 21033 is not the subject-matter of investigation. It has no concern with Century Scam Matter. None of the Bank entries in Account No. 21033 is linked with the Account No. 283 which is admittedly a forged account. The money deposited in A/c No. 283 has not been claimed by the applicant.

4. Mr. Bireshwar Nath, learned Counsel appearing on behalf of CBI submitted that there is ample evidence to show that the transactions were made in between A/c No. 21033 and A/c. No. 283, the forged account which was opened in State Bank of India, Hyderabad Branch, Ashok Marg Branch, Lucknow. This fact is established from the Annexure Nos. SCA-5 and SCA-6 to the Short Counter Affidavit. Annexure No. SCA-2 is cheque and the Annexure No. SCA-3 is the pay-slip which also proves this transaction. It was further stated that a cheque No. 404416 for an amount of Rs. 1,40,000/- was issued from the Account No. 21033 favouring Kamal Infosys Ltd. which was created into bogus account No. 283 of Kamal Infosys Ltd. through Voucher dated 23.11.2000.

5. On 18.10.2000 cheque No. 40136 was issued from Account No. 21033 for Rs. 2,50,000/- favouring Kamal Infosys Ltd. The said amount was credited into the said bogus current Account No. 283 through credit voucher dated 20.10.2000.

6. During investigation it has been found that both the cheques were issued by Sri N.K. Shukla in the capacity of Managing Director for Kamal Infosys Ltd. amount of which was credited into the fictitious current account No. 283 opened in the same name by the co-accused A.K. Shah and A.M. Jauhari. It was further stated that the said amount was immediately withdrawn in cash from the said account No. 283 on the very same day.

7. During investigation it has been found Sri. A.K, Jauhari who was one of the Directors of Century ConsultantsLtd., fraudulently got printed the share certificates of Kamal Infosys Ltd. It has further been found that the accused persons in conspiracy with each other unauthorizedly collected Rs. 23292000/- from 811 investors and issued them forged certificates which was subsequently utilised by them for their own purposes. It was also disclosed that in all the above mentioned accounts Sri N.K. Shukla was the authorised signatory to operate the accounts and transactions with these accounts have taken place with the account No. 283. The investigation further disclosed that one Sri Girish Bihari Saxena was also cheated who had given Rs. 2 lacs to Century Consultants Ltd. vide cheque No. 768561 dated 31.7.1999 for the purchase of shares but the

same were not purchased.Charge-sheet has been filed against S/Sri A.M. Jauhari, A.K. Jauhari, A.K. Shah, Narendra Kumar Shukla, Ananat Shayan, M/s. Kamal Infosys Ltd. and M/s. Century Consultants Ltd.

8. It has been contended by learned Counsel for the applicant that S/Sri A.K. Jauhari and A.K. Shah were operating the account although they were not signatory. Sri. N.K. Shukla was the only authorised person to operate all the three accounts. No transaction of depositing the forged shares'' amount from genuine account to bogus account was made but only two cheques have been deposited in the bogus account which pertains to the genuine account by Sri N.K. Shukla, Kamal Infosys Ltd. Sri N.K. Shukla has not operated the bogus account.

9. Heard the learned Counsel for the applicant and the learned Counsel appearing on behalf of the C.B.I.

10. The two cheques show that they were issued in the name of Kamal Infosys Ltd. vide Annexures Nos. SCA-5 and SCA-6 and the same were deposited in the bogus account No. 283. The amount of the said cheques was credited into fictitious account No. 283 opened on the same name by the co-accused A.K. Shah and A.M. Jauhari. The statement of account also shows that immediately after credit of amount of both aforesaid cheques the amounts were withdrawn in cash from the said account No. 283 on the very same day. The above facts and circumstances, prove that the applicant was very much conscious regarding opening of the said accounts. Therefore, there is no ground for release of the account in question in favour of the applicant. Since the cheques have been issued and money has been withdrawn, the application for release of the account No. 21033 has no force and is accordingly rejected.

