(2015) 06 KAR CK 0193

In the Karnataka High Court

Case No : Criminal Petition No. 3211 of 2015

Kineta Minerals and Metals Ltd. APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 11-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 102, 102(3)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 21, 23, 4(1), 4(1)(a)
Penal Code, 1860 (IPC) — Section 120-B, 379, 409, 420
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2015) 06 KAR CK 0193

Hon'ble Judges : A.N. Venugopal Gowda, J

Bench : Single Bench

Advocate : Hashmath Pasha, for the Appellant; P. Govindan, Spl.P.P., Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

A.N. Venugopal Gowda, J.—Respondent No. 1 has registered a FIR in Crime No. 15/2015 on 11.05.2015 for the offences punishable under Ss. 379, 409 and 420 read with S. 120-B of the IPC and also under Ss. 13(2) and 13(1)(d) of the Prevention of Corruption Act and Ss. 21 and 23 read with Ss. 4(1) and 4(1)(a) of the Mines and Minerals (Development and Regulation) Act, 1957, regarding illegal iron ore business by the petitioner.

2. The respondent No. 1, having requested the respondent No. 2, to furnish the Account Opening Forms (KYC) and Bank Statements from 01.01.2009 to 31.05.2010 of Account Nos. 30064460879, 30064418261 and 3004925096 and simultaneously freeze the account Nos. 30064460879, 30064418261 and 3004925096 vide Annexure - A and the 2nd respondent, in pursuance of the communication as at Annexure - A, having freezed the account Nos. 30064460879, 30064418261 and 3004925096 of the petitioner, vide Annexure - B, this petition was filed to quash the communication as at Annexure-A and to

direct the 2nd respondent to defreeze the operation of account Nos. 30064460879, 30064418261 and 3004925096.

3. Sri Hashmath Pasha, learned advocate for the petitioner, contended that the first respondent having not disclosed any reason necessitating freezing of petitioner''s account numbers stated above, has acted arbitrarily and illegally in sending Annexure-A to the second respondent and requesting for freezer of the accounts. He submitted that action of the freezer of the accounts has also not been reported to the Special Judge, Lokayukta Cases and that there is violation of Section 102(3) of Cr.P.C. Placing reliance on an order passed in the case of Smt. Lathifa Vs. The State of Karnataka and Others, (2012) CriLJ 3487 : (2012) ILR (Kar) 2220 , he contended that Annexure-A to the extent of freezer of the petitioner''s bank accounts is liable to be quashed.

4. Mr. P. Govindan, learned Special Public Prosecutor, on the other hand made submission in support of the action of the respondent No. 1 in freezing the bank accounts of the petitioner by issuance of Annexure-A.

5. Perused the writ record and considered the rival contentions.

6. By way of an intimation dated 11.05.2015 vide Annexure-A, the first respondent requested the second respondent, to furnish the Account Opening Forms and Bank Statements from 01.01.2009 to 31.05.2010 of account Nos. 30064460879, 30064418261 and 3004925096. Without even perusal of the said accounts, the simultaneous freezing of the accounts of the petitioner is arbitrary and illegal. Prior to freezing of the bank accounts of the petitioner, the first respondent ought to have verified, whether the same have any nexus with the commission of offence, for which FIR in Crime No. 15/2015 was registered on 11.05.2015.

7. In almost identical circumstances, in the case of SMT. LATHIFA ABUBAKKAR (supra), it was held as follows:

"11. It is thus clear that the bank account of the accused or any of his relation is ''property'' within the meaning of Section 102, Cr.P.C, and the police officer in course of investigation, can seize or prohibit operation of the said account, if such assets have direct link with the commission of the offence. For the application of the Section, the basic requirements are 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 of the Police Officer concerned. The provisions of Section 102, Cr.P.C. are mandatory. Mere allegation of the prosecution, that the property i.e., bank account is a sequel to the discovery of commission of offence, is not sufficient to attract Section 102 of Cr.P.C. Following the procedure as provided under Section 102 is mandatory. If the police officer who has seized the bank account is subordinate officer/in-charge of a police station, he shall forthwith report the seizure to his higher officer. He should inform the concerned Magistrate forthwith regarding the prohibitory order and he should also give notice of seizure to accused and allow him/her to operate bank account subject to his/her executing bond undertaking to produce the amount in Court as and when required.

12. In the present case, the fourth respondent has not produced any materials till this day to show that the bank account has any nexus with the commission of the alleged offence. It is evident that respondents have not issued a notice of seizure to the petitioner to enable her to operate the bank account subject to her executing bond undertaking to produce the amount in the Court as and when required. Admittedly, the third respondent has not reported the seizure of the bank account to the Magistrate having jurisdiction. Thus, it is clear that respondents have not complied with the mandate contained in Sections 102 of the Cr.P.C. Therefore, the direction of the fourth respondent in freezing the bank account of the petitioner is illegal."

8. Since the instant case is almost identical to the case considered and decided in the decision noticed supra and as the communication vide Annexure-A suffers from the same infirmity as was found by this Court, in the decision noticed supra, i.e., to the extent of the freezer of bank accounts, following the said order and for the reasons recorded therein, this petition is allowed in part and Annexure -A, to the extent of freezing of account Nos. 30064460879, 30064418261 and 3004925096 in the second respondent - bank is quashed. The second respondent shall permit the petitioner to operate its said accounts, subject to petitioner executing a bond undertaking to produce the amount in deposit in the respective accounts, in the court, as and when required.

The second respondent is directed to furnish the Account Opening Forms (KYC) and Bank Statements of Account Nos. 30064460879, 30064418261 and 3004925096, for the period from 01.01.2009 to 31.05.2010, to the first respondent.

No costs.

