(2009) 10 OHC CK 0010

In the Orissa High Court

Case No : Writ Petition (Criminal) No. 525 of 2009

Lakshya India APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 22-10-2009

Acts Referred:

Constitution of India, 1950 — Article 19(1)
Criminal Procedure Code, 1973 (CrPC) — Section 102, 102(3), 457

Citation : (2009) 10 OHC CK 0010

Hon'ble Judges : I.M. Quddusi, Acting C.J.;Sanju Panda, J

Bench : Division Bench

Advocate : Ramakanta Mohanty, D.K. Mohanty, S. Mohanty, A.P. Bose, P. Jena, S. Mohanty, S.K. Mohanty and S.N. Biswal, for the Appellant; Government Advocate, for the Respondent

Judgement

S. Panda, J.—In this writ petition, challenge has been made to the action of the Crime Investigation Department, Crime Branch, Orissa (hereinafter referred to as "the CID (CB)") in freezing the accounts of the Petitioner operating in different branches all over India.

2. The brief facts of the case are as follows: The Petitioner is a Company under the name and style of Lakshya Level Marketing Pvt. Ltd. which is registered under the Indian Companies Act, 1956 with a website name "Lakshya India". The said company is represented by its Managing Director Naresh Mundhra. One Himansu Sekhar Panigrahi filed an FIR on 25.7.2009 before Sahadevkhunta Police Station which was registered as Sahadev Khunta P.S. Case No. 130 of 2009 corresponding to C.T. Case No. 1358 of 2009. As per the allegations made in the FIR, the informant after verifying the scheme in the website of the Petitioner company invested Rs.15, 000/- with an impression that he would get more benefits. As per the scheme, if one deposits Rs.5, 000/- with the Petitioner company, he would get Rs.75/- in the first month, Rs.150/- in the second month, Rs.300/- in the third month and likewise every month he would get double amount received by him in the proceeding month for one year consecutively and

in the process he would get about Rs.2 lakhs. If the said person promotes Anr. person, he would get promotional benefit of Rs. 50/ - per person. However, the informant did not receive the money as promised in the website. He felt that the "circulation of money may disrupt financial system". Therefore, the FIR was registered and the matter was investigated. Thereafter, the case was taken over by the CID (CB) by reporting the matter to the learned SDJM, Balasore. The FIR was registered as CIDCase No. 21 of 2009. The Petitioner stated that the business of the company has no connection with any money circulation in its website. It displayed the scheme which is transparent in the internet and accessible to everybody. The website is known as www.lakshyaindia.net and Email as Info '' lakshyaindia.net. The functioning of the company is totally different. It is doing business online as well as offline interactive marketing specialists offering complete online marketing and sales rewards/incentives for their sales distributors. Their clients are provided marketing solutions which ultimately raise the sales volume positively. The company is associated with authorized all-India marketing Partners of branded products like Sangini diamond jewellery Freya life style jewellery (imitation jewellery), Liverpool, Barcelona apparels. Haier Appliances, gold jeweler, Lawmen, Integrity, etc. The company has product marketing experience of 12 years and are serving its clients in the filed of marketing. By this process, the company generated great sales volume particularly because of the referral reward marketing programme. The entire system works through distributorship. Each distributor has been giyen an identification number on payment of a non-refundable product booking charge for purchase of product from the company. The persons are treated as privileged distributors of the company. The informant and the other persons named in the FIR are the distributors of the company. They are also eligible to get the benefits upon purchase of the products. The advance coupons issued are accepted at all Lakshya India franchise stores/showrooms and other establishments disclosed in the website. The distributor is entitled to make purchase as per the requirements with optimum benefits. It has been specifically stated that the company has no connection or business with the banking, investment or even money circulation. There is no money circulation, far less any transaction of chits and prizes in the commercial functioning of Lakshya India. Therefore, the feeling expressed by the informant is wholly imaginary and based on hearsay. However, the CID (CB) investigated the matter on 29.7.2009 as if it is a money scam purportedly related to deposit by the persons resulting in money circulation with expectancy of quick profit. The concept of "prize" and "chits"or money circulation" is relatable to deposits made by the innocent investors with the hope of getting extra profit moneywise immediately. The Petitioner company was not aware of such circulation going on unlawfully. While the matter was investigated by the CID (CB), the investigating authority issued letter dated 30.7.2009 to the banks to freeze the Petitioner''s accounts. The investigating authority also issued instructions to other sister concerns working throughout India not to enter into any banking transaction with the company. The company''s various bank accounts have been frozen i.e. HDFC Bank, Andheri West and Malad West, State

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Bank of India, Malad West and ICICI Bank account, Andheri West and Kandivali West, Mumbai. The FIR was lodged on an apprehension of alleged disruption of financial system in circulation of money which does not make out a case against the Petitioner company as a result of which the Petitioner is facing acute financial stringency to meet the day to day financial need and operate the business in website. The entire running business of the Petitioner has come to a standstill. Since the Petitioner company stands on a different footing and there is no allegation against the Petitioner company from the authorized customers establish all over India regarding any type of irregularities, the action of the CID (CB) is illegal and it infringes the constitutional and fundamental rights of the Petitioner company to carry on business as guaranteed under Article 19(1)(g) of the Constitution of India. Therefore, the Petitioner approached this Court for quashing of the direction of the CID (CB) to freeze the Petitioner''s account in different banks though the matters is pending before the learned S.D.J.M., Balasore and till date there has been no seizure or production of property before the learned S.D.J.M. in terms of Section 102 Code of Criminal Procedure Hence, it is stated that the action of the investigating authority is unconstitutional and the same is liable to be quashed and the Petitioner may be allowed to operate its bank accounts for its business purpose.

3. A counter affidavit has been filed on behalf of the CID (CB) indicating therein that several persons have lodged FIRs alleging fraud committed by the Petitioner company which is registered under the Indian Companies Act. As a follow-up to an FIR and considering the gravity of offence and the interstate network, CID (CB) took charge of the investigation. During investigation it was found that the Multi Level Marketing Company seemed to be functioning with a design to defraud good number of innocent depositors in respect of huge sum of money. The crores of money involved are purely public money. The Directors/ Promoters of the company had taken resort to attract more depositors under the scheme by assuring them to give high returns and become rich overnight. The depositors are unaware of the real picture of the money circulation scheme. By the time the people realize that they were taken for a ride and cheated, it becomes too late. During investigation, it was found that the distributors are getting monthly returns upto six months and thereafter the company stresses upon enrollment of a new member under such depositors for giving double the money of monthly return. The depositor has to wait for one calendar year for getting the assured product. Till date none of the depositors has been given with the assured products and the promoters of the company were designing to shift to the new areas after attaining saturation of members enrolled under their scheme.

4. The Reserve Bank of India (in short "RBI") by its letter dated 18.8.2009 issued guidelines to the Chairman/Chief Executives of all Scheduled Commercial Banks regarding the activities of Multi Level Marketing Company. The RBI has given a list of 7 companies involved in Multi Level Marketing and the Petitioner company''s name finds place at serial No. 2 in the said list. In the aforesaid letter dated 18.8.2009, the RBI specifically stated as follows:

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... certain firms posing as Multi Level Marketing (MLM) agencies for consumer goods and services have been actually mobilizing large amounts of deposits from the public with promise of high returns. The firms had opened accounts at various bank branches at different locations in the country and numerous small cash deposits were being made in those accounts... These funds running into crores of rupees were being pooled at the Principal Accounts of the MLM firms and the funds were eventually flowing out of those Principal Accounts for purposes apparently illegal or highly risky. These firms had managed to get very large number of cheque books issued from the banks and they have in turn, issued to the depositors, post dated cheques for small amounts representing future interest dues and deposit repayment Since the operations of the firms are essentially deposit taking activities involving unusually high returns, the ongoing repayments of interests and deposit amounts in respect of existing deposits would depend on continuous and uninterrupted flow of fresh deposits with increasing volume. Therefore, at some stage the flow of deposits is found to be stifled and post dated cheques tendered thereafter would bounce due to inadequate funds available in the accounts.

Some of the above firms were advertising their deposit schemes through websites. A few such website addresses are:

http;//www, laskhaindia, net/business plan.html

http://www.fineindia.net/

Preliminary reports reveal that the names of the banks, where the MLM firms or their agents were maintaining accounts, were getting associated with such operations of MLM firms. This has potential reputational risk for the banks, especially in the event of the firms failing to repay the depositors. Incidentally, as it appears, during personal contacts with the prospective depositors some of these MLM firms or their agents had used the name of the banks where they had accounts.

In view of the above, we advise that banks should be careful in opening accounts of the marketing/trading agencies etc. Especially, strict compliance with KYC and AML nuidelines contained in circular DBO.AML.BC.No. 2/14.01.001/2009-10 dated July 1, 2009 issued by RBI should be ensured in the matter. We also draw attention to the instruction contained in our circular DBOD.No. BC.108/09.07.007/97-98 dated September 25, 1997 on procedure for issuance of cheque books to customers.

In cases where accounts have already been opened in the names of the marketing agencies, retail traders, investment firms, the banks may undertake quick reviews. Wherever a large number of cheque books have been issued to such firms, the relative decision may be reviewed in the light, of the following:

Whether the cheque books have been issued to customers on the basis of their express request and after following the internal processes laid down in the matter.

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Whether the number of cheque books is consistent with/ matching the profiles of the customers as also their nature of business operations.

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xxx xxx xxx

5. In the said letter, it was further stated by the RBI that they have frozen the accounts as a preventive in nature and to ensure that public does not loose their money. The Petitioner company has not been cooperating with investigation and no documents are produced for the purpose of investigation. The investigation is at a preliminary stage and it was also found that the money received by the company has been transferred to the Director''s personal bank account and the large scale transfer of public funds to personal account should be stopped as per the RBI guidelines. It also transpired that the money received by the company is being transferred to a film financing company. The nature of transaction of the company through the banking networks was purely based on collection of the deposits from the various investors through different collection branches of private banks, like ICICI Bank, HDFC Bank, Axis Bank and Government owned State Bank of India.

All those amounts deposited in those banks are transferred to the centralized account of the company located at Mumbai and the investment of the said centralized account is a mischief and is under investigation. Therefore, the Petitioner company has no right to carry on the business at the cost of public money and it shall not be allowed to operate the accounts for the following reasons:

i. Immediately, the Promoters/Directors of the farm shall withdraw the entire deposited amount and shall remain under ground and out of view.

ii. The investigation of the case is in nascent stage.

iii. The total loss of the public money involved and the total collection under the scheme are yet to be ascertained,

iv. The magnitude of the offence committed is still to be unearthed.

v. The scam seems to have wide ramification through out the country and the possibility of transfer of money through Hawala from the Central Account of the company to some foreign countries, cannot be ruled out. There is also suspicion of inclusion of a huge some of forged notes into the Banking Network through the above company promoters.

6. They further stated that they have duly reported the matter i.e. freezing the accounts to the learned S.D.J.M., Balasore on 22.8.2009. Therefore, for the interest of justice the Petitioner company is not entitled to get any relief at this stage.

7. The Petitioners also filed a rejoinder affidavit denying the allegations made by

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the opposite parties in the counter affidavit.

8. The learned Counsel for the Petitioner submitted that the Petitioner company has already given reply to the letter of the RBI and the personnel of the RBI also checked the office of the Petitioner several times. The RBI did not issue any order against the Petitioner company. The action of the investigating authority is illegal as it was not empowered under the law to freeze the accounts ot the Petitioner company as it had not fulfilled the mandatory requirements of Section 102(3) Code of Criminal Procedure The CID (CB) intimated the learned S.D.J.M., Balasore on 22.8.2009 about freezing of the accounts of the Petitioner company dated 30.7.2009 which was an after-thought as the said authority reported the matter after filing of the writ petition before this Court. The learned Counsel for the Petitioner company further submitted that the RBI has statutory powers to regulate or prohibit issue of advertisement soliciting deposits in public interest. The RBI Act empowers it to issue necessary direction and it has already inspected the Petitioner''s transaction. The Petitioner had also replied to the queries made by the RBI with full satisfaction. Therefore, the impugned action of the CID (CB) in unilaterally treating the Petitioner''s business as unlawful is illegal and without jurisdiction. The freezing of accounts of the Petitioner company cannot be sustained in the eye of law as the investigating authority had not fulfilled the mandatory requirements as provided u/s 102(3) Code of Criminal Procedure In support of his submission, he cited a decision of the Delhi High Court reported in 1988 Cri.LJ 241 Delhi (Ms. Swaran Sabharwal v. Commissioner of Police) which has been referred to by the apex Court in the case of State of Maharashtra Vs. Tapas D. Neogy, . He also cited the decisions reported in B. Ranganathan Vs. State, Indian Overseas Bank and Allahabad Bank, and Rajamani Vs. The Inspector of Police, Shevapet Police Station, The Inspector of Police, Suramangalam Police Station and The Dy. Superintendent of Police, CBCID, (wherein it has been held that freezing of accounts is also not otherwise permissible without first allowing operation on taking undertakings and laying down conditions. He further submitted that the Petitioner company is also willing to give an undertaking and has disclosed all its bank accounts along with the respective balances on the date of freezing. The learned S.D.J.M. can also monitor the bank operations and impose conditions in order to secure transparency.

9. From the above narration of facts and the submissions made by the learned Counsel for the parties it appears that the investigation is still going on and the matter is at a preliminary stage. At this point of time, this Court is not inclined to give any specific finding.

10. However, there is no doubt that the Company is acting as a promoter and collecting subscription from the distributors to the scheme. The distributors are receiving monetary returns for a specified period and till date none of the distributors have received any product of the company (emphasis supplied). As per the Scheme, the distributors/ depositors have to wait for a calendar year to

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get the assured product. The distributors/depositors are getting monthly returns upto six months and thereafter the company stresses upon enrollment of a new member under such depositors for giving double the money of monthly returns. The money collected from the distributors is the principal item of income of the company and the same has been transferred to the personal accounts of the Directors. The company promises high returns that if a person invests Rs.5000/- he would get Rs.2 lakhs in a period of one year. This fact speaks so eloquently that no further discussion is called for. The moneys are of the general public which are collected from the persons who have limited resources and it would be doubtful for them to obtain their claim than to take recourse to legal proceedings and incur expenses. The innocent persons are roping themselves in the scheme and they have invested their hard money. Therefore, a proper safeguard to the said money is necessary which would adequately protect the general people to restrict the transaction with the company during the investigation. Since the matter is still pending before the learned S.D.J.M., Balasore, it is open to the Petitioner company to move an application u/s 457 Code of Criminal Procedure before the learned S.D.J.M. to take further action in which event the latter will consider the same on its own merits. Therefore at this stage this Court is not inclined to interfere with the matter, as the action of the investfgating authority has no way violated the constitutional rights of the Petitioner as envisaged under Article 19(1)(g) of the Constitution at India.

11. In the result, the writ petition is dismissed.

I.M. Quddusi, J.

12. I agree.

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