(2007) 08 P&H CK 0096

In the Punjab And Haryana At Chandigarh

LVL Infrastructure Limited — APPELLANT

Vs

C.B.I. — RESPONDENT

Date of Decision : 20-08-2007

Acts Referred:
Prevention of Corruption Act, 1988 — Section 13

Citation : (2007) 08 P&H CK 0096

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—The petitioner, LVL Infrastructure Limited has filed this revision challenging the order passed by Special Judge, Ambala declining the prayer of the petitioner for release of money seized by Central Bureau of Investigation from the house of accused Chander Shekhar in case FIR No. RCCHG/2004 dated 30.6.2004 u/s 13(1)(e) read with Section 13(2) of Prevention of Corruption Act, 1988.

2. Mr. Chander Shekhar, named above while working as General Manager, BSNL, Rohtak (hereinafter referred as `accused'') was being investigated for being in possession of assets disproportionate to his known source of income. During the course of investigation, on 3.6.2006 the accused was caught red handed while accepting bribe of Rs. 25,000/-for approving tender. FIR in this regard was accordingly registered. Residential house of accused Chander Shekhar was raided, during which number of documents, articles and cash amount of Rs. 45,03,450/-were recovered in the presence of independent witnesses. The accused accordingly is being prosecuted for an offence under the Prevention of Corruption Act.

3. The present petitioner has filed this petition to intervene in this case pending against the accused. Petitioner-company claims that they had approached C.B.I.officials with the request that this amount of Rs. 45,00,000/-recovered

from the house of the accused in fact belongs to the petitioner-company. The Company, however, was told by the C.B.I.officials that investigation is in progress and as such their prayer would have to be considered after completion of the investigation. The petitioner-company, however, has now moved this application on 31.1.2007 for release of this amount to it claiming that this amount belongs to it.

4. The perusal of the revision petition would show that the company earlier known as M/s Mini Medicare Limited, was named as Omni Global Healthech Limited after change and is presently known as LVL Infrastructure Limited. Claiming that this amount of Rs. 45,00,000/-was kept in the safe custody of the accused by the official of the petitioner-company, prayer for release of the amount is made. It is mentioned that one D.K.Aggarwal, Promoter Director of the petitioner-company is a relative of the accused and he alongwith one Santosh Kumar had visited Rohtak in connection with some deal concerning their business transaction with one Deeptak Mittal. This amount was taken by said D.K.Aggarwal on 27.5.2004 for payment to Deepak Mittal. It is stated that this amount was kept for safe custody with the accused as the proposed business transaction was postponed due to some unavoidable circumstances and the agreement required to be written was postponed to be done on 8.6.2004. Petitioner claims that finding it to be unsafe to carry this amount back, the same was kept for safe custody with the accused, when it was recovered by the C.B.I. and seized. It is in this background, the prayer is made for release of this amount to the petitioner-company.

5. The counsel appearing for the petitioner by making mention to the facts as afore-noted, submits that the impugned order is misconceived in fact and law and hence calls for interference by way of this revision. The counsel further says that the petitioner- company is prepared to provide guarantee or surety for the release of the amount to it.

6. To me, this prayer made by the petitioner-company appears to be clearly aimed at helping the accused. It is actuated with motive and purpose. A very intelligent and not so normal method is adopted by the present petitioner-company to help the accused, who is facing the prosecution under the Prevention of Corruption Act. Obviously, he is in no position to explain the recovery of this huge amount from his residence. Thus, this known company to the accused managed by his relative is made to stand up and file this application, which is clearly aimed at bailing out the accused not only from the case but to help him with this huge amount. If by chance any court grants relief to the present petitioner-company by directing release of this amount to it, obviously the accused would be able to plead that this money does not belong to him. In this way, he would be able to take this money back via the petitioner-company, and would have valid defence to explain this huge ill-gotten wealth recovered from his residence. It is clearly noticeable from the facts that this action on the part of the present petitioner is an afterthought and a well planned move. The money

was recovered from the house of the accused on 3.6.2004. During the course of investigation, no such plea apparently is raised by the accused to explain the recovery of this amount from his residence. Upon completion of investigation, charge-sheet is filed in the court on 31.7.2006. It is specifically noted by the court that during the course of investigation, the accused never provided any information or evidence in regard to this recovery. It is only after 2-1/2 years of the allegation/recovery that this present application is moved by the petitioner. The reasons given by the petitioner concern for leaving this money with the accused would sound puerile. No sane concern or an individual would take risk to leave such a huge amount at somebody''s residence that too for safe custody. The petitioner concern could bring this huge amount to Rohtak for payment to Deepak Mittal, but did not find it safe to carry it back. Is it acceptable? Obviously, this plea has now been raised by the petitioner-company to help the accused in this case. The petitioner-company is in no position to satisfy that this money in facts belongs to it. There is no material what to talk of any sufficient material placed by the petitioner- company in this regard before the court. It may not be out of place to mention that as per provisions of Criminal Law Amendment Ordinance, 1944, any property, which is ill-gotten, can be confiscated to the State. The present petition appears to be a misconceived approach on the part of the petitioner-company to seek release of this amount. This also does not appear to be a genuine and sincere move on the part of the petitioner-company. Motive is clearly seen. It is a motivated approach. Even the application/petition moved before the Special Judge is not under any of the provisions of Code of Criminal Procedure. A simple application without revealing any authority or the section, under which it is filed is pressed before the Court. The counsel could not point out any infirmity otherwise in the impugned order. This petition, as such, deserves to be dismissed with contempt.

7. Before parting, I am inclined to direct the C.B.I., which is the investigating agency in this case, to look into the motive behind the petitioner in moving this application and to take appropriate action/proceedings in case it is found that this approach on the part of the petitioner is not a sincere one and is aimed to help the accused in order to screen the offender.

