
(2016) 10 P&H CK 0064
In the Punjab And Haryana At Chandigarh
Case No : CRM-M-24737-2015 (O&M)

M/s Ajanta Marketing

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 03-10-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 102, Section 102
Penal Code, 1860 (IPC) — Section 420

Citation : (2016) 4 LawHerald 3373

Hon'ble Judges : Mr. A.B. Chaudhari, J.

Bench : Single Bench

Advocate : Shri Saurabh Bhardwaj, Shri Hemant Kumar, Advocates, for the Petitioner; Shri Sumeet Goyal, Advocate, for the Respondent No. 1-CBI; Shri K.C. Bhatia, Advocate, for the Respondent No. 2

Final Decision : Dismissed

Judgement

Mr. A.B. Chaudhari, J. (Oral) - These petitions relate to the challenge to the order dated 16.3.2015 (Annexure P-7) passed by the Special Judge, CBI at Panchkula, Haryana by which three applications filed by the petitioners for return of the amount of about Rs.7.5 crores to the petitioners, which was seized being the stolen property, and further order to entrust the said amount to the Uttrakhand Gramin Bank (hereinafter referred to as the Bank) with a further direction to fix the same in deposits carrying higher rate of interest, were dismissed.

2. In support of the petitions, Learned Counsel for the petitioners vehemently argued that the petitioners are the bona fide recipients of the moneys in the said sum of rs.7.5 crores during the course of their routine business transactions and in fact by making sale of the valuable golden articles, they had received the amount in question by NEFT. There was no reason for not returning the said amount to the petitioners who had nothing to do with the crime that had allegedly taken place. The petitioners were the bona fide businessmen selling their valuables for a price. It was wholly unjust to deprive them of the value of

the property sold by them when they had parted with the articles to the purchasers who, according to the prosecution, were ultimately found to be the main accused in the matter of forgery and fabrication, as alleged by the prosecution. The counsel for the petitioners then contended that under section 102 Cr.P.C., the seizure of the bank account or freezing of the bank account could not be done as mere suspicion by the CBI or the investigating agency that the moneys were related to the offences of fraud and forgery. The counsel relied on the decision in the case of Ms. Swaran Sabharwal v. Commissioner of Police, 1988 Cri. L.J. 24.

3. The counsel for the petitioners in both these petitions contended that the petitioners were not admittedly the accused in the crime in question and therefore, they have parted with the goods namely the gold etc. as traders and are being deprived of the value thereof which is in crores. This amounts to severe injustice to the petitioners and therefore the impugned order made by the court below in both these petitions are clearly illegal and liable to be set aside, so also the order under Section 102 Cr.P.C. about the freezing of the bank accounts. The counsel for the petitioners therefore prayed for setting aside the impugned order and handing over the amount in question back to the petitioners and also to de-freeze the bank accounts. In the alternative, the petitioners contended that the Bank could not have been given the amount for fixing the same in the fix deposits as it was the said Bank, its officers and the managers who are said to have colluded with accused Gurpreet @ Neeraj for committing fraud and forgery in the matter of cheques. There was no justification for the court to allow the same bank to retain the money unto itself. That apart, the order is equally illegal.

4. Per contract, learned counsel for the CBI and for the private respondent vehemently opposed the petitions and supported the impugned order. The counsel for the respondents submitted that the impugned order gives the necessary details and the same is required to be upheld. Counsel for the respondents then contended that the petitioners appear to be party to the fraud and fabrication in relation to the huge amount of Rs.7.5 crores belonging to the Bank whose officers, as it appears, colluded the fraudsters for siphoning off the huge amount in crores. The counsel for CBI left it to the alternative prayer made by counsel for the petitioners, namely, for investment of the money. The counsel for the Bank vehemently opposed the idea of transferring the amount in question to any other bank on the ground that it was the Bank who was entitled to the custody of the said amount and for the criminal activities of its officers, the Bank could not be deprived of the moneys.

Consideration

5. I have gone through the entire record and proceedings. I have gone through the impugned orders and reasons recorded by the learned trial Judge. I have heard Learned Counsel for the parties at length.

6. It is not in dispute that one Neeraj @ Gurpreet Singh by presenting the

cheques in the total amount in the sum of Rs.13,53,10,000/- and then he after release of the said amount in his account in the Bank made all further transactions by making payment under his cheques to the petitioners for the purchase of alleged goods and other valuable articles. The investigation has revealed that the officers of the Bank credited the payments in the accounts of Neeraj @ Gurpreet and in the accounts of M/s Health Research Care Centre, he being the proprietor thereof. The investigation shows that the Managers and the officers of the Bank without even finding out about the existence of cheques or sending the same to the bank of the drawer, namely, the Engineer-in-Chief, Public Health Department, Panchkula, straightway credited the amount by making entries in the account of the M/s Health Research Care Centre, proprietor being Neeraj @ Gurpreet. The said main culprit Neeraj @ Gurpreet then transferred the amounts in the accounts of the petitioners. The petitioners are now saying that these amounts were transferred in their accounts as they have sold gold and other articles to Neeraj and by sending the amount by NEFT. The claim of the petitioners that they are the bona fide sellers and are entitled to the value of the goods sold in crores of rupees, has been found to be false and bogus by the learned trial court. The arguments were also advanced before me on that question with the assistance of the counsel for the CBI and the investigation papers. Instead of giving separate reasons, I think it would be appropriate to reproduce para 18 and 19 (extracted portion) about the findings during investigation since I concur with the said finding of fact:-

"18. As per record available with Registrar of Companies, Delhi, Ajanta Marketing Company is being run by Directors namely Ajay Bahadur and Ajay Kumar. Likewise, M/s Zentrum Infra Developers Pvt. Ltd. Is also being run by Director Ajay Bahadur. During investigation, Enforcement Directorate conducted investigation and recorded the statement of one Khushi Ram Sharma son of Ganesh Dutt Sharma, who has stated that M/s Mahavir Enterprises, Ajanta Marketing and M/s Zentrum Infra Developers Pvt. Ltd. Never conducted any business from the premises of 2745, Naya Bazar, Delhi as well as any person named as Ajay Bahadur and Ajay Aggarwal or Santosh Gupta never conducted any business from the aforesaid premises. It is also note worthy to mention here that as far as record of Mahavir Enterprises is concerned, in its record, the aforesaid firm has shown that it is being operating from 952, Gali Tota Maina Delhi. The ED had also recorded the statement of Mohd. Wasim son of Mohd. Samim, resident of 952 Gali Tota Maina, Delhi and he has deposed that in the aforesaid house, he is residing since 1953 and it has six portions. Out of them, four portions are being occupied by him and two portions are being occupied by Akhtar and Farhan. The aforesaid portions are purely residential and there are no office of Mahavir Enterprises. The ED had also recorded the statement of Ajay Kumar, the Director of Ajanta Marketing Company and Zentrum Infra Pvt. Ltd. The alleged Director has stated to ED officers that one Atul Gupta of M/s Pooja Trading Company having office at 2745 Naya Bazar, Delhi had obtained signatures on some papers. Mr. Ajay Gupta is dealing in brokerage business of

Foodgrains. He had not been known to any Ajay Bahadur (alleged Director of the company). Thus, from the statement of this person, he in fact had not been Director of the aforesaid company. He never deal with business of gold ornaments etc. etc. This person shown as Director is a poor person being employed @ Rs.5000/- per month. At any time, as per report of Income Tax Officer, Ward-1 (3) Room No.385, CR Building, New Delhi, Ajay Bahadur Shah had never been income tax payee and he had never filled any income tax returns in the office. As per account maintained by Mr. Santosh in Punjab and Sind Bank, Delhi, he deals in dry-fruits and kerosene shop. It is also clear from the record that the statement of account of aforesaid companies had never been submitted to the Registrar of Companies. Even the aforesaid companies and firm had not filed any income tax returns of the disputed period.

19. In view of the aforesaid facts and circumstances, three companies-applicants are in fact not bona fide businessmen. From the aforesaid prima facie facts, I have no hesitation to hold that amount of Rs.7.5 crores in ICICI Bank, in the account of the aforesaid companies, was not transferred by means of bona fide business transaction. ..."

7. It is thus clear from the above that the petitioner firms clearly appears to be nominal and there is a reason to believe that the main accused and the petitioners had joined hands to show that they had made bona fide transactions in crores of rupees when as a matter of fact, the petitioners firms' income tax returns examined by the trial court as above and their alleged business background is contrary. The submission made by Learned Counsel for the petitioners on the basis of the judgment of the Delhi High Court, above, qua Section 102 Cr.P.C. is equally misconceived and cannot be accepted. There is a power in the investigating machinery to seize the properties by resorting to power under Section 102 Cr.P.C. Having come thus to the conclusion that the properties in question i.e., the moneys which were siphoned off from the Bank by clearly in collusion with and conspiracy of the officers of the Bank by forging the cheques in the name of the Engineer-in-Chief, Public Health Department, Panchkula, the irresistible conclusion is that these petitions must be dismissed by upholding the impugned order.

8. The next question is about the direction to give the amount again to the Bank for deposit in the fixed deposit for carrying higher rate of interest. In my opinion, the officers and managers of the Bank having colluded and conspired with the main accused in siphoning out the amount of the Bank, cannot be rewarded giving premium by entrusting the same amount to the Bank which proved itself to be fully responsible for commission of the crime and siphoning off the public money. It is clear that the Bank and its officers who were responsible in the entire episode, should not be rewarded by again asking it to retain the money with it. It is clear from the above that the Bank as such did not at all bother about the public money and therefore it is clearly dis entitled to retain the entire amount in the case. Having taken this view, in my opinion, now the entire

amount ordered to be given to the Bank in para 24 of the impugned order will have to be modified and instead of deposit of the entire amount with the Bank, I order that the same be deposited in a fix deposit with the State bank of India, Panchkula which is directed to invest the same in an FD carrying highest rate of interest and to continue to renew the FD till it receives final order in the matter. In the result I make the following order:-

ORDER

(i) Petition is dismissed.

(ii) However, the impugned order dated 16.03.2015 (Annexure P-7) is modified to the extent that the entire amount shall be invested in fixed deposit with the State Bank of India under the control of Special Judge, CBI, Panchkula and the receipts will be deposited with the said Court who shall keep the same in sealed condition. The renewal of fixed deposit shall be done from time to time by the concerned Bank failing which the Bank officer(s) shall be responsible for the loss of interest.