(2021) 02 BOM CK 0019

In the Bombay High Court

Case No : Criminal Application (APL) No.684 Of 2018

Rajiv APPELLANT

Vs

Superintendent And Others RESPONDENT

Date of Decision : 10-02-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 102, 482
Indian Penal Code, 1860 — Section 34, 109, 120B, 201, 420, 406, 408, 409, 467, 468, 471
Information Technology Act, 2000 — Section 65
Maharashtra Protection Of Interest Of Depositors (In Financial Establishments) Act, 1999 — Section 3

Citation : (2021) 02 BOM CK 0019

Hon'ble Judges : Z. A. Haq, J;Amit B. Borkar, J

Bench : Division Bench

Advocate : Shyam Dewani, T.A.Mirza

Final Decision : Dismissed

Judgement

Amit B. Borkar, J

1. Rule. Rule is made returnable forthwith.

2. This is an application under Section 482 of Code of Criminal Procedure challenging the communications dated 27th November 2018 and 5th December 2017 issued by the non-applicant no.1 to the non-applicant nos. 2 and 3 freezing bank account and the locker of the applicant and also letter dated 16th December 2017 and the Notification dated 2nd August 2019 issued by the non-applicant no.6 published in the Official Gazette dated 6th August 2019.

3. The First Information Report came to be registered against the applicant bearing Crime No.338 of 2007 with Sitabuldi Police Station, Nagpur for offences punishable under Sections 406, 408, 409, 467, 468, 471, 420, 201, 120-B and 109 read with Section 34 of the Indian Penal Code, 1860 and Section 65 of the Information Technology Act, 2000 alongwith Section 3 of the Maharashtra

Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short “the Act of 1999”).

4. The First Information Report came to be registered against the applicant and others with the accusation that the applicant being the Managing Committee member of the Cooperative Bank alongwith other Managing Committee members disbursed loans to the borrowers without following procedure prescribed and without taking securities for the loans. It is further alleged that the applicant alongwith other Managing Committee members have done acts, which were detrimental to the interest of the bank, resulting into huge losses to the bank and have defrauded and misappropriated the account holders of the bank, of an amount of Rs.145,60,56,332/-. It is alleged that the said misappropriation took place between the period from 30th March 1997 till 31st March 2006.

5. The applicant - petitioner had challenged registration of the First Information Report by way of filing Writ Petition No.11 of 2020. This Court by way of the judgment and order dated 10th February 2021 allowed the said Petition and quashed the First Information Report No.338 of 2007 and consequent charge-sheet filed against the applicant.

6. By way of present application, the applicant has challenged order of freezing Saving Account of the applicant dated 27th November, 2018 and 5th December, 2017 and the Notification dated 2nd August 2019.

7. The impugned communications dated 27th November 2018, 5th December 2017 and 16th December 2017 have been issued in exercise of power under Section 102 of Code of Criminal Procedure. Section 102 of the Code of Criminal Procedure empowers the Police Officer to seize any property, which is found under circumstances which create suspicion of the commission of any offence. It is settled law that the power under Section 102 of the Code of Criminal Procedure can be exercised, if the Investigating Officer comes to prima facie conclusion that the amount in the account has any connection with the offence alleged against the accused. By the recent judgment, this Court in Writ Petition No.11 of 2020 has quashed First Information Report No.338 of 2007 and consequent charge-sheet dated 30th June 2010 in R.C.C.No.2190 of 2008, as ingredients of offences registered against the applicants were not fullfilled. We are therefore satisfied that the order of attachment under Section 102 of Code of Criminal Procedure in relation to the offences under Crime No.338 of 2007 and consequent Charge-sheet, cannot be continued. We, therefore, pass the following order:

ORDER

Communications dated 27th November 2018 and 05th December 2017 (Annexure-E) and letter dated 16th December 2017 (Annexure-G) and the Notification dated 2nd August 2019 published in Official Gazette dated 6th August, 2009 (Annexure-I) are quashed and set aside.

Rule is made absolute in the above terms.

