(2015) 07 BOM CK 0398

In the Bombay High Court

Case No : Criminal Application (APL) No. 243 of 2015

Sudha Sudindra Mathur APPELLANT

Vs

State of Maharashtra and Others RESPONDENT

Date of Decision : 20-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 102, 482
Penal Code, 1860 (IPC) — Section 34, 420

Citation : (2015) 4 BomCR(Cri) 562

Hon'ble Judges : A.P. Bhangale and P.N. Deshmukh, JJ.

Bench : Division Bench

Advocate : R.R. Vyas, for the Appellant; N.P. Mehta, A.P.P., for the Respondent

Final Decision : Disposed Off

Judgement

1. The applicant by this application under section 482 of the Code of Criminal Procedure prays for quashing and setting aside the communication dated 27/3/2015, which the Investigating Officer in the case had addressed to the Manager, Axis Bank, Main Branch, Nagpur. According to the Investigating Officer i.e. Assistant Police Inspector, Sadar Police Station, Nagpur, he was investigating into Crime No. 89/2015 reported under section 420 read, with section 34 of the Indian Penal Code against M/s. Chintransh Technology Pvt. Ltd., Sudindra Mohal Mathur and Sudha w/o. Sudindra Mathur. The Manager of the Axis Bank was requested to stop the transactions of the bank account maintained by the said accused with Main Branch, Nagpur.

2. According to the learned Counsel for the applicant, such communication ought not to have been addressed to the Branch Manager to stop the operation of accounts maintained by the applicant with the Axis Bank, Main Branch, Nagpur.

3. The application is strongly objected on the ground that during the course of investigation, it was felt necessary by the Investigating Officer to check the financial transactions entered into by the accused of their bank account, since

case is under investigation. The Investigating Officer is suspecting that the amount ill-gotten was siphoned off through the said account maintained by the accused with the Axis Bank, Main Branch, Nagpur. It is alleged that the main accused namely Sudindra Mathur cheated and duped more than 183 persons and money siphoned off through the bank account to the tune of more than Rs. 49.00 lacs. Thus, under which circumstance, that communication was addressed to the Manager. According to the learned Counsel for the applicant, there was no such communication addressed to the applicant so as to inform her before taking drastic action of seizure of the bank account.

4. The learned A.P.P. by opposing the application has invited our attention to the Full Bench ruling in the matter of Mr. Vinoskumar Ramachandran Valluvar Vs. The State of Maharashtra, , whereby this Court considered the question as to whether under section 102 of the Code of Criminal Procedure, issuance of notice is required to a person before or simultaneously with the action of attaching his bank account and the answer was given in paragraph 19 that section 102 Cr.P.C. does not require issuance of notice to a person before or simultaneously with the action of attaching bank account.

5. According to the learned Counsel for the applicant, there was a Division Bench ruling of this Court in the matter of Dr. Shashikant D. Karnik Vs. The State of Maharashtra, , whereby the Division Bench of this Court held that bank account can be attached by police in exercise of powers under section 102 Cr.P.C. and provisions of section 102 are to be complied with. According to rulings, police officials have no power to pass ad interim order or temporary order stopping operation of accounts and then issue final order of attachment of account. In paragraph 20, the Division Bench of this Court observed thus:

20. Third requirement of sub-section (3) of section 102 , lays down a mandate that every Police Officer acting under sub-section (1) shall forthwith report the seizure or attachment of accounts to the magistrate having jurisdiction Admittedly, this is not done in the present case. Paragraph 5 of the second affidavit of Mr. Pardeshi, quoted above is very clear in this regard as well as the oral submission of Mr. Mhaispurkar. It will be, therefore, clear that there is absolutely no compliance to any of the provisions of sub-section (1), (2) and (3) of section 102 of Cr.P.C. in this matter. Consequently, the petition is required to be allowed and the orders are required to be quashed as prayed."

The Division Bench of this Court held that it is mandatory that every police official acting under sub-section (1) of section 102 Cr.P.C. shall report the seizure or attachment of account to the Magistrate concerned having jurisdiction. It is contended that this procedure was not complied with in the present case. The learned A.P.P. disputed this submission on the ground that the learned Magistrate concerned having jurisdiction i.e. Court No. 6, Nagpur was already informed on 15/6/2015 and report was made to the learned Magistrate concerned. The report was duly acknowledged. Hence, procedure under section 102 Cr.P.C. was complied.

6. Our attention was invited to a communication addressed to the learned Judicial Magistrate First Class, Court No. 6, Nagpur, dated 15/6/2015, whereby the fact of closure of the bank account in the name of accused viz. Sudindra Mathur, Sau. Sudha Mathur and M/s. Chintransh Technology Pvt. Ltd. was informed and procedure was complied. That being so, the ruling in Dr. Shashikant Kamik''s case would not come to the rescue of the applicant herein. It is not improper or illegal for the Investigating Officer in investigating the serious criminal cases involving economic offences such as misappropriation of the money, fraud etc. to ensure that the illegal money collected by the accused ought not to be siphoned off for illegal purpose or making unlawful gains by the accused.

7. That being so, we do not find the communication to the Bank either unlawful or improper so as to quash and set aside the same. The application is, therefore, rejected with liberty for the applicant to raise all available defences, according to law, as and when the charge-sheet is filed. The criminal application is disposed of as such.

