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(2018) 03 DEL CK 0188

In the Delhi High Court

Case No : Criminal Revision Petition No. 1304 Of 2017

Sunil Bhargava APPELLANT

Vs

Cbi RESPONDENT

Date of Decision : 13-03-2018

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 13(1)(d), 13(1)(e), 13(2), 16
Indian Penal Code, 1860 — Section 120B
Code Of Criminal Procedure, 1973 — Section 102, 102(1), 357, 451, 452, 453, 456, 457
Employees' Provident Funds And Miscellaneous Provisions Act, 1952 — Section 9, 10

Citation : (2018) 03 DEL CK 0188

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Siddharth Aggarwal, Stuti Gujral, Nikhil Pillai, Ritwick Shrivastav, Nikhil Goel, Ashok Kumar, Ashutosh Ghade, Gurpreet Hora

Final Decision : Disposed Off

Judgement

Mukta Gupta, J

1. By this petition, petitioner challenges order dated 10th March, 2017 passed by the learned Special Judge in RC 221/2016/E0026 under Section 120-B IPC read with Section 13(2) and Section 13(1)(d) of the Prevention of Corruption Act (in short 'PC Act') whereby the application under Section 457 read with Section 102 Cr.P.C. filed by the petitioner was dismissed except for release of the Pension Account of the petitioner permitting him to operate the said account to meet his medical and miscellaneous expenses.

2. The above noted FIR was registered on 6th September, 2016 against Ms.Archana Bhargava, wife of the petitioner and two other accused companies namely M/s.Rank Mercantile Pvt. Ltd. and M/s.Astbhuja Dealtrade Pvt. Ltd. and other unknown persons. Pursuant to the search warrants, raids were conducted by the CBI and it also seized various assets of the applicant and froze savings

accounts, fixed deposit, lockers, PPF accounts and pension accounts.

3. Case of the petitioner is that the attachment of PPF account is in contravention of Section 9 and 10 of The Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Further, the respondent did not comply with the mandatory requirement of Section 102 Cr.P.C. and there was no direct link/connection between the crime alleged and the property seized, thus directions be issued to release/de-freeze bank accounts, FDs, Bonds, LIC policies and PPF account.

4. As noted above, the learned Trial Court only granted limited relief of release of the pension account on a no objection submitted by the CBI.

5. Learned counsel for the petitioner and CBI have relied upon the decision reported as (1999) 7 SCC 685 State of Maharashtra Vs. Tapas D. Neogy wherein the Supreme Court explaining scope of Section 102 Cr.P.C. and affirming the decision of the Madras High Court in 'Bharath Overseas Bank Vs. Minu Publication' held :

"9. In Bharath Overseas Bank v. Minu Publication [1988 MLW (Cri) 106] a learned Single Judge of the Madras High Court considered the same question and came to the conclusion that the expression "property" would include the money in the bank account of the accused and there cannot be any fetter on the powers of the police officer in issuing prohibitory orders from operating the bank account of the accused when the police officer reaches the conclusion that the amount in the Bank is the outcome of commission of offence by the accused. The Court considered the fact as to how in modern days, commission of white-collar crimes and bank frauds are very much on the increase and banking facilities have been extended to the remotest rural areas and, therefore the expression "property" may not be interpreted in a manner so as to exclude the money in a bank which in turn would have the effect of placing legal hurdles, in the process of investigation into the crimes. According to the learned Judge, such literal interpretation of the expression "property" could not have been the intent of the framers of the Criminal Procedure Code. In para 11 of the said judgment, the learned Judge referred to the object behind investing the police with powers of seizure. It will be appropriate to extract the same in extenso:

"It would now be useful to refer to the object behind investing the police with powers of seizure. Seizure and production in court of any property, including those regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence or any other property will have a twofold effect. Production of the above property may be necessary as evidence of the commission of the crime. Seizure may also have to be necessary, in order to preserve the property, for the purpose of enabling the court to pass suitable orders under Section 452 of the Criminal Procedure Code at the conclusion of the trial. This order would include destruction of the property, confiscation of the property or delivery of the property to any person claiming to be entitled to possession thereto. It cannot be contended that the

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concept of restitution of property to the victim of a crime, is totally alien to the Criminal Procedure Code. No doubt, the primary object of prosecution is punitive. However, Criminal Procedure Code does contain several provisions, which seek to reimburse or compensate victims of crime, or bring about restoration of property or its restitution. As Section 452 Cr.PC itself indicates, one of the modes of disposing of property at the conclusion of the trial, is ordering their return to the person entitled to possession thereto. Even interim custody of property under Sections 451 and 457 Cr.PC recognizes the rights of the person entitled to the possession of the properties. An innocent purchaser for value is sought to be reimbursed by Section 453 C.rPC.

Restoration of immovable property under certain circumstances, is dealt with under Section 456 Cr.PC. Even, monetary compensation to victims of crime or any bona fide purchaser of property, is provided for under Section 357 Cr.PC, wherein when a court while convicting the accused imposes fine, the whole or any part of the fine, if recovered, may be ordered to be paid as compensation to any person, for any loss or injury, caused by the offence or to any bona fide purchaser of any property, after the property is restored to the possession of the person entitled thereto. This twofold object of investing the police with the powers of seizure, have to be borne in mind, while settling this legal issue."

10. This judgment of the learned Single Judge of the Madras High Court was followed in a later decision in the case of Bharat Overseas Bank Ltd. v. Prema Ramalingam [1991 MLW (Cri) 353] wherein the learned Judge agreeing with Padmini Jesudurai, J. in Bharat Overseas Bank case [1988 MLW (Cri) 106] came to hold that money in a bank account is "property" within the meaning of Section 102 of the Criminal Procedure Code, which could be seized by a prohibiting order. In the aforesaid case, the learned Judge has also noticed the fact that the judgment of Padmini Jesudurai, J. in Bharat Overseas Bank [1988 MLW (Cri) 106] was upheld by the Division Bench subsequently.

11. In the case of Gurcharan Singh (Dr) v. State of Punjab [(1978) 80 Punj LR 514 (DB)] a Division Bench of the Punjab & Haryana High Court differing with the view taken by the Allahabad High Court in Textile Traders [AIR 1960 All 405 : 1960 Cri LJ 871] came to hold that the bank account would be "property" and as such would be capable of being seized under Section 102 of the Code of Criminal Procedure.

12. Having considered the divergent views taken by different High Courts with regard to the power of seizure under Section 102 of the Code of Criminal Procedure, and whether the bank account can be held to be "property" within the meaning of the said Section 102(1), we see no justification to give any narrow interpretation to the provisions of the Criminal Procedure Code. It is well known that corruption in public offices has become so rampant that it has become difficult to cope up with the same. Then again the time consumed by the courts in concluding the trials is another factor which should be borne in mind in interpreting the provisions of Section 102 of the Criminal Procedure Code and the

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underlying object engrafted therein, inasmuch as if there can be no order of seizure of the bank account of the accused then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdrawn by the accused and the courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer. We are, therefore, persuaded to take the view that the bank account of the accused or any of his relations is "property" within the meaning of Section 102 of the Criminal Procedure Code and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence for which the police officer is investigating into. The contrary view expressed by the Karnataka, Gauhati and Allahabad High Courts, does not represent the correct law. It may also be seen that under the Prevention of Corruption Act, 1988, in the matter of imposition of fine under sub-section (2) of Section 13, the legislatures have provided that the courts in fixing the amount of fine shall take into consideration the amount or the value of the property which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of Section 13, the pecuniary resources or property for which the accused person is unable to account satisfactorily. The interpretation given by us in respect of the power of seizure under Section 102 of the Criminal Procedure Code is in accordance with the intention of the legislature engrafted in Section 16 of the Prevention of Corruption Act referred to above. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court of Bombay committed error in holding that the police officer could not have seized the bank account or could not have issued any direction to the bank officer, prohibiting the account of the accused from being operated upon. Though we have laid down the law, but so far as the present case is concerned, the order impugned has already been given effect to and the accused has been operating his account, and so, we do not interfere with the same."

6. Decision of the Supreme Court clearly notes that under Section 102 Cr.P.C. bank account of the accused or any of his relations can be seized or frozen as property within the meaning of Section 102 Cr.P.C. if such assets have direct links with the commission of offence for which the police office is investigating into. Thus, the investigating agency is required to show prima facie material that the accounts/assets attached have a direct link with the commission of the offence.

7. Learned counsel for the petitioner relying upon the decision in Tapas D. Neogy (supra) states that not only that there is no live link or nexus between the accounts of the petitioner frozen and the alleged offence but allegations in the FIR pertain to the years 2011 to 2014 whereas the bank deposits made by the petitioner even prior to the year 2011 have been attached. Further the accused in the FIR are the wife of the petitioner and two companies namely M/s.Rank Mercantile Pvt. Ltd. and M/s.Astbhuja Dealtrade Pvt. Ltd. and not the petitioner.

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Even if the allegations of the CBI are accepted as true at this stage sufficient bank accounts and deposits of M/s.Rank Mercantile Pvt. Ltd. have been seized and there is no justification for seizing/freezing petitioner's individual bank accounts, fixed deposits etc.

8. A Status Report was filed by the CBI wherein no objection was given to the PPF Account of the petitioner being de-frozen. Thus, vide order dated 15th December, 2017, this Court directed the CBI to de-freeze the PPF Account No.10819158157 of the petitioner granting him liberty to utilize the same for his needs. This Court also noted that despite FIR having been registered 15 months ago the Status Report does not crystallized the amount misappropriated/abused by the petitioner. CBI was thus directed to file a detailed Status Report.

9. On the next date, the so-called detailed Status Report was handed over in Court in a sealed cover which did not contain the details. Hence, the report was returned and directions were issued to CBI to file a detailed Status Report. On 6th March, 2018, learned counsel for the CBI handed over a detailed Status Report, which was taken on record, along with the fresh FIR registered being RC No.217/2018/A0002 under Section 13(2) read with Section 13(1)(e) of the PC Act.

10. As per the detailed Status Report, it is stated that Smt.Archana Bhargava, wife of the petitioner while posted as Executive Director of Canara Bank in 2011 and Chairman-cum-Managing Director of United Bank of India in 2013 abused her official position as public servant and obtained for herself and/or for M/s.Rank Mercantile Pvt. Ltd., a company owned by her husband, i.e. the petitioner herein and her son, various amounts from the companies to whom various credit facilities were granted. It is alleged that the activities of M/s.Rank Mercantile Pvt. Ltd. increased manifold from 2011 onwards thereby leading to an inference that pecuniary advantages were extended to the company by various companies in lieu of facilitating the credit facilities to them by Smt.Archana Bhargava by abusing her office.

11. As per the Status Report 25 bank accounts, 7 bank lockers of the petitioner as well as his wife and son were seized/frozen pursuant to search warrants. It is also stated that the account balance in various bank accounts totaling to Rs. 2,35,53,978/-, FDRs totaling to Rs. 2,00,38,891/-, lockers having cash of Rs. 10,50,000/- and gold and diamond jewellery valued at Rs. 2,84,95,647/- were found available as on 31st March, 2016.

12. To connect the amount frozen with the amount misappropriated/earned by abuse of official position, CBI relies on four basic allegations of pecuniary advantages to the company M/s.Rank Mercantile Pvt. Ltd. The first averment in para 8 of the Status Report notes that a credit facility to M/s.Punj Lloyd Ltd. was sanctioned as a fund based limit of Rs. 173.33 crore and non-fund based limit of Rs. 270.34 crore by the Managing Committee of the Board of United Bank of India on 31st August, 2013 when Smt.Archana Bhargava was its Chairman-cum-

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Managing Director. Further, M/s.Punj Lloyd Ltd. through account No.0030110000246 maintained with HDFC Bank, K.G.Marg, New Delhi made a payment of Rs. 78,65,200/- to M/s.Rank Mercantile Pvt. Ltd. on 18th October, 2013 in its current account as consultancy charges for a BSNL tender. Investigation from BSNL revealed that though M/s.Punj Lloyd Ltd. purchased a tender document but did not participate in the tender.

13. The second set of allegation relate to a term loan sanctioned to four Reliance Group companies including M/s.Reliance Communications Ltd. when Ms/Archana Bhargava was Chairman-cum-Managing Director of United Bank of India. Further, M/s.Reliance Communications Ltd. made payment of Rs. 4,70,988/- including TDS of Rs. 9,257/- to M/s.Rank Mercantile Pvt. Ltd. through cheques from the account of Reliance Communication Ltd. As per the Status Report, the work allotted to M/s.Rank Mercantile Pvt. Ltd. by Reliance Group companies and other related issues are being ascertained.

14. The third set of allegation relates to a shell company M/s.Astbhuja Dealtrade Pvt. Ltd. operated by Raushan Agarwal of Kolkata which remitted an amount of Rs. 1.15 crore to the account of M/s.Rank Mercantile Pvt. Ltd. by way of five different RTGS transactions in the year 2013. Though the claim of the petitioner was that it entered into an agreement for sale of a flat for which advance payment of Rs. 1.15 crore was received, however, investigation revealed that Rs. 1.15 crore in cash through one Angaria of Delhi on behalf of Anshuman Bhargava and Sunil Bhargava through one Pankaj Chaturvedi, CA and Internal Auditor of M/s.Rank Mercantile Pvt. Ltd. was received through RTGS transactions.

15. The fourth set of allegation is that a term loan of Rs. 500 crore was sanctioned by Canara Bank to Delhi International Airport Ltd. (DIAL) in March, 2013 and a total payment of Rs. 11.05 crore for 28 work orders have been made by M/s. DIAL to current account of M/s.Rank Mercantile Pvt. Ltd. with Oriental Bank of Commerce, Panchsheel Park Branch, New Delhi. It is stated that investigation in this regard is in progress.

16. Learned counsel for the petitioner relies upon the decision in Tapas D. Neogy (supra) and contends that at the moment even not looking into the allegations relating to amounts received from M/s.Punj Lloyds Ltd., M/s.Reliance Communications Ltd. and M/s.Astbhuja Dealtrade Pvt. Ltd. which would total at best to a sum of approximately Rs. 2 crore the investigation and Status Report indicates that amount of Rs. 11.05 crore received from DIAL was for 28 work orders of M/s.Rank Mercantile Pvt. Ltd. which has been working with DIAL since 2006. Despite FIR having been registered now for more than 17 months till date CBI has not verified the 28 work orders of M/s.DIAL with M/s.Rank Mercantile Pvt. Ltd. Though all documents have been provided to them. Even as per the Status Report there is no allegation that this amount of Rs. 11.05 crore was received as a kickback. Learned counsel for the petitioner contends that once the CBI attached assets of M/s.Rank Mercantile Pvt. Ltd. which are more than Rs. 3 crore, there is no justification and no live link in attaching accounts, FDRs,

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lockers of the petitioner which are in his individual names.

17. This Court called for a Status Report from the CBI as to the assets of M/s.Rank Mercantile Pvt. Ltd. seized/attached by the CBI. On 8th March, 2018, a chart detailing the bank accounts, Fixed Deposits and Term Deposits of M/s.Rank Mercantile Pvt. Ltd., which were seized/frozen, was handed over and which was disputed by learned counsel for the petitioner stating that more Fixed Deposits and bank accounts had been frozen. The Investigating Agency was thus directed to file an affidavit on record including the details of all the accounts, Terms Deposits and assets of M/s.Rank Mercantile Pvt. Ltd. which have been seized/frozen/attached by the Investigating Agency during the present investigation.

18. An affidavit in compliance of the order dated 8th March, 2018 of Shri Ashok Kumar, Additional SP, EO III, CBI has been handed over in Court today, which is taken on record. Though learned counsel for the petitioner even refutes that still the complete details have not been given, however, as per the details mentioned in Annexure A-2 relating to the bank accounts/Fixed Deposits etc. of M/s.Rank Mercantile Pvt. Ltd. frozen in RC No.221/2016/E0026 amount to total of Rs. 2,35,37,868.70.

19. Though this Court is not required to go into the total assets of M/s.Rank Mercantile Pvt. Ltd. but considering the fact that as per the Status Report the three allegations which prima facie the CBI has been able to show material for, relate to transfer by M/s.Punj Lloyd of a sum of Rs. 78,65,200/- to M/s.Rank Mercantile Pvt. Ltd., payment of Rs. 4,70,988/- from the account of Reliance Communications Ltd. and an amount of Rs. 1.15 crore into the account of M/s.Rank Mercantile Pvt. Ltd. by 5 RTGS transactions in the year 2013 only.

20. In respect of the fourth allegation regarding total payment of Rs. 11.05 crore to M/s.Rank Mercantile Pvt. Ltd. by DIAL it is the case of CBI itself that the same is against 28 work orders and despite investigation having stretched for 17 months, no illegality therein has been found out. Thus, considering the fact that the amount involved relating to the first, second and third allegation at best amounts to Rs. 2 crore and bank accounts deposits etc. of M/s.Rank Mercantile Pvt. Ltd. having a sum of Rs. 2,35,37,868.70 have already been seized/frozen, this Court deems it fit to direct CBI to de-freeze the accounts, Fixed Deposits, Term Deposits etc. in the individual name of the petitioner forthwith.

21. Petition is disposed of.

22. Order Dasti.

23. Needless to note that the CBI has now registered the FIR against Ms.Archana Bhargava and in case it finds a direct nexus of the alleged offence with the disproportionate assets it will be at liberty to take action in accordance with law.

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