

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.7.2015

CORAM:

THE HON'BLE MR.JUSTICE P.DEVADASS

Crl.R.C. No.254 of 2015

Surana Corporation Ltd
29, Whites Road, Chennai-14
Represented by its Managing Director,
Vijairaj Surana .. Petitioner/Accused No.8

Vs.

1. State Rep. by Inspector of Police,
SPE; CBI;ACB,
Haddows Road, Chennai.

2. State Bank of India,
Overseas Branch,
No.86, Rajaji Salai,
Chennai-600 001 rep.
by its Deputy General Manager,
Mr.V.Krishna Mohan

(impleaded as 2nd respondent as per
orders of this Court made in M.P.No.1/15
order dt.9.6.2015 by PDSJ) .. Respondents/Complainant.

Petition filed under Section 397 and 401 of the Code of Criminal Procedure, to set aside the order of the learned VIII Additional and Principal Judge, CBI Cases dated 26.02.2015 in Crl.M.P.No.828 of 2015 in RCMAI 2013 A 0039 in so far it is against the petitioner.

For Petitioner : Mr.N.R. Elango, Senior Counsel
for Mr. V. Balasubramaniam
For R1 : Mr.K.Srinivasan
Special Public Prosecutor, C.B.I
For R2 : Mr. A. Thiagarajan

O R D E R

Ex-A8, namely, Surana Corporation, aggrieved by the order of VIII Additional Judge (CBI Cases), Chennai passed in Crl.M.P.No.828

of 2015 in RCMAI 2013 A 0039 so far as the property order is concerned has directed this revision.

2. In this petition, the State Bank of India, Overseas Branch, Chennai got impleaded itself as second respondent.

3. CBI registered a case in RCMAI 2013 A 0039 as against petitioner and certain others for their alleged commission of certain offences. After conducting investigation, CBI filed negative report in the Trial Court to the effect that the evidence so far collected is insufficient to conduct a successful prosecution and thus, sought for the closure of the F.I.R.

4. It is pertinent to note that in this case, 400.47 kgs of gold is involved. In the said final report, the CBI also sought for sending the said 400.47 kgs of bullion to the Directorate-General of Foreign Trade (DGFT), Department of Commerce, Government of India, New Delhi for adjudication.

5. The trial Court after perusing the materials accepted the request of the CBI to close the FIR. Further, advertng to the said request of the CBI, the trial Court while closing the F.I.R in order dated 26.2.2015 paragraph 8(c) directed as under:

"Further, an order is passed granting permission to the petitioner/complainant to produce the case properties namely, 400.47 kgs of Bullion and Jewellery items before the appropriate authority viz., Directorate General of Foreign Trade (DGFT), Department of Commerce, Government of India, New Delhi."

6. Aggrieved, A8 has filed this revision. The impleaded Bank is also glamouring for the glittering gold setting out reasons and also made a rival claim.

7. The CBI filed counter narrating the events leading to the closing of the FIR and direction of this Court to produce the said valuable items to the Directorate General of Foreign Trade (DGFT), New Delhi for adjudication.

8. The learned Senior Counsel for the petitioner submitted that the said bullion belongs to the petitioner. It was recovered from the petitioner and before passing the said order relating to the bullion, petitioner was not heard. So, possession of the bullion has to be restored to the petitioner. By the impugned order, the petitioner is affected. The principles of natural justice is not observed. No opportunity has been given to the petitioner to put forth its version.

9. The learned counsel for the bank submitted that as a security to the loan advanced to the petitioner, the Bank has been given a right over the bullions.

10. The learned Special Public Prosecutor, CBI submitted that the Directorate General of Foreign Trade is the competent authority to adjudicate this matter. In this regard a detailed report also has been sent to the said official and he has also initiated proceedings.

11. The learned Senior Counsel for the petitioner replied that now the knot tried to be created by the Bank has to be untied not by a criminal court but, by a competent civil court. In this petition, the Bank cannot try to recover its dues.

12. The learned counsel for the petitioner also submitted that on the request of CBI to adjudicate, petitioner has got valid objections and points. That opportunity cannot be denied to the petitioner before passing the impugned order relating to the said property.

13. I have anxiously considered the submissions of the learned Senior Counsel for the petitioner, learned counsel for the Bank and the learned Special Public Prosecutor, CBI cases, Chennai.

14. I have succinctly given the necessary factual matrix for the disposal of this petition. Let us not duplicate it.

15. 'Hear before condemn' is a component of principles of natural justice. In each and every matter, hearing will also sometime results in boring. Hearing must be given to a person, who is likely to be affected by the order proposed to be passed. Otherwise, anybody will meddle with the Court proceedings and public time and public interest will become a toll. Further, if a person is having a say in the matter, passing orders *res inter alia acta* (something done behind the back of a party), is against fundamental judicial procedure.

16. Now, in this case, gold bullion of considerable quantity has been seized from A8 and locked up in a criminal case. Criminal case is over, but the property matter is not yet over. Now, a request has been made by the CBI to resolve this property matter by way of adjudication by the Director-General of Foreign Trade, New Delhi. Such an order will not be to the liking of the petitioner. Petitioner will like to have the gold with him. The consequences of such an order will likely to affect the petitioner. From the records, it emanates that the case property of considerable value concerning the petitioner/A8 is involved. In such circumstances, after giving opportunity, order has to be passed. There cannot be quarrel over this.

17. In the circumstances, the order of the learned VIII Additional Judge, C.B.I cases, Chennai passed in CrI.M.P.No.828 of 2015 in RCMAI 2013 A 0039 dated 26.02.2015 so far as clause 8(c)

directing producing of the gold bullions weighing 400.47 kgs to the Directorate-General of Foreign Trade, New Delhi is set aside. The trial Court will give reasonable opportunity to all the parties, permit them to file their counter etc., if any and hear all the parties and pass orders in accordance with law at an early date. All the parties shall appear before the VIII Additional Judge, C.B.I Cases, Chennai on 03.08.2015.

18. Accordingly, this Criminal Revision Case is disposed of.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To

1. The VIII Additional Judge, CBI Cases, Chennai.
2. The Special Public Prosecutor, CBI Cases, Chennai.
3. Deputy General Manager, State Bank of India, Overseas Branch, No.86, Rajaji Salai, Chennai-600 001.
4. The Inspector of Police, SPE; CBI;ACB, Haddows Road, Chennai.

+1 cc to M/s. A.Thiyagarajan, Advocate, sr.35784

+1 cc to Mr.V.Balasubramanian, Advocate, sr.35777.

CrI.R.C. No.254 of 2015

rsi(co)
kra(31/07)

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