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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1081 OF 2015

Minvera Apparels Private Limited .. Petitioner

Versus

1. The State of Maharashtra and anr. .. Respondents

WITH
CRIMINAL WRIT PETITION NO. 1082 OF 2015

Minerva Dealers Private Limited .. Petitioner

Versus

1. The State of Maharashtra and anr. .. Respondents

WITH
CRIMINAL APPLICATION NO. 194 OF 2015
IN
CRIMINAL WRIT PETITION NO. 1082 OF 2015

Surendrakumar Niranjanlal Dalmia .. Applicant/ Intervener

In the matter of

Minerva Dealers Private Limited .. Petitioner

Versus

1. The State of Maharashtra and anr. .. Respondents

Mr. Nitin Pradhan i/by Ms. Shubhada D. Khot for petitioner in both the petitions.
Mr. J. P. Yagnik, APP for State in both the petitions.
Mr. Manoj Mohite i/by Mr. Amol J. Phoujdar for applicant/intervener in APPW No. 194 of 2015.

CORAM: NARESH H. PATIL &
PRAKASH D. NAIK, JJ.

RESERVED ON : JUNE 22, 2016

PRONOUNCED ON : JULY 04, 2016

ORDER [Per Naresh H. Patil, J.] :

1. The petitioners challenge communications dated 17/1/2015 issued by the Inspector of Police, Yellowgate Police Station, Mumbai, addressed to the Manager, ING Vysya Bank, Andheri (E) Branch. Under the said communications, the police directed the Bank to stop operation of the bank accounts of the petitioners. In short, it is contended by the petitioners that Mr. Surendrakumar Niranjanlal Dalmia filed a complaint on 11/9/2014 with the police on which FIR No. 200 of 2014 dated 23/12/2014 was registered for offences punishable under Sections 406, 409, 419, 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code. During the course of investigation of the said offence, the impugned communications were issued by the police.

2. It is contended by the petitioners that late Mr. Niranjanlal Dalmia, during his life time, had inducted his sons, namely, Surendrakumar Dalmia, Ashokkumar Dalmia and Shivkumar Dalmia into the management of the business of the Dalmia Group of Companies. Each son was made responsible for the day to day management of the business of the Company. The shareholding of the Company was held equally by three brothers and their wives and family respectively. Most of the decisions were taken on a consultative basis by circulation and ratification. In the year 2007-2008, the Goenka Group, Kalpataru Group and Dalmia Group came together and formed Azure Tree Township Pvt. Ltd. In `Auzre', the petitioners-companies held 32.32% share and the three brothers, Shivkumar Dalmia, Ashokkumar Dalmia and Surendrakumar Dalmia held in total 1% share. Rest of the two Groups i.e. Goenka and Kalpataru held 33.33% share, each. Azure, a Private Limited Company, was converted into a Limited Liability Partnership with effect from 25/6/2011.

3. Eversmile Properties Private Limited is a Company engaged in the development of properties. The shareholders in the said Company are Goenka Group, Kalpataru Group and Dalmia Group.

4. The Dalmia Group's shareholding was in turn equally held by the three brothers. In 2007, Eversmile Company was to develop a plot of land at Mira Road. Eversmile handed over the development rights of this plot to Azure. Shivkumar Dalmia was the representative of Eversmile and Azure on behalf of the Dalmia Group. When the requirement of funds in the form of equity and unsecured loans came up in Azure, the two brothers viz. Ashokkumar and Surendrakumar disbursed their equity share only i.e. the nominal amount of Rs.33,330/-. It is contended that Shivkumar by taking a personal risk, borrowed from open market and gave a personal guarantee of Rs.60 Crores to the Bank for this project. This was done to fulfill family / shareholders commitment.

5. On 2/9/2014, Shivkumar Dalmia received a letter from Marine Drive Police Station asking him to remain present at the Police Station with respect of a complaint dated 26/8/2014 made by Surendrakumar Dalmia. Statement of Shailesh Dalmia came to be recorded.

6. On 23/12/2014, C.R. No. 200 of 2014 was registered at the Marine Drive Police Station. Investigation was transferred to Yellow Gate Police Station. On 16/1/2015, some cheques issued by the petitioners-

Companies were returned dishonoured by ING Vysya Bank i.e. respondent no.2, inspite of there being sufficient balance lying to the credit of the petitioners' current account. Respondent No.2 – Bank was contacted and it was informed that on 19/1/2015 it had received a letter dated 17/1/2015 from the Yellow Gate Police Station to freeze the petitioners' bank accounts. The petitioners were aggrieved by the same and, therefore, they preferred the present petitions on receiving a reply from the respondent no.2 – Bank on 24/1/2015 in respect of freezing of the accounts.

7. Mr. Nitin Pradhan, learned counsel appearing for the petitioners submits that the impugned communications made by the police were erroneous and contrary to procedure established by law. In the facts, the Investigating Agency was not entitled to freeze the accounts. Learned counsel submitted that the mandatory provisions of Section 102 (3) of Cr. P. C. were not followed. Learned counsel referred to the order dated 8/1/2015 passed by the Company Law Board, Mumbai Branch, Mumbai. By an order dated 20/1/2015 passed by the Member (Judicial), Company Law Board, Mumbai Branch, Mumbai, the respondent nos.2 and 4 therein i.e. Ashokkumar Dalmia and Shailesh Shivkumar Dalmia were permitted to operate bank accounts by way of joint signatures. Learned counsel

submitted that Company Law Board had considered the dispute and had passed orders so that the bank accounts could be operated. The police had no authority to override the orders passed by the Company Law Board by exercising powers under Section 102 of the Cr. P. C. Due to impugned communications of freezing the bank accounts, the functioning of the companies has come to a standstill. Learned counsel placed reliance on the following judgments:-

(i) (1999) 7 SCC 685 – State of Maharashtra vs. Tapas D. Neogy.

(ii) 2007 (2) Bom. C. R. (Cri) 871 – Shashikumar D. Karnik vs. State of Maharashtra.

8. The learned APP submitted that the Investigating Agency was convinced that the bank accounts are required to be freezed and accordingly impugned communications were made. Considering the nature of dispute and seriousness of the offence, the impugned communications were required to be made. There is no error in the police adopting such a view, according to the learned APP. It was submitted that as the charge-sheet had been filed, the petitioners can adopt appropriate remedy as permissible in law. Learned APP placed reliance on the following

judgments:-

(i) (2013) 3 SCC 594 – State Represented by Inspector of Police vs. N. S. Gnaneshwaran.

(ii) Criminal Misc. No. 43768-M of 2004 decided by the High Court of Punjab and Haryana at Chandigarh on 10/1/2007.

9. We have heard learned counsel appearing for the applicant/intervener.

10. We have perused the record placed before us and the judgments cited (Supra). Provisions of Section 102 of Cr. P. C. refers to power of police officer to seize certain property. Under Sub-section (3) of Section 102, every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction. It is submitted that there is non-compliance of provisions of Section 102(2) and (3). Much reliance was placed by the learned counsel appearing for the petitioners on the order passed by the Company Law Board. Before the Company Law Board, the applicants are Surendra Kumar Dalmia, the present complainant and others. The applicants therein prayed for restraining order against respondent nos.2 to 4 therein from making any

payment from the accounts of the companies, save and except with prior written consent of the applicants and to pass an order thereby directing respondent nos.2 to 4 that no new bank account be allowed to be opened without the consent of the applicants. The Company Law Board recorded its prima facie opinion in para 7 as under :-

> “7. I have given my thoughtful consideration to the submissions advanced by the Ld. Counsels representing the respective parties. A short question to be answered, on the facts and circumstances and material available on record, is as to whether siphoning of funds by the Respondent No.3 in collusion with the Respondent No.4 is, prima facie, made out, as alleged by the Petitioners? In my opinion, a prima facie case is made out upon a critical analysis of the material available on record, for which the Respondents have failed to give any reasonable and convincing explanation to rebut the said allegation.”

11. Even the observations of the Company Law Board do not support the contention of the learned counsel for the petitioner. As regards the requirement of following procedure under Section 102 (3) of Cr. P. C., reliance was placed by the learned APP on para 15 of the judgment in the case of State vs. N.S. Gnaneshwaran (Supra), which reads as under :-

> "15. While determining whether a provision is madatory or directory, in addition to the language used therein, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve. It may also be necessary to find out the intent of the legislature for enacting it and the serious and general inconveniences or injustice to persons relating thereto from its application. The law which creates public duties is director but if it confers private rights it is mandatory."

12. During the course of hearing it was submitted that charge-sheet has been filed. It is required to be noticed that the petitioners are challenging the communications of freezing of accounts dated 17/1/2015. There was no stay operating during the period of pendency of these petitions in this court. In the facts, as the police did not comply with the provisions of Section 102(3) of Cr. P. C., it would not appropriate to set aside the impugned communications/orders of freezing the subject accounts, more particularly in view of the fact that now a charge-sheet has been filed.

13. Taking into consideration the relevant facts and circumstances, we find that no interference is warranted in these petitions. The petitions

are dismissed.

14. Criminal Application No. 194 of 2015 stands disposed of accordingly.

(PRAKASH D. NAIK, J.) (NARESH H. PATIL,J.)