IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3354 OF 2016

New Krishna Co-operative Housing Society Ltd. Petitioner
versus
The State of Maharashtra and others Respondents

Mr.P.A.Pol i/by Pol Legal Juris for Petitioner.
Mrs.G.P.Mulekar, APP, for State.

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

DATE : 17 October 2016

PC :

1. Rule. Rule made returnable forthwith. Learned APP waives service for Respondent nos.1 and 2. Taken up for hearing by consent of parties.

2. Petitioner has invoked writ jurisdiction of this Court under Article 226 of the Constitution of India as well as inherent powers under Section 482 of the Code of Criminal Procedure, 1973 (`Code') and sought to challenge the directions issued by the investigating machinery to the banks for freezing of the Petitioner's bank accounts.

3. Petitioner is a co-operative housing society duly registered under Maharashtra Co-operative Housing Societies Act, 1960. In the year 2010, the Petitioner declared elections and accordingly it was informed to the Joint Registrar, Co-operative Societies and CIDCO,

CBD Belapur, Navi Mumbai. The elections were conducted and results were also informed to the said authorities on 13 August 2010. The newly elected committee took charge of the society. On 5 January 2011, the Joint Registrar, CIDCO issued an order for appointment of an administrator upon the society. The said order dated 5 January 2011 was challenged by the committee members of the society by preferring an appeal before the competent authority. The Petitioner had also preferred Writ Petition No.130 of 2011 before this Court for grant of stay to the aforesaid order dated 5 January 2011. This Court vide orders dated 19 April 2011 and 20 January 2012, granted stay to the aforesaid order till final disposal of the appeal pending before the competent authority.

4. One of the past committee member of the Petitioner society lodged an first information report (`FIR') with Kopar Khairane police station on 24 September 2016 vide CR No.341 of 2016 for offences punishable under Sections 384, 420, 504, 506 read with Section 34 of Indian Penal Code (`IPC'). The complainant in the said FIR had alleged that he was the owner of a gala which was situated in the building of Petitioner society and since the said complainant wanted to sell the said premises, he required no objection from the Petitioner society. It was further alleged that for the purpose of issuing no objection certificate, the complainant therein was asked to make a payment of Rs.50,000/-. Hence, the complainant issued a cheque bearing No.2024754 for an amount of Rs.50,000/- in favour of Petitioner society. The said cheque was drawn on Union Bank of India, Ratnagiri Branch. It was further alleged in the said FIR that the society issued a receipt in respect to the amount of Rs.25,000/-

on 15 February 2012, although the said complainant had deposited Rs.50,000/-. It was further contended that in spite of said amount being deposited, no objection certificate was not issued by the Petitioner society.

5. Petitioner society has its account with Bank of Baroda, Kopar Khairane Branch, Sector-14, Navi Mumbai. The Police Sub Inspector of Kopar Khairane police station issued a direction to Bank of Baroda on 3rd September 2016 intimating that an FIR has been registered with Kopar Khairane police station vide CR No.341 of 2016 at the instance of one Sunil Dattaram Bhogale. It was further mentioned that the premises viz. Gala no.1A situated in New Krishna Co-operative Housing Society is owned by the complainant and that the said society has obtained an amount of Rs.50,000/- for issuing no objection certificate and has cheated said complainant. It was further mentioned that although the society is being dissolved, the committee members are demanding money from the complainant. It was further mentioned that in the event that said bank is having a bank account of the Petitioner society, any transaction in the said amount may be stopped and that the said account may be freezed. In view of the aforesaid direction issued by the said police officer, the Bank of Baroda forwarded a letter dated 8 September 2016 to the Petitioner society intimating that Account bearing No.32970100001646 has been freezed in view of the instructions from Kopar Khairane police station.

6. The police sub inspector of Kopar Khairane police station also issued directions to UCO Bank, Sector-14, Kopar Khairane Branch,

Navi Mumbai on 31 August 2016 stating that a complaint has been received against New Krishna Housing Society Limited at the instance of one Mr. Sunil Dattaram Bhogale and that an FIR has been registered against the said society vide CR No.341 of 2016. Similar facts, as were mentioned in the letter issued to Bank of Baroda, were also reflected in the aforesaid letter dated 31st August 2016. Police also sought information from UCO Bank on certain issues reflected in the said letter. Police had further directed UCO Bank to freeze the account of Petitioner society. Police called for the details of bank account of the Petitioner as well as information whether cheque bearing No.2024754 was honoured by the bank. In pursuant to the said directions, UCO Bank issued letter dated 9 September 2016 to the Petitioner society. In the said letter, it was stated that the bank has received a letter from Kopar Khairane police station on 1 September 2016 regarding freezing of the Petitioner's account maintained with them bearing Account No.18600110013731 and the account has temporarily been freezed on account of suspicious transactions.

7. Petitioner society forwarded a complaint against high handed approach of the police authorities of Kopar Khairane police station to the Commissioner of Police, Navi Mumbai on 16 September 2016. In the said complaint it was pointed out that an inquiry be conducted against concerned officials of Kopar Khairane for their illegal action. It was also prayed that directions be issued to concerned banks for de-freezing the said accounts of Petitioner society.

8. Learned counsel for the Petitioner made following submissions :

(a) The police authorities have completely misconstrued and misused the provisions of Section 102 of Code of Criminal Procedure, 1973 (`Cr.P.C.');

(b) The action taken by the police is illegal, arbitrary and contrary to the procedure established by law;

(c) Police have not conducted any preliminary inquiry and without that, came to a conclusion that the office bearers of the society had no authority to conduct the affairs of the society;

(d) Police have not followed the procedure contemplated under Section 102 of Cr.P.C. and that after the action of freezing of bank accounts in exercise of power under Section 102 of the Cr.P.C; the police have not informed the Magistrate about the said action;

(e) The day-to-day transactions of the Petitioner society were stopped on account of coercive action taken by police and the society is put to hardship as the accounts could not be operated.

9. We have perused the documents on record. It is noticed that police machinery has arbitrarily exercised power under Section 102 of Cr.P.C.. There is manifest non application of mind on the part of Respondent police authorities while issuing directions to the concerned banks for stopping transactions and freezing the accounts

of Petitioner society maintained with said banks. The action on the part of police authorities shows the high handed approach in a dispute which was purely of civil nature. Exercise of power by police under Section 102 of Cr.P.C. in the present case, clearly shows that the investigating machinery has not understood the object of the said provision. It appears that the police authorities are indiscriminately exercising the power under the said provision. The directions issued by police to the banks for freezing the accounts do not demonstrate that police have applied their mind to the spirit of Section 102 of Cr.P.C.. Without conducting any preliminary inquiry, as soon as the FIR has been registered, police have directed the banks to stop transactions of the said accounts. From the tenor of directions it appears that police are under an impression that as soon as FIR is registered, an action under Section 102 of Cr.P.C. is required to be initiated against concerned parties. From one of the letter it is apparent that police had sought information whether cheque has been honoured by the said bank. It is pertinent to note that in the FIR itself the complainant had stated that the cheque was deposited by the society in their account and same has been honoured. It shows that police have adopted a very casual approach while issuing directions to freeze the bank accounts. It is also surprising to note that although the grievance of the complainant Mr.Bhogale was that he had issued a cheque of Rs.50,000/- in favour of Petitioner society towards issuance of no objection certificate against which receipt of Rs.25,000/- only was issued, the police, however, directed Bank of Baroda as well as UCO Bank to stop entire transactions in relation to the accountsl maintained by the Petitioner society in both the banks. The deposits in the accounts of society with two banks were more than Rs.50,000/- and on account of freezing the accounts, day-to-day activities of the society could not be performed. It is also noted that in the intimation letter to the banks, the investigating machinery has stated that members of the society are conducting the affairs of the society, although society was dissolved. It must be noted here that police had no jurisdiction to enter the arena of powers of committee members or working of the society, which was a civil issue and in fact from the order of this court which has been annexed to the petition, it is apparent that the order of appointment of administrator has been stayed and the elections were conducted by the society. The learned APP appearing for Respondents could not justify the action of police.

10. The exercise of power under Section 102 of Cr.P.C. by the investigating agency in the present case reflects total non application of mind. The said powers are exercised in most casual and arbitrary manner without understanding the object and the spirit of the said provision. On perusal of the order dated 3 September 2016 issued by Police to Bank of Baroda directing them to freeze the account of the Petitioner with the said bank, it is apparent that Police authorities have not understood the scope of Section 102 of Cr.P.C.. In the said letter, it is stated that a complaint has been received by Kopar Khairane Police Station from one Sunil Bhogale and on the basis of which an FIR has been registered vide CR No.341 of 2016. It is further stated that in the complaint it was alleged that the members of society had represented that on payment of Rs.50,000/- to the society, no objection certificate will be issued in favour of the complainant for the sale of respective premises in the said society. It

is further stated that in relation to the said transaction, the complainant had deposited Rs.50,000/- by way of cheque in favour of Petitioner society. It is further stated that in the event the said society is having a bank account with the said bank, the transactions in the said account may be stopped and the account may be freezed. Similarly, in another letter dated 31 August 2016 issued by Kopar Khairane Police station to UCO Bank, Section-14 Branch, Kopar Khairane, Navi Mumbai, similar averments are reflected. In addition, it is stated that details mentioned in the said letter may be submitted to Police by the bank. The said details were in relation to the nature of account held by the Petitioner society, whether the cheque issued by the complainant has been honoured, bank statement of the Petitioner society etc.. The bank was directed to cancel the transactions in the said account and to freeze the bank account of the Petitioner society. On the face of the record, it is apparent that the investigating agency has completely misdirected themselves in understanding the provision of Section 102 of Cr.P.C.

11. Section 102 of Cr.P.C. stipulates that any police officer may seize any property which may be alleged or suspected to have been stolen or which may be found under circumstances which create suspicion of the commission of any offence. However, on perusal of the contents of the directions issued by Police Sub Inspector of Kopar Khairane to the banks, it is clear that the said directions are issued only on the basis of the fact that a complaint has been received against the Petitioner society with Kopar Khairane police station. Satisfaction which is required to exercise powers under Section 102 of Cr.P.C. is completely missing in the said direction. It is further

pertinent to note that as per sub-section (2) of Section 102, the police officer, if subordinate to the officer in charge of police station, is required to forthwith report the seizure to that officer. Sub-section (3) of Section 102 stipulates that every police officer acting under sub-section (1) of Section 102, shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court. No compliance of the aforesaid provisions of sub-sections (2) and (3) of Section 102 of Cr.P.C. is made in the present case. It is, therefore, clear that the powers under Section 102 of Cr.P.C. has been exercised without adhering to the principles enunciated in Section 102 of Cr.P.C.. This is a serious lapse on the part of Police Sub Inspector, who had exercised the powers without understanding the scope of said provision.

12. In view of the above, the directions issued by the police machinery to the aforesaid banks with regard to freezing of the accounts of the Petitioner society, are required to be quashed and set aside.

13. Hence, we pass following order :

(a) Rule is made absolute;

(b) The directions issued by Police Sub Inspector of Kopar Khairane, Navi Mumbai vide letter dated 3 September 2016 directing the Branch Officer of Bank of Baroda, Sector-14 Branch, Kopar Khairane, Navi Mumbai to freeze forthwith bank account of New

Krishna Co-operative Housing Society bearing No.32970100001646, in connection with Cr No.341 of 2016, is quashed and set aside;

(c) The directions issued by Assistant Police Sub Inspector of Kopar Khairane, Navi Mumbai vide letter dated 31 August 2016 directing the Branch Officer of UCO Bank, Sector-14 Branch, Kopar Khairane, Navi Mumbai, to freeze forthwith bank account of New Krishna Co-operative Housing Society bearing No.18600110013731, in connection with Cr No.341 of 2016, is quashed and set aside;

(d) Parties and all concerned to act on an authenticated copy of this order duly issued by registry.

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

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