IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2266 OF 2017

Diebold Nixdorf India Private Limited
through Naxima Mkhtar Kadiri ..Petitioner
Vs.
The Senior Inspector of Police & Ors ..Respondents

Mr. Subodh Desai a/w Ms Krishna Borkule i/b Kurdukar Associates for the Petitioner
Mrs. S. V. Sonawane APP for the Respondent-State

CORAM :R. M. SAVANT, &
SANDEEP K. SHINDE, JJ
DATE : 7th AUGUST, 2017

P.C.

1 The Writ Jurisdiction of this Court under Article 226 of the Constitution of India, is invoked for seeking a direction against the Respondents to register an FIR on the basis of the Petitioner's statement dated 31-1-2017 recorded by the Banking Unit-I, Economic Offences Wing, Mumbai.

2 A few background facts would have to be cited for the sake of appreciating the relief sought in the above Writ Petition.

The Petitioner entered into an agreement with one RCI Cash Management Services Pvt Ltd. for providing cash management services. The Petitioner between the year 2013-2015 handed over the operation, service and maintenance of around 750 ATMs of various customer banks to the said RCI. In May 2015, the Petitioner received complaints from customer Banks with respect to the deficiency in services in the matter of huge discrepancy which was found in the amounts reflected in the Cash Balancing Report and the amounts actually loaded in the ATMs. It seems that in June 2015, the RCI stopped the field operations. The Petitioner consequently asked the RCI to hand over the operation of the services of the ATMs. In view of the refusal of the RCI to do so, the ATMs which were in possession of the RCI had to be broken open with the compliance of the regulatory and procedural mandates of the Petitioner. It is the case of the Petitioner that RCI has taken undue advantage of its position and has deliberately and dishonestly embezzled cash from the ATMs to the tune of Rs.7,39,45,988/-. The Petitioner accordingly addressed a complaint to the Vanrai Police Station giving information of the commission of the cognizable offences. The Vanrai Police Station it seems showed its reluctance to register an FIR upon which the Petitioner had approached the Respondent No.2 herein. The matter it seems thereafter went back and forth between the Commissioner of Police, the Vanrai Police Station and ultimately the Deputy Commissioner of Police Dahisar, informed the Petitioner that the complaint lies within the jurisdiction of the Economic Offences Wing and would be sent to the Joint Commissioner of Police Economic Offences Wing. On the matter being sent to Economic Offences Wing, the statement of Ms Nazima Mukhtar Qadri, General Manager, Cash Operations of the Petitioner was recorded by the Bank Unit of the Economic Offences Wing. The Economic Offences Wing after carrying out a preliminary enquiry addressed a letter dated 7-7-2016 to the Petitioner informing the Petitioner that in respect of the complaint dated 7-7-2016 a preliminary enquiry being P. E. No.16/17 was initiated. It was further stated in the said letter that no cognizable offence was disclosed within the jurisdiction of Mumbai and that the misappropriation of the amounts was committed in different cities in Maharashtra and India. It was further stated that the preliminary enquiry being P. E. No.16/17 has been closed and that the Petitioner would be required to register separate complaints at the local police stations having jurisdiction were the cash was loaded in the ATMs.

3 Today during the course of the hearing of the above Writ Petition, the Learned APP has submitted a report dated 22-7-2017. The said report can be said to contain the details in respect of the preliminary enquiry which was conducted by the Economic Offences Wing, Mumbai. At page 4 of the said report, two tables have been reproduced. The first table is in respect of the ATMs outside Maharashtra where there was a shortfall of cash and second table is in respect of ATMs in Maharashtra i.e. Navi Mumbai, Thane, Pune and other parts of Maharashtra. It is stated in the said report that in respect of the ATMs which are outside Maharashtra they are 144 in number and the shortfall of cash was to the extent of Rs.6,63,44,136/-. It is further stated that out of the said ATMs, in 102 ATMs in Bihar the shortfall was in the sum of Rs.4,07,81,500/-. Out of 19 ATMs in Delhi, 1 ATM in Tamil Nadu and 22

ATMs in Rajasthan, the shortfall was Rs.2,55,62,636/- in respect of the said 42 ATMs. It is stated in the said report that in respect of the said shortfall, it appears that it is the complicity of the custodian and the other employees. It is further stated that in respect of one Electronic Payment and Services Pvt Ltd an FIR has been registered against the accused at 7 different police stations in Mumbai in respect of the offences relating to the ATMs within the jurisdiction of the respective police stations. It is stated that having regard to the aforesaid facts that the Petitioner was informed by letter dated 3-2-2017 to register the FIRs at different places where the offence has occurred in respect of shortfall in cash in the ATMs.

4 The Learned Counsel appearing on behalf of the Petitioner Mr. Desai would contend that the Respondents have erred in not registering the FIR which they are bound to do and it is only after the investigation that they could have remitted the FIRs to the different police stations within whose jurisdiction the ATMs were situated, in the event they were to come to such a conclusion. The Learned Counsel sought to place reliance on Sections 178 and 181 of the Cr.P.C. to contend that the FIR was required to be registered by the Economic Offences Wing, Mumbai. The Learned Counsel in support of the said contention would place reliance on the judgment of the Apex Court in the matter of **Lee Kun Hee, President, Samsung Corporation, South Korea & Ors. Vs. State of Uttar Pradesh & Ors.**[1] The said judgment can be said to be

1 **(2012)3 Supreme Court Cases 132**

an exposition of the Apex Court in so far as the aforesaid provisions i.e. Sections 178 and 181 of the Cr.P.C. The Apex Court in the said judgment has laid down the tests to determine as to which court or courts would have jurisdiction.

5 In our view, the said judgment would not further the case of the Petitioner having regard to the facts of the instant case. The reliance placed on the agreement entered into between the Petitioner and the RCI would also be of no help to the Petitioner. In the instant case as indicated above, the shortfall in the currency in the ATMs has been found in the ATMs of various Banks all over the country i.e. Bihar, Delhi, Tamil Nadu, Rajasthan and Maharashtra in respect of the said shortfall, the complicity of the employees cannot be ruled out as per the police report. In our view therefore, the Economic Offences Wing has rightly by the letter dated 3-2-2017 which is annexed to the above Petition has directed the Petitioner to register the FIR at the places where the ATMs were situated. It is therefore open for the Petitioner to follow the said course of action, if so advised. Hence no relief can be granted in the above Criminal Writ Petition. The above Criminal Writ Petition is accordingly dismissed.

[SANDEEP. K. SHINDE, J] **[R.M.SAVANT, J]**