IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on: 28.11.2017

Orders Pronounced on: 05.12.2017

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.1039 of 2017

Sherna F. Irani ...Petitioner

Vs.

1. Central Bureau of Investigation, BS & FC,
Rep.by the Superintendent of Police,
No.36, 2nd Floor, CBI Complex,
Bellari Road, Gangana Halli,
Bangalore - 560 032.

2. The Lakshmi Vilas Bank Limited,
Represented by its Manager,
Mount Road Branch,
No.356, Old No.646, Anna Salai,
Chennai - 600 006.

3. The Karur Vysya Bank Limited,
Represented by its Manager,
Whites Road Branch,
No.31, Whites Road,
Royapettah, Chennai - 600 014. ...Respondents

Criminal Revision Petition filed under Section 397 r/w Section 401 of Code of Criminal Procedure, to set aside the order dated 14.07.2017 of the learned Additional Chief Metropolitan Magistrate (For CBI Cases), Egmore, Chennai passed in Crl.M.P.No.304/2017 in Crime No.6/E of 2015 pending investigation on the file of the first respondent.

For Petitioner : Mr.A.Ramesh, Senior Counsel
for Mr.R.Baskar

For Respondents: Mr.K.Srinivasan
Special Public Prosecutor (for CBI Cases)

O R D E R

This Criminal Revision case is filed by one Sherana F.Irani, wife of Farouk M.Irani, seeking direction of this Court to defreeze the following bank accounts and lockers belonging to her and her family members maintained with the second and third respondents.

NAME	ACCOUNT TYPE	ACCOUNT NO	BANK
Farouk M.Irani	Individual	0429301000023378	LVB - 2nd Respondent
Farouk M.Irani	Individual	1219175000000421	KVB - 3rd Respondent
Sherna F Irani	Joint	0429301000024122	LVB - 2nd Respondent
Farah Bakshay	Joint	429301000021360	LVB - 2nd Respondent
Lia Gagrat	Joint	429301000021372	LVB - 2nd Respondent
Sherna F Irani	Joint	1219155000105200	KVB - 3rd Respondent
Sherna F Irani	Individual	1219175000000644	KVB - 3rd Respondent
Farah H Bakshay	Individual	1219175000000528	KVB - 3rd Respondent

2. The petitioner herein is the wife of Farouk M.Irani and mother of Lia Gagrat and Farah Bakshay. The Central Bureau of Investigation had registered a complaint against her husband Farouk M.Irani on 21.09.2015, for the alleged offence under Section 120 B r/w 420, 467, 468, 471 and 477A IPC. The Enforcement Directorate also registered a case against Farouk M.Irani and at the instance of Enforcement Directorate, about 132 bank accounts, which were alleged to have been operated by Farouk M.Irani, had been freezed. While being so, two bank accounts, which are subject matter of the present account namely S.B.No.0429301000024122 which is in the name of the petitioner / Sherna F Irani maintained with Lakshmi Vilas Bank, Mount Road Branch, Chennai, and Saving Bank Account No.1219175000000644 maintained by Sherna F Irani in Karur Vysya Bank Limited, Whites Road Branch, Chennai, and some of the fixed deposit maintained by her in Lakshmi Vilas Bank and Karur Vysya Bank Limited, were freezed by the Enforcement Directorate, under the Prevention of Money Laundering Act, 2002.

3. Challenging the freezing of her account in the case registered against her husband by Enforcement Directorate, the petitioner herein filed a writ petition before this Court and as an interim measure, this Court has directed the petitioner herein to withdraw a sum of Rs.75,000/- per month from each of the above said accounts to meet out medical expenses and emergency expenses.

4. While, the said order passed in W.P.No.20541/16 dated 17.06.2016, is in force, the Central Bureau of Investigation represented by the first respondent, had freezed the said account along with other accounts stated above, which stands in the name of the petitioner and her family members. The freezer of these accounts were informed by the third respondent - bank vide letter dated 14.09.2016 and by the second respondent-bank vide letter dated 22.08.2016, at no point of time, the first respondent had informed about freezing of the accounts and lockers. Therefore, an application under Section 102 Cr.P.C., before the learned Additional Chief Metropolitan Magistrate (for CBI Cases) was filed to defreeze the accounts / deposits / lockers. However, the application was dismissed by the learned Magistrate vide order dated 14.07.2017. Aggrieved by the said dismissal order, the present revision case is filed.

5. The main contention raised by the revision petitioner is that the accounts which have been frozen at the instance of the first respondent is nothing to do with the offence investigated by the first respondent. Further more, when the prosecution has failed to comply with the condition laid in Sub-Section 3 and Section 102 Cr.P.C., the order of freezing the accounts is liable to be quashed. In the absence of any reason to freeze the account and a failure of the prosecution to follow the due process of law, vitiates the entire proceedings of freezing accounts.

6. This Court, after hearing the learned counsel for the petitioner and the learned Special Public Prosecutor, sought for action taken report after freezing the above mentioned accounts of the petitioner and the family members on 09.11.2017, the respondent had filed the action taken report wherein, he had taken inventory of the lockers which stand in the name of the petitioner and her family members maintained at Karur Vysya Bank Limited and after taking inventory, valuables found in the lockers were listed and handed over to the petitioner herein and also advised the branch to allow operation in the said locker and nothing seized from the locker.

7. In so far as, the bank accounts are concerned, a detailed statement of objection was filed by the first respondent, maintaining that the order to freeze these accounts was issued by the CBI under Section 102 Cr.P.C. The freezing order, in respect of the accounts in the second respondent-bank was issued on 16.08.2016 and the freezing order in respect of the accounts which is in the third respondent bank was issued on 25.05.2016. Immediately after issuing these orders, the same was intimated to the Additional Chief Metropolitan Magistrate through speed post and by hand delivery.

8. The learned Additional Chief Metropolitan Magistrate while dismissing the petition to defreeze the accounts has taken note of the fact that mandatory provision of Section 102 (3) Cr.P.C., has been complied with and the link between the bank accounts and the crime is a matter for decision at the time of trial of the case. It is premature to decide whether the petitioner can be allowed to operate the bank account freezed. Under Section 102 Cr.P.C., nowhere, it is stated that concern account holder shall be informed. While so, the intimation made by the bank in which they maintain the account is sufficient information and direct intimation by the investigating agency to the account holder is neither necessary nor mandatory under the statute.

9. It is further submitted that in the counter that the husband of the petitioner has induced the bank to part away more than Rs.1,300 Crores, and had not paid the amount. Eight cases are pending against the petitioner's husband and the estimate loss to the bank is approximately Rs. 1,300 crores. Since the proceeds of crime had been distributed through various channels, the freezing of the accounts mentioned above is essential for investigation and accordingly accounts are freezed. Since the asset is suspected to link with the Commission of the offence, Investigation officer can seize or prohibit the operation in the bank account. In the instant case, since the crime proceeds had been diverted by the accused through these bank accounts, it is essential to prohibit the petitioner and her family members, from operating the accounts referred above.

10. The learned counsel for the petitioner submitted that the account No.0429301000023378 which stand in the name of Farouk M.Irani in Lakshmi Vilas Bank Limited, had a sum of Rs.15,34,979.57/- on the date of freezing his account, the LIC pension of Farouk M.Irani is being deposited in this account periodically and as of now Rs.44,78,577.57 is accrued. Similarly, in other accounts also, interest and deposit are made into its credit. However, the freezing of the account had disabled the account holders from withdrawing the money. Though respondent says that the accounts have to be freezed and suspected that money in this accounts are proceeds of crime, till date the first respondent has not permitted the account holders to operate their account nor proceeded for forfeiture or seizure in accordance with law as contemplated under Section 105 Cr.P.C. The Courts have heavily come down against such attitude of the investigation agency in several cases. Despite such condemnation, the first respondent has not taken serious note about the law and judicial pronouncements in this aspect.

11. Per contra, the learned counsel for the first respondent submitted that huge amount of public money had been siphoning indigenously by the husband of the petitioner and in connivance with other accused. The involvement of the petitioner in the crime is under investigation. Further, the heavy flow of fund had been seen from these bank accounts at the instance of the prime accused which has prompted the investigating agency to freeze the accounts, the investigation is under way. After completion of the investigation, if necessary steps will be taken for forfeiture of the money, it is proceeds of crime. To state the process, the petitioner herein wants to de-freeze the account and siphon off the money, which cannot be permitted under law.

12. Further, the learned Special Public Prosecutor submitted that out of eight accounts which are the subject matter of this petition, only one account is exclusively in the name of the petitioner and two accounts in the joint name of the petitioner and her husband Farouk M.Irani who is the prime accused in the case, rest of the five accounts, the petitioner is not at all concerned. Therefore, this petition is not maintainable, in respect of those five accounts, which either stand in the name of the accused Farouk M.Irani or jointly in his name or in the name of his daughters.

13. Reading of the provisions of the code, it is abanduntely clear that the power of the investigating agency to freeze the bank account invoking Section 102 Cr.P.C., cannot be questioned. Whether, such power is properly exercised or not alone be the matter for consideration.

14. In this case, it is stated by the prosecution that accounts were freezed and operation is prohibited in view of the material collected during the course of investigation that the money in the said account is linked with commission of the crime. Admittedly, the petitioner herein or her daughters are not accused, only her husband Farouk M.Irani is accused in whose name the first account in Lakshmi Vilas Bank Limited and the second account in Karur Vysya Bank stands. Two bank accounts are jointly held by the petitioner herein and her husband Farouk M.Irani one in Karur Vysya Bank and another in Lakshmi Vilas Bank. In such circumstances, unless and until there is any positive material available to freeze the accounts and indication or intimation to proceed for attachment and forfeiture in the manner known to law, just freezing the account perputually will not meet the ends of justice.

15. Therefore, this Court passes the following direction:-

The first respondent is hereby directed to take a decision within a period of 15 days from the date of receipt of the copy of this order, whether the above said accounts to be freezed or not. In case, the investigating officer is of the opinion that if any of the account shall be allowed to operate, the same may be communicated to the bank and the account holder. If, in case the investigating officer has enough material to proceed against any of the accounts for forfeiture or seizure, such proceeding shall be initiated within 15 days, failing which, the concerned account holder can file a petition before the trial Court and get their accounts defreezed on furnishing bond equal to the amount in credit of their account as on the date of freezing. The trial Court while considering the said petition, need not insist on the personal appearance of the parties.

16. Accordingly, this Criminal Revision Petition stands disposed of.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

AT
To

1. The Superintendent of Police,
Central Bureau of Investigation, BS & FC,
No.36, 2nd Floor, CBI Complex,
Bellari Road, Gangana Halli,
Bangalore - 560 032.

+4cc to MR.R.Baskar, Advocate SR.No.84682

Crl.R.C.No.1039 of 2017

SS(CO)
sm:22.12.2017