

\$~21

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 2753/2015 & CrI.M.A. 17518/2015

MODI INNOVATIVE EDUCATION SOCIETY Petitioner

Through Mr.Sanjay Kumar Sharma, Adv.

versus

STATE Respondent

Through Mr.R.S. Kundu, ASC.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

%

06.07.2017

The petitioner is aggrieved by the order dated 18.11.2015 passed by the learned MM-08, South East Courts, Saket, New Delhi in connection with FIR No.979/2015 whereby the prayer made on behalf of the petitioner for release of proceeds of FDR Nos.007666028046, 007666028047, 007666028048) with the Dena Bank, Malabar Hills Branch, Mumbai has been adjourned pending the outcome of a revision filed against an order passed in FIR No.892/2014. Learned counsel for the petitioner submits that such an order is only an abdication of the judicial function bestowed upon the learned Magistrate.

It appears that on 02.05.2014, the petitioner society had transferred an amount of Rs.4 crores to Dena Bank for the purpose of creating three aforesaid FDRs. This was done on the inducement of the bank of giving the petitioner a high rate of interest. When a request was made by the petitioner for premature encashment of the FDRs on 15.07.2014, he was informed that

a forgery had been committed in the bank and a loan account was opened in the name of the petitioner against two of the FDRs. This led to the filing of the complaint and eventually, the registration of FIR No.979/2015 in Amar Colony police station.

It has also been submitted that the bank, later, informed the petitioner that the FDRs could not be released as those FDRs were seized by the CBI/EOW and that the FDRs of the petitioner were renewed for a further period of one year from the date of the first maturity. The petitioner states that such renewal was made without any request from him.

It further appears from the records of the case that the CBI/BS & FC, Mumbai has been investigating a case vide FIR No. RC-BSM-2014-E-0006/CBI/BS & FC, Mumbai, under sections 419/420/467/468/471/120-B of the IPC read with section 13(1)(d) of the PC Act 1988 dated 14.07.2014. This FIR was registered on the complaint made by one Moti Lal Behra, the then DGM, Dena Bank. During the course of investigation of the aforesaid case, all original documents were seized by the CBI vide seizure memo dated 22.07.2014.

The seized documents includes the FDRs of the petitioner. In the aforesaid case, chargesheet had been submitted by the CBI before the Trial Court at Mumbai.

Mr.R.S. Kundu, learned ASC informs this Court that the CBI has also investigated the subject matter of the present FIR lodged at the instance of the petitioner. During the course of investigation, it was found that the FDRs of the petitioner was forged and then replaced with the FDRs of the same serial number which was then sent to another entity by courier.

It appears that with respect to another FIR No.892/2014, an order was passed by the learned Magistrate for the release of the FDRs and against the aforesaid order of release, a revision also was filed which is pending. The learned Magistrate, therefore, on the pretext of a pending revision in another case, decided to await the outcome of the aforesaid revision before passing any order with respect to release of the FDRs of the petitioner.

Though the Court below ought not to have awaited the outcome of the revision petition in another case with respect to another person, nonetheless even if any order would have been passed, it would not have been executable. The FDRs of the petitioner have admittedly been seized by the CBI. The CBI has, it has already been stated, submitted chargesheet before the Trial Court in Mumbai.

In that view of the matter, even if the learned Magistrate is held to have faulted in not passing an order in this case because of the pendency of a revision petition in another case, the net result would have been that any order passed in favour of the petitioner would not have been executed. Thus, no useful purpose would have been served in passing any order on the application of the petitioner.

The present petition, therefore, is dismissed but with the liberty to the petitioner to approach the concerned Trial Court at Mumbai for release of his FDRs.

This writ petition is disposed of with the aforesaid observations.

ASHUTOSH KUMAR, J

JULY 06, 2017
ab