IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 660 OF 2018

Sweta Industries … Petitioner
Vs.
The State of Maharashtra & Anr. … Respondents

…

Mr. Suryajeet Chavan for the Petitioner.
Mrs. M.R. Tidke, APP for the Respondent-State.
Ms. Ammeta Kuttikrishnan for the Respondent-CBI.

…

CORAM : PRAKASH D. NAIK, J.
DATE : 05th JULY, 2018.

P.C.

1. Heard both sides for final disposal.

2. The petitioner has challenged the order dated 25th October, 2017 passed by the learned Special Judge (CBI) Sessions Court, Mumbai for rejecting application de-freezing of the bank account bearing No. 316005010050159 of Union Bank of India, V.P. Road Branch, Mumbai. The said account was freezed in connection with Crime No.66 of 2014. Initially, the proceedings were pending before the Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai. Thereafter, the case was forwarded to the Special Court and presently the proceedings are pending in the Court of Special Judge, CBI Sessions Court, Greater Bombay.

3. The prosecution case is that during the stage of investigation, the account was freezed by EOW, Unit-III, Mumbai. Thereafter,

the entire investigation was clubbed and assigned to CBI and it has transpired that accused had committed fraud in furtherance of conspiracy on Dena Bank causing wrongful loss to the Dena Bank. The offences were registered under Sections 420, 409, 471, 467, 468 of Indian Penal Code and under Section 13(2), r/w 13(1)(c) & (d) of Prevention of Corruption Act, 1988. The bank account of the petitioner with Union Bank of India has been freezed by the Investigating Authority. It is alleged that one of the witness had stated that after getting cash amount he transferred amounts of Rs.23,50,000/- through RTGS to Sweta Industries. In view of that, the application was preferred before the Special Court for defreezing the account and returned the amount of Rs.23,50,000/-. The Special Judge vide order dated 25th October, 2017 rejected the said application for defreezing account. While rejecting the application, it was observed that the amount belongs to Dena Bank.

4. Being aggrieved by the said order, the petitioner has preferred this petition before this Court. It is submitted that the petitioner is willing to execute the bank guarantee in the sum of Rs.23,50,000/- without prejudice to the claim that the amount is

not involved in the crime.

5. It is the contention of the Petitioner that in the month of April, 2014, one trading firm namely Rose Impex approached the petitioner company and placed orders for purchasing manufactured goods. The petitioner accepted the orders from the said firm and accordingly supplied the said materials to the said firm and invoices were raised for the same. The said manufactured goods were loaded and transported by the petitioner to various places as requested by M/s Rose Impex. As per the contractual obligation, the petitioner company started receiving payment from the said M/s Rose Impex towards the material supplied by the petitioner. In pursuance to the bills and invoices raised by the petitioner payments were made by M/s Rose Impex vide cheque to the petitioner. The said cheques were deposited in the aforesaid Bank account. The cheques were honoured on the presentation. The petitioner company received an amount of Rs.23,50,000/- from M/s Rose Impex. Subsequently, it was learnt that the account has been freezed on instructions from Respondent No.1. It was also revealed that FIR has been registered vide CR No. 60/2014 with Malabar Hill Police Station against the accused for siphoning off huge amount by

opening overdraft account against the fixed deposit belonging to MMRDA. Petitioner initially preferred an application before the learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai which was rejected on 1st August, 2015 on the ground that investigation is transferred to CBI and the said Court has no jurisdiction to entertain the said application. Thereafter, the application was preferred before Special Court for CBI which was rejected on 25th October, 2017.

6. It is submitted by the counsel for the petitioner that the amount was received by the petitioner company in genuine transaction. The payment was made by M/s Rose Impex towards the services rendered by the petitioner company. Dena Bank is allegedly entitled for funds to the tune of Rs.23,50,000/- but the entire account was frozen. Freezing of account has caused great inconvenience to the petitioner company. It is submitted that the petitioner is not involved in the alleged crime and it is the reputed company. The petitioner is required to incur expenses such as payment of salary to the employees. The petitioner has not received any amount from the account of Dena Bank. It is further submitted that the petitioner is willing to execute bank guarantee in respect to the amount frozen for releasing the amount by

defreezing the account.

7. Learned APP submitted that the amount is involved in the crime. The prosecution has established the link with the said amount towards the crime. The execution of bank guarantee would not serve any purpose, the amount is required to be secured. There is no reason to set aside the order passed by the Special Court.

8. Apparently, it is seen that the petitioner company is not an accused in the said crime. There were business transactions with the M/s Rose Impex and in respect to that the amount was received by cheques which were deposited by the petitioner company into their account. There is no complicity of the petitioner in the alleged crime. The money were deposited towards the consideration which was received by the petitioner company. The amount received by the petitioner company was allegedly to the tune of Rs.23,50,000/-. However, the entire account has been freezed by the Investigating Agency which has caused inconvenience to the petitioner's day to day transactions. With a view to secure the amount, the petitioner has agreed to execute the bank guarantee qua a sum of Rs.23,50,000/-.

9. Considering the submissions advanced by petitioner and

respondents, there is no impediment for allowing application for defreezing the account on executing the bank guarantee to the tune of Rs.23,50,000/-. Hence, I pass the following order.

ORDER

i. The petition is allowed;

ii. The order dated 25th October, 2017 passed by the Sessions Court in Misc. Criminal Application No. 977/17 is set aside;

iii. The prayers made in Misc. Criminal Application No. 977/2017 are allowed subject to condition that the petitioner shall execute the bank guarantee to be furnished before the trial Court for the amount of Rs.23,50,000/-. It is clarified that the issuance of bank guarantee is without prejudice to the rights of the petitioner and it would be subject to the final decision in the proceeding pending before the trial Court;

iv. Petition stands disposed off.

Sachidanand Kuttan Nair
Digitally signed by Sachidanand Kuttan Nair
Date: 2018.07.17 11:09:30 +0530

(PRAKASH D. NAIK, J.)