IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1287 OF 2015

Dhawal Sureshkumar Patel … Petitioner
Versus
The State of Maharashtra and another … Respondents

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Mr. Nilesh Tribhuvan for Petitioner.
Mr. A. R. Patil, APP for the State.
Mr. Kushal Mor for Respondent No.2.
Mr. H. S. Venegaonkar – CBI.

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CORAM : PRAKASH D. NAIK, J.

DATE : 27th JULY, 2018.

P. C.:

1. Rule. Rule made returnable forthwith.

2. Heard both sides for final disposal.

3. The petitioner challenges order dated 22nd December, 2014, passed by the Special Judge (CBI), Greater Bombay in Miscellaneous Application No. 163 of 2014.

4. The case of the petitioner as evident from the contents of the petition and the submissions of the learned Advocate for the petitioner is as follows:

(a) The petitioner is Director of M/s Mahavir Gems Pvt. Ltd., doing business of trading in raw diamonds and polish diamonds and operating from its office at Surat. The petitioner is maintaining a current account No.3211158461 with Kotak Mahindra Bank, Opera House Branch, Mumbai.

(b) The petitioner is not accused in the case. On 13th March, 2014, the petitioner was informed that the current account was freezed by respondent No.1 vide Section 102 of Criminal Procedure Code.

(c) The petitioner filed Miscellaneous Application No. 72 of 2014 for defreezing the said account before the Special Court. Respondent No.1 filed reply dated 27th March, 2014.

(d) The Special Court by order dated 15th May, 2014 allowed the said application and directed the petitioner not to withdraw amount of Rs.1.10 Crore till further orders and the petitioner was ordered to execute an indemnity bond that in the event it is found that an amount of more than one crore in his account is generated from the crime, he would refund the said said amount together with interest at the prevailing bank rate. The Kotak Mahindra Bank was directed not to permit the petitioner to withdraw amount of Rs.1.10 Crore.

(e) On 12th April, 2014, respondent No.2 preferred Miscellaneous Application No. 83 of 2014 for freezing of account before the Special Court. Respondent No.1 filed reply dated 23rd April, 2014 by providing details of the petitioner's bank account.

(f) Miscellaneous Application No. 83 of 2014 was thereafter amended and the petitioner was impleaded as party respondent No.37. Respondent No.1 was aware about address of the petitioner.

(g) Miscellaneous Application No. 83 of 2014 was allowed by order dated 9th June, 2014. The said order was passed without hearing the petitioner.

(h) On 6th August, 2014, the petitioner preferred Miscellaneous Application No. 163 of 2014 before the Special Court for return of property. Respondent No.1 filed reply opposing the said application. By order dated 22nd December, 2014 the said application was rejected.

5. During the course of pendency of this petition, the amendment was carried out by annexing the charge-sheet.

6. Learned Advocate for the petitioner submits that the order passed by the CBI Special Court is erroneous. The petitioner had previously filed an application for defreezing his account which was allowed by the Court vide order dated 15th May, 2014. The CBI could not place any material to show that the amount was involved in the crime. It is further submitted that order dated 9th June, 2014 was passed without following principles of natural justice. No notice was served upon the petitioner. Respondent No.2 was nowhere connected with Kotak Mahindra Bank nor the amount in current account No.3211158461 had any connection with respondent No.2. The Court was mislead by CBI submitting

that the petitioner is one of the person whose account was freezed by respondent No.1 was necessary party to Miscellaneous Application No.83 of 2014 preferred by respondent No.2. The Special Court without taking into consideration as to how the petitioner does not hold any account with respondent No.2 stands connected to the said respondents having his account with Kotak Mahindra Bank passed the impugned order. It is submitted that the Special Court vide earlier order has freezed the account with a direction to maintain an amount of Rs.1.10 Crore. Thereafter, account was freezed and the amount was directed to be transferred to respondent No.2 without any logic and without affording any opportunity to the petitioner to defend the said application. It is submitted that on going through the entire charge-sheet the prosecution has not made out any case establishing the connection of the petitioner with the alleged crime and that the amount is connected with the crime. The charge-sheet also does not indicate that an amount of Rs.1.10 Crore is involved in the crime is lying in the account of petitioner.

7. Learned Counsel relied upon the following decisions of the Supreme Court.

(i) ***Teesta Atul Setalvad Vs. State of Gujarat – (2018) 2 Supreme Court Cases 372.***

(ii) State of Punjab Vs. Davinder Pal Singh Bhullar and others – (2011) 14 Supreme Court Cases 770.

(iii) Jawahal Lal @ Jawahar Lal Jalaj Vs. State of U.P. - 2015 SCC OnLine All 8899.

8. Per contra, the respondents supported the order of the Special Court. The learned Counsel for respondent No.1 submitted that the notice was issued to the petitioner and the same was served upon the petitioner. Learned Counsel placed on record the affidavit of service dated 12th May, 2014 and a sealed envelope returned back with a remark “left”. It is further submitted that there is no reason to interfere with the order passed by the Special Court. The learned Judge has assigned proper reasons while passing the order. It is further submitted that the petitioner had preferred Miscellaneous Application No. 163 of 2014 in pursuant to order dated 9th June, 2014 and thereby had an opportunity to contend that he was not served and the order against the principles of natural justice. Learned Judge has rejected the said application by assigning reasons.

9. I have perused the documents on record. Respondent No.2 has also filed reply, opposing the prayers in this petition. The FIR was registered on 8th March, 2014 for the offences under Section 120-B read with 409, 420, 468, 471 of I.P.C. and 13(2) read with 13(1)(d) of PC Act and substantive offences thereof against the Branch Manager of Oriental Bank of Commerce, Malwani Malad Branch, Mumbai and others. The case of the prosecution is that JNPT had transferred a sum of Rs.110 Crore and Rs. 70 Crore on 12th February, 2014 and 17th February, 2014 to the aforesaid bank for placement in TDRs for a period of one year at the rate 9.67% and 9.75% respectively, which was siphoned off by the accused. The amount of Rs. 180 Crores was fraudulently transferred to the account of M/s Padmavati International in the said branch of Oriental Bank of Commerce on the basis of false and forged letters dated 12th February, 2014 and 17th February, 2014 purportedly issued by authorised signatories of JNPT. The said amount was allegedly further transferred to several accounts from the account of Padmavati International and the entire amount was siphoned off by the accused in furtherence of conspiracy. After registration of FIR, investigation commenced and the details of transactions

involving transfer of funds was ascertained through Oriental Bank of Commerce. The bank authorities were directed to produce documents relating to transactions in question. On 10th March, 2014, CBI initiated the efforts to freeze the accounts. Rs.1.00 Crore was routed to the account of M/s. Mahavir Gems Pvt. Ltd. Maintaining with Kotak Mahindra Bank on 25th February, 2014. As a part of defrauded amount aggregating to Rs.1.00 Crore was transferred to the account of M/s Mahavir Gems Pvt. Ltd. Since the transfer is from the proceeds of fraud, an order under Section 102 of Cr.P.C. was issued to Kotak Mahindra Bank Ltd., directing them to freeze the account and not to allow any operation. The statement of account in respect of M/s Roop Creation with IndusInd Bank was collected, which shows two credits of Rs.1.50 Crore each was received in the said account on 25th February, 2014 and immediately thereafter an amount of Rs.1.00 Crore was transferred to M/s Mahavir Gems Pvt. Ltd. by way of RTGS. The directions for freezing account were issued on 11th March, 2014. The application for defreezing account was preferred on 26th March, 2014. Reply was filed by CBI on 27th March, 2014. The respondent No.2 preferred Misc. Application No. 83 of 2014 on

12th April, 2014. The application for amendment to the said application was filed on 8th May, 2014. The order on application of petitioner was passed on 15th May, 2014. Thus, the application of respondent No.2 was apparently pending on that day. The Special Court passed order on 9th June, 2014 and directed to credit the amount to the account of Oriental Bank of Commerce which was transferred from the bank to the account of applicant with a condition of returning of the same amount to the respective account holders in case during trial it reveals that the transaction is genuine.

10. On perusal of order dated 9th June, 2014, it can be seen that Miscellaneous Application No. 83 of 2014 was preferred by Oriental Bank of Commerce contending that an amount of Rs.180 Crore was deposited by JNPT and some of the accused who are the bank officers dishonestly transferred the amount to various accounts of respondents. If amount remained in the account of the said respondents then the applicant bank will have to suffer irreparable loss as the amount is very large and thus the amount is returned to the applicant bank. JNPT and CBI apparently supported the said application subject to condition that in the

event that the bank is not entitled for the amount, then it shall refund the amount with interest. It was observed that some of the respondents avoided to appear before the Court after service of notice. It was further observed that the bank is ready to take custody of amount, subject to terms and conditions which may be imposed by the Court to safeguard the interest of all the parties. The petitioner was impleaded as one of the party respondent No.37 in the said application. The contention of the petitioner is that he was never served with the notice. In pursuant to order dated 9th June, 2014 the petitioner preferred a Miscellaneous Application No. 163 of 2014 before the Special Court for return of property. The prayer in the said application was to return the amount to the applicant. It is pertinent to note that earlier Court passed order dated 15th May, 2014 and 9th June, 2014. The petitioner did not challenge order dated 9th June, 2014 in higher Court. He preferred Miscellaneous Application No. 163 of 2014 with independent prayer of returning amount to him inspite of earlier orders. The application was rejected on 22nd December, 2014. The prayer in this application is to set aside order dated 22nd December, 2014. It was contended that the petitioner was allowed to operate the account and the amount was transmitted in his account in accordance with order dated 15th May, 2014. However, the bank preferred an application in which order dated 22nd December, 2014 was passed. It was also contended that the notice was not served upon the petitioner. He had complied with order dated 15th May, 2014 by maintaining minimum balance of Rs.1.10 Crore as per directions of the Court. The amount has no nexus with the crime. It was therefore prayed that the respondents be directed to return the amount to the petitioner.

11. The Special Court by order dated 22nd December, 2014 while rejecting the application preferred by the petitioner has observed that while passing order dated 9th June, 2014 the Court has imposed condition of returning the said amount to the respective account holders, in case during the trial it reveals that the transaction in their accounts are genuine and legal and thus, the court has passed the order to meet the ends of justice and to protect the interest of the bank as well as applicant and other account holders. Otherwise also, the Court had directed the applicant to maintain balance amount of Rs.1.10 Crore till conclusion of trial. Hence, no prejudice is caused to the petitioner.

The Court further observed that the applicant/petitioner was impleaded as party respondent No.37.The grievance was made by the applicant relying on the documents that the office of the company is situated at the given address, but it is not desirable to draw any conclusion regarding those documents at this stage. Otherwise also, the Court has duly protected the interest of the applicant while transferring the amount into the account of opponent No.2- Oriental Bank of Commerce. It is contended that charge-sheet do not establish connection of amount transferred to his account with crime.

12. I do not find any reason to take a different view of the matter, assuming that the contention of the petitioner that he was not served while hearing Miscellaneous Application No. 83 of 2014 filed by the bank, he had moved application bearing Miscellaneous Application No. 163 of 2014, in which the aforesaid order was passed by the Court. It is pertinent to note that by order dated 15th May, 2014, Miscellaneous Application No. 72 of 2014 was allowed and the petitioner was directed to operate bank account No.3211158461 with Kotak Mahindra Bank, Opera House Branch, Mumbai. He was directed not to withdraw an amount of

Rs.1.10 Crore till further orders and was also directed to give indemnity bond that in the event it is found that amount more than One Crore in his account is generated from the crime, he would refund the said amount together with interest at the prevailing banking rate. The Kotak Mahindra Bank was directed not to permit him to withdraw Rs.1.10 Crore and he was permitted to withdraw excess amount lying in his account. While passing order dated 9th June, 2014, the Court had directed that the amount be transferred from the Oriental Bank of Commerce to the respective accounts, be credited in the account of Oriental Bank of Commerce and the bank was directed to give undertaking that in event it is held that the bank is not entitled for this amount, then it shall refund the amount together with interest at the rate of 12% per annum from the date of taking custody of amount till its realisation. Thus, the petitioner was restrained from withdrawing Rs.1.10 Crore, which has been directed to be transferred to the account of Oriental Bank of Commerce. The case of the prosecution was that the amount of Rs.1.10 Crore was transferred from Oriental Bank of Commerce to the account of petitioner, which is directed to be credited to the account of

Oriental Bank of Commerce. The petitioner's contention that amount be returned to him cannot be accepted. The prosecution case is that amount has been transferred from Oriental Bank of Commerce to M/s Padmavati International and then to petitioner's account. The submission of the learned Advocate for the petitioner that after filing of charge-sheet, no case is made out for earmarking the amount of Rs.1.10 Crore cannot be accepted. The Special Court has taken into consideration the interest of both the parties vide order dated 22^{nd} December, 2014 and in the circumstances, no case is made out for setting aside the order dated 22^{nd} December, 2014. The decisions relied upon by the learned Advocate for petitioner are of as help to the petitioner. The decision in the case of ***Teesta Atul Setalvad (supra)*** relates to powers under Section 102 Cr.P.C. It is observed that investigating officer in the course of investigation has power to seize or prohibit operation of bank account, which is found under circumstances creating suspicion of commission of any offence. In the case of ***State of Punjab Vs. Davinder Pal Singh Bhullar(supra)***, it is observed that, if a judgment pronounced without jurisdiction or in violation of principles of natural justice or where. The order has been pronounced without giving an opportunity of being heard to party affected by it or where an order was obtained by abuse of the process of Court which would really amount to it being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes nullity and provisions of Section 362 Cr.P.C. would not operate. The other judgment of Allahabad High Court in the case of ***Jawahar Lal Jalaj (Supra)*** held that, Section 362 puts a complete bar for altering or reviewing of a judgment or final order on merits. It is noted that in the present case the order dated 9th June, 2014 causes no prejudice. The petitioner further preferred an application for return of amount which was rejected and the Court has justified order dated 9th June, 2014. The order dated 9th June, 2014 was not challenged and the petitioner preferred petition pursuant to order dated 22nd December, 2014. The said orders are in operation for about last four years. For all the reasons stated above, no case is made out for grant of relief.

13. In the circumstances, petition is devoid of merits and the same is dismissed. Rule discharged.

(PRAKASH D. NAIK, J.)