IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 138 OF 2015

Rajesh Natwarlal Bangawala ...Applicant

Versus

C.B.I., B.S. & F.C., Mumbai & Anr. ...Respondents

WITH
CRIMINAL APPLICATION NO. 226 OF 2015
WITH
CRIMINAL REVISION APPLICATION NO. 138 OF 2015

C.B.I., B.S. & F.C., Mumbai ...Applicant

IN THE MATTER BETWEEN

Rajesh Natwarlal Bangawala ...Applicant

Versus

C.B.I., B.S. & F.C., Mumbai & Anr. ...Respondents

Ms.Anjali Patil a/w. Mr.Arun Rajput, Mr.Pracheta Rathod for the Applicant.
Mr.Limosin A., Sr.P.P for Respondent No.1-CBI.
Mr.Yogesh Dabke, APP for Respondent No.2-State.
Mr.Kushal Mor a/w. Mr.Marmik Shah for the Intervenor.

CORAM : MRS. MRIDULA BHATKAR, J.
DATE : 19 NOVEMBER 2018

P.C.:

1. In this Criminal Revision Application, the order dated 6th February, 2015 passed below exhibits 20 and 21 regarding forfeiture of the accounts as prayed

in prayer clause (I) of M/s. Design Point Tradlink Ltd. Hongkong and its associated accounts in CBI Spl. Case No. 42/14 along with 10/15 by the learned Special Judge (CBI), Gr. Bombay is challenged.

2. In this case, the present applicant/accused, along with co-accused, who is a Senior Manager of Oriental Bank of Commerce, Malvani Branch, Mumbai and being a public servant, prosecuted for the offences punishable under Sections 120 B read with 409, 420, 468, 471 of the Indian Penal Code and Section 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act.

3. J.N.P.T. had deposited INR 1100.00 millions on 12th February, 2014 and INR 700.00 millions on 17th February, 2014 in Oriental Bank of Commerce. The Branch Manager conspired with the applicant/accused and fraudulently transferred the said amounts in the account of M/s. Padmavati International of which the applicant/accused was a proprietor.

4. As per the case of the prosecution, the said amounts were transferred on the basis of false and forged letters dated 12th February, 2014 and 17th February, 2014. Thereafter, the amounts which were transferred in the account of M/s.Padmavati International was siphoned in various accounts. Thereafter, a criminal case has been filed against the applicant/accused, which is pending before the learned Special Judge (CBI), Gr. Bombay. In which, CBI filed an

application under Section 105 C of Chapter VII-A of the Code of Criminal Procedure for forfeiture of the said property. Forfeited amounts were lying in the account of M/s. Design Point Tradlink, Hongkong and its associated accounts in HSBC,Bank, Hongkong Central. After hearing the other side, the learned Special Judge allowed the said applications and directed temporary forfeiture of the said amounts as prayed till further order. The learned Judge also issued a letter of request/rogatory to competent authority on ascertaining the same from Union of India to carry out the investigation regarding accounts mentioned in the annexure/application and also to execute the order. The Investigating Officer also directed to file the report regarding as to whether amount lying in the aforesaid account having nexus with the alleged wrongful gain so that further orders regarding forfeiture of the aforesaid accounts/amount can be passed. This order is challenged by the present applicant /accused in this Revision Application.

5. The learned counsel for the applicant/accused has submitted that the challenge is given on the basis of non-compliance of the provisions laid down under Chapter VII-A of the Code of Criminal Procedure. She has further submitted that notice of forfeiture of the property is not given to the applicant/accused to enable him to give explanation regarding amounts lying in the account. She has further submitted that there can be forfeiture of the property, but it can be attached.

6. The learned counsel for CBI and the intervenor have supported the order. They have submitted that fraud is played upon the bank and the order of forfeiture is necessary. There is reasonable apprehension that siphoned money is likely to be dealt with and made disappear, transfer or may be hide.

7. Perused impugned order and also considered the provisions of Sections 105C to 105G of the Cr.P.C. Chapter VII-A of the Cr.P.C. empowers the attachment and forfeiture of the property with a view to save the property, which is the subject mater of criminal case. To avoid further loss, the Court can pass interim order of seizure or attachment of the property. The learned Judge in the order has used the word “temporary forfeiture” instead of “seizure” so that modification is required. Notice of forfeiture of the property is required to be given to the applicant/accused so that he can be given an opportunity to give explanation of source of income and earning of the assets.

8. In clause No. 5 of the operative part of the impugned order, the learned Judge has given direction to the investigating officer to issue notice regarding forfeiture of the accounts/amount and then submit a report accordingly. Thus, there is compliance of the procedure laid down under Chapter VII-A of the Cr.P.C. from Sections 105C to 105G. Hence, clause No.2 of the operative part of the impugned order is modified as under :-

> **"2) The accounts in the name of M/s. Design Point Tradlink Ltd., Hongkong and its associated accounts more particularly described in prayer clause (I) as such directed to be seized till further order".**

9. The said amounts are to be transferred to the Head Office of Oriental Bank of Commerce and the concerned Branch Manager is hereby directed to keep the said amounts in the fixed deposit. CBI to inform the directors of M/s. Design Point Tradlink Ltd., Hongkong about the aforesaid order.

10. Rest of the impugned order remained as it is. Revision Application is allowed to this extent only "forfeiture" to "seizure".

11. Criminal Revision Application is disposed of .

12. In view of disposal of Criminal Revision Application, Criminal Application does not survive, hence the same is also disposed of accordingly.

(MRIDULA BHATKAR, J.)