

Vidya Amin.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 5485 OF 2018

Ramesh Bhai Bagtariya & Ors.	...	Petitioners
VS.		
The State of Maharashtra & Ors.	...	Respondents

Mr. Kapil Dave i/b. Urvika A. Shah, Advocate for the petitioners.
Mrs. Geeta P. Mulekar, APP for the respondent No. 1/State.
Mr. Arun Rajput, Advocate for respondent No. 3.
Mr. R.B. Singhvi i/b. Lex Service, Advocate for respondent nos. 4 and 5.
Mr. V.N. Ajikumar, Advocate for respondent No. 6.
Mr. R. Chaudhary, Advocate for respondent No. 7.

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 6th December, 2018**

P.C. :

This Petition is directed against the order dated 30th November, 2018 passed by the learned Metropolitan Magistrate, 18th Court, Girgaon, Mumbai thereby directing the manager of various banks to credit the freezed amount as shown against the name of their bank to the account of informant, namely, Jagdish Sing Rawal, who is respondent No. 3, his account stands in the name of Roop Enterprises account No. 7812017134, Kotak Mahindra Bank, Alta Mount Branch, Mumbai in connection with C.R. No. 233 of 2018.

2. Heard the submissions of the learned counsel for the petitioners and learned counsel for the respondent No. 3/complainant. It is admitted that the petitioners are not the accused. They are the persons in whose accounts the accused has transferred the siphoned amount, which is the subject matter of this criminal case wherein respondent No. 4-Pankaj Sanghani is facing prosecution for the offences punishable under sections 420, 403, 424 of Indian Penal Code in C.R. No. 233 of 2018 registered with D.B. Marg Police Station.

3. The Application was made by the complainant/respondent No. 3 under section 457 of Cr. P.C. for return of the property, i.e., amount lying in the account of the petitioners with the respondent-banks. It appears from the order that the learned Magistrate did not give notice to the concerned parties. When the Application is made for return of the property under Chapter XXXIV of Cr. P.C., it is necessary for learned Magistrate to give notice to the concerned parties, i.e., complainant, accused and any other persons from whom the property is seized. After hearing the persons, who claim the possession/ownership of the property, then Magistrate to pass the order. In the present case, neither the notices were given to

the present petitioners from whom the property is supposed to be transferred and also the accused. On this ground alone, the order passed by the learned Magistrate is hereby quashed and set aside. The learned Magistrate is directed to hear the Application under section 457 of Cr. P.C. made by the complainant afresh after giving notices to all the parties. The learned counsel for the six petitioners and learned counsel for respondent No. 4/accused waives service. The parties and their respective counsel are directed to appear before the Metropolitan Magistrate Court on 14th December, 2018 at 11.00 a.m.

4. It is made clear to the learned Magistrate that besides these petitioners, if other persons are involved in whose account the accused has siphoned the amount, which is property in dispute in the said C.R., the concerned persons also to be given notice and thereafter the learned Magistrate may fix the date for hearing of the matter as per his convenience. Earlier position of the accounts as per the status of investigation shall remain till the learned Magistrate pass the order.

5. Writ Petition is disposed of.

(MRIDULA BHATKAR, J.)