

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 04.07.2018]

[Pronounced on : 12.09.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Cr1.R.C.No.830 of 2017

Canara Bank,
Rep. by its Deputy General Manager,
Circle Office,
No.524, Anna Salai,
Teynampet,
Chennai - 600 018. Petitioner/De facto Complainant

.. Vs ..

1. The Assistant Director,
Directorate of Enforcement
Government of India,
Ministry of Finance,
Department of Revenue 2nd & 3rd Floor,
C Block, Murugesu Naicker Office Complex,
No.84, Greaves Road, Chennai - 600 006.
2. M.Balasubramaniam
3. V.Jagadeesha
4. Sukash Chandrasekar @ Shekar
5. Ajit Jain
6. Meghraj Jain
7. M/s. Future Techniks Pvt Ltd.,
Represented by its Managing Director,
Shri Balasubramanian
8. M/s. Mangal Royal Jewels,
Represented by its Director Shri. Meghraj Jain
9. M/s.Mangal Bullion Pvt Ltd.,
Represented by its Director Shri Ajit Jain
10. Sanjay Rasiklai Doshi
11. M/s. Leena Maria Paul
12. Krunal Vijay Shah
13. Raju R.Patwa

14. M/s. More Max Ltd.,

Represented by its Director Shri Mahendra Singh Solanki

15. Dharmendar Kumar Acharath Lal Rolia @ Dharmesh Shah

16. Vijay Chand Jain

... Respondents

PRAYER: Criminal Revision Case filed under Sections 397 & 401 of Cr.P.C. against the order passed by the learned Principal Sessions Judge, Chennai, on 28.03.2017 in Criminal M.P.No.21812 of 2016 in C.C.No.58 of 2016 (Impugned Order) dismissing the petition filed by the petitioner Bank seeking orders to de-freeze the fixed deposits, held by the respondents with Canara Bank, Teynampet Branch, Chennai, vide FDR Nos.0416401003706, 0416401003713 and 0416401003759 dated 11.04.2014, 15.05.2014 and 08.08.2014 respectively and consequently to direct the first respondent to pay the said sum of Rs.13,22,96,000/- lying to the credit of the above fixed deposits along with interest accrued thereon to the petitioner herein/de facto complainant.

For Petitioner : Mr.A.Ramesh, Senior Counsel
for M/s.Kaushik N.Sharma

For R-1 : Mr.N.Ramesh,
Special Public Prosecutor

RR-2 to 16 : No Appearance

ORDER

This Criminal Revision Case is filed by the petitioner/Canara Bank against the order dated 28.03.2017 passed by the learned Principal Sessions Judge, Chennai, in CrI.M.P.No.21812 of 2016 in C.C.No.58 of 2016.

2. The revision petitioner herein/Canara Bank has filed the above CrI.M.P.No.21812 of 2016 in C.C.No.58 of 2016 before the trial Court under Sections 102, 451 and 457 of Cr.P.C. r/w. Section 8(8) of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the Act) seeking to de-freeze the fixed deposits, held by the respondents with Canara Bank, Teynampet Branch, Chennai, vide FDR Nos.0416401003706, 0416401003713 and 0416401003759 dated 11.04.2014, 15.05.2014 and 08.08.2014 respectively and consequently, direct the first respondent herein to pay the said sum of Rs.13,22,96,000/- lying to the credit of the above fixed deposits along with interest accrued thereon to the petitioner/Bank.

3. The brief averments made in the petition filed before the trial Court are as follows:-

The petitioner/Canara Bank is the de facto complainant. M/s. Future Techniks Ltd., was one of the constituents of Canara Bank, Ambattur SME Branch, Padi, Chennai, and thereby, maintaining Current Account No.2412261002005 with them wherein, M.Balasubramaniam and Chitra Balasubramaniam are the Directors. In the course of such transactions M/s.Future Techniks Ltd., represented by its aforesaid Directors during 11.02.2013 to 19.03.2013 have transferred a sum of Rs.19,21,13,549/- under RTGS to the various customers under the Adhoc Over Draft Cash Credit Facility granted by the previous Chief Manager Mr.Jagadeesha. Thus, the then Chief Manager has allowed such Adhoc facility to the extent of Rs.19 crores by gross violation of the guidelines issued by the head office. Therefore, the aforesaid Chief Manager, while passing the cheques issued by the said company to the various accounts through NEFT/RTGS has not followed procedure with ulterior motive. Thus, the said then Chief Manager, by colluding with them and thereby caused heavy loss to the petitioner/Bank. In this connection, a case in Crime No.64 of 2013 was registered on the basis of the complaint given by the Bank to the Central Crime Branch, Chennai. The CCB also frozen the amount of Rs.6,29,37,738/- from the accounts of the accused and made necessary attachment. The first respondent registered ECIR No.1 of 2013 and based on the power contemplated under the Act also attached the amount lying in the bank accounts. The adjudicating authority confirmed the attachment.

4. The second respondent has re-registered the complaint under FIR No.RC.6/E/2014 and filed charge sheet in C.C.No.3 of 2015 before the XI Assistant Special Court for CBI Cases, Chennai. The fixed deposits are maturing on 14.04.2017, 15.05.2017 and on 08.08.2017 respectively. The Bank has filed an application in O.A.No.424 of 2014 on the file of the DRT-III, Chennai, for recovery of Rs.21,09,87,806.97 together with interest. Taking into consideration the final order of attachment, the accused have not preferred any revision and thereby it becomes final and in the above case, final report has been filed by the police. It is very much necessary that the amount involved in the provisional attachment has to be returned to the petitioner-Bank in order to reduce the liability of Rs.21,09,87,806.97 referred in O.A.No.424 of 2014. Since the petitioner/Bank is the lawful owner of the said sum, the respondents herein and others cannot have any valid objection for the same. The confiscation under Section 3 of the Act cannot be ordered when the ownership of such property is certain and definite.

5. The brief averments made in the counter filed by the first respondent are as follows:-

Respondent No.1 is enjoined to attach, submit within 30 days

of attachment a complaint before the Adjudicating Authority and the Adjudicating Authority may confirm the said attachment provided the property attached is involved in money laundering. Since these stages have been crossed and the amounts are in the possession of respondent No.1 in terms of the Act, the claims of the petitioner are not sustainable in law.

5(i). The property in FDRs held by the first respondent with the petitioner is held by the petitioner in a fiduciary capacity and not as the owner of the said FDRs, as the monies sanctioned as overdraft and working capital were disbursed to M/s.Future Techniks, Chennai and M/s.Future Techniks had paid those sums to various persons in the guise of commercial transactions. These putative commercial transactions had been discovered to be a case of criminal conspiracy, cheating and delivery of properties and based on the scheduled offences committed by the persons and the property being involved in the offence of money laundering as mentioned in the prosecution complaint filed by the first respondent was trailed, traced and attached from 20 different persons in terms of the Act, after due investigations. The claim of ownership of the monies in the FDRs mentioned above is erroneous and contrary to the facts. The petitioner can have a remedy under Section 8(8) of the Act. The claim by the petitioner that the moneys traced, attached, confirmed and taken possession of belongs to them, is an unsustainable claim which patently bypasses the legal rights of the various hands through which the moneys had passed after it left the bank account of M/s.Future Techniks and that the claims are unsustainable.

5(ii). The purchase of the said luxury cars by Shri.Sukash Chandrasekhar have been the subject matter of the Second Provisional Attachment Order No.01/2014 dated 07/01/2014, which were taken custody of with the permission of the XI Additional City Civil and Sessions Judge for CBI Cases, Chennai. The process for auctioning the same is under way. However, the claim of the petitioner/Bank to credit the sale proceeds of the said luxury cars are not sustainable, as the luxury cars are designated as proceeds of crime and have been attached, confirmed and taken possession of for depriving the persons from enjoying the fruits of their crime and the proceeds of crime involved in money laundering could be parted with only in accordance with the provisions of the Act. Since the petitioner's money had been loaned by the petitioner/Bank to M/s. Future Techniks Private Ltd., Chennai and M/s. Future Techniks Pvt. Ltd., had transferred sums to various accounts as instructed by Shri.Sukash Chandrasekhar and the said Shri.Sukash Chandrasekhar had received 60% of the amounts transferred to the various entities in cash and had utilized the same for purchasing the cars, there is no ownership interest established between the cars attached and taken possession of by the respondent No.1's department and the petitioner.

6. The brief averments made in the counter filed by the second and seventh respondents are as follows:-

Respondents 2 and 7 had never been directly or indirectly involved in any money laundering activity knowingly as defined under the Act nor held or projected any proceeds of the crime as untainted property. The second respondent had legally obtained money as Temporary Overdraft / Loan from Canara Bank by applying to the SME Ambattur Branch, Chennai, as an existing borrower and through the agreement that pre-existed on documents and securities deposited with the bank in the relevant period. In the said circumstances, the second respondent prayed for allowing the above CrI.M.P.No.21812 of 2016 filed by the revision petitioner/Bank and also prayed to issue suitable direction to the first respondent to transfer the funds held in Fixed Deposits to the Canara Bank into the Loan Account of the seventh respondent.

7. The brief averments made in the counter filed by the third respondent are as follows:-

The third respondent not violated any guidelines issued by the Head Office and a mere perusal of records will show that he has nothing to do with the alleged offence. Even at the early point of time, he has raised before the adjudication authorities that the money involved in the case should go to the Canara Bank from where it is originated. The third respondent is innocent and he has not committed any offence and his name has been falsely implicated.

8. The averments made in the counter filed by respondents 5, 6, 8 and 9 are that mere passing of adjudication order under the Act does not confer right on the petitioner-Bank to appropriate sums to their account to the credit of M/s.Future Techniks Ltd., The sums which have been seized to the tune of Rs.4.60 crores and frozen by the complainant Enforcement Directorate are actually legitimate business amounts of the respondents herein. Returning the amounts accrued in the FDRs would amount to prejudicing the issue, thereby nullifying the defence and the legitimate claim of the respondents herein and hence, prayed for dismissal of the petition.

9. After hearing both the parties and also taking note of the provision of law under Section 8(7) of the Act, the learned Principal Sessions Judge, Chennai, has held that as all the accused are appearing before the Court and the matter is ready for presentation of the prosecution, the conditions stated under Section 8(7) of the Act have not been arrived and accordingly, dismissed the petition observing that the trial of the case has not been concluded and hence, the revision by the Canara Bank.

10. Mr.A.Ramesh, learned Senior Counsel appearing for the revision petitioner/Canara Bank has contented that the centaur of the prosecution is, Vigilance Department, Canara Bank on conduction of an internal investigation preferred a complaint before CCB stating that Chief Manager of their bank, Padi Branch collude hands with Director of future Techniks Ltd and sanctioned an OD for Rs.19 Crores (Not his sanction limit) by receiving a bribe of Rs.50 laksh. Further, the said amount was transferred through 20 RTGS within a short span of one month to six satellite companies (created by Mangal Group, owned by Ajit and Megraj Jain, acquaintance of Suresh Chandrasekar) by the directors as instructed by one Mr.Suresh Chandrasekar (portrayed as Jayakumar) who had induced Mr.Balasubramaniam that they would get the tender in Karnataka for supply of Self service Vending Machine.

11. It is further contended that as per the investigation, modus operandi for transfer was creating fake and forged bills as if the diamonds were actually purchased and thereby transferred the funds to Foreign companies and other companies. The same was done by the Directors (Balasubramaniam) and Suresh Chandrasekar. It is also contended that on 19.03.2013, the complaint preferred by the Canara Bank in Crime No.64/2013 was culminated into FIR under Sections 406, 409 and 420 IPC. Hinted by that on 26.03.2013 registered an ECIR, bearing No.01 of 2013. The Adjudicating Authority, in the meanwhile, in the year 2013 and 2014 (vide Attachment Order No.07/2013 and 01/2014) initiated proceedings against Balasubramaniam and passed order of Confirmation of Provisional Attachment Order on 20 Bank accounts (INR.13,21,61,297.94) Luxury Cars (nine valued at INR.7 Crores), Watches (eighty) and jewelries (two golden ring and one ear golden color ring) and ipad. In the meanwhile, Canara Bank had initiated Debt Recovery proceedings before DRT-II, Chennai against M/s.Future Techniks Ltd., represented by 26 others with a prayer, directing them (latter to former) to pay a sum of INR.21,09,87,806.97/- along with interest. The learned Senior Counsel also submitted that on 19th Day of 2015, the learned XI Additional CBI Judge, passed an order in CrI.M.P.No.412 of 2015 on the petition preferred by the Joint Director, Directorate of Enforcement under Section 8(4) of the Act granting possession of the attached/frozen by Adjudicating Authority in favour of the Joint Director. Further, on 04.11.2016, the Assistant Director, Directorate of Enforcement, in the meanwhile, initiated criminal proceedings before the learned Principal Sessions Judge, Chennai, by filing a complaint under Section 45 (1) r/w. 3, 4 and 8(5) of the Act against Balasubramaniam, Jagadeesha, Suresh Chandrasekar and 12 others to take cognizance of the complaint and pass appropriate orders.

12. The learned Senior Counsel also produced a table of accounts frozen and converted as FDs which reads as under:-

S.No.	Name of the Account	Amount Frozen (INR)
1.	M/s. Mangal Bullion Pvt Ltd.,	Rs.4,60,94,825.00
2.	M/s. Mangal royal jewels	Rs. 48,000.00
3.	Smt. Saroja devi jain	Rs. 3,09,869.57
4.	M/s. Srisri mal gems	Rs. 3,168.74
5.	M/s. Cherio Trading	Rs. 5,490.00
6.	M/s.Madan impex Pvt Ltd.,	Rs. 18,451.00
7.	M/s. Yash Vikram Developers	Rs. 10,58,611.16
8.	M/s. Pulkit Impex Pvt Ltd	Rs. 31,619.00
9.	M/s. Nita Enterprises	Rs. 86,000.00
10.	M/s. Pensive real estate	Rs. 1,31,658.25
11.	M/s. Shri ganesh spinners	Rs. 88,00,000.00
12.	UBQOOL Future tech pvt ltd	Rs. 1,94,731.85
13.	Shri Chaudry ambika Prasad	Rs. 87,325.19
14.	M/s. Rolex trading company	Rs. 2,71,000.00
15.	M/s. Deepak trading company	Rs. 10,11,750.00
16.	M/s. Bhagyasri gems	Rs. 53,605.00
17.	M/s. Zela enterprises	Rs. 19,312.78
18.	M/s. Asatha gems	Rs.1,10,22,878.94
19.	M/s. Galaxy Trading Co.	Rs.3,56,00,000.00
20.	Mr.Sukash Chandrasekar	Rs. 4,84,000.00
	Total	Rs.13,21,61,297.94

13. Mr.N.Ramesh, learned Special Public Prosecutor appearing for the first respondent, relying upon the counter affidavit filed by the Assistant Director, Directorate of Enforcement, made submissions in support of the order passed by the learned Principal Sessions Judge, Chennai.

14. This Court has considered the submissions made by the learned Senior Counsel appearing for the revision petitioner and the learned Special Public Prosecutor appearing for the first respondent and also perused the records available on record.

15. The sum and substance of the contentions raised by the learned Senior Counsel appearing for the revision petitioner/Canara Bank are summarised as under:-

The learned Principal Sessions Judge had failed to appreciate the interpretation on four counts viz.,

i) that if the ownership of the property were certain, then the property is to go back to the owner of the property.

ii) that only if the ownership of the property were doubtful that the property has to be a part of the trial proceedings and one has to wait for the conclusion of the trial.

iii) that even though trial had not commenced, as the moneys belonged to the petitioner bank, there was no bar for them to claim the moneys nor any bar on the first respondent herein from handing the moneys.

iv) that as the first respondent has clearly proved that the moneys attached belonged to the petitioner Bank, the learned Principal Sessions Judge was at liberty, in terms of Section 8 (7) of the Act, to exercise his discretionary powers and release the funds to the petitioner.

16. The sum and substance of the contentions raised by the learned Special Public Prosecutor appearing for the first respondent/Directorate of Enforcement are summarised as under:-

Sub-section 7 of Section 8 of the Act contains provisions relating to a situation where trial cannot be conducted for the following reasons:-

- i) death of the accused;
- ii) the accused being declared a proclaimed offender;
- iii) any other reason;
- iv) the trial though commenced could not be concluded.

17. The petitioner/Bank has not been able to bring their claim under any of the reasons listed at clause (i) (ii) and (iv) above, and as such have brought their arguments under the category of "any other reason". However, Section 8(7) of the Act deals with remedies where trial cannot be conducted. In the instant case, a complaint under Section 45(1) of the Act has been filed before the Special Court for Prevention of Money Laundering Act cases and as such, does not fall within the purview of this Section and as such, the interpretation forwarded by the petitioner/Bank is erroneous in law and inappropriate at this stage. However, it is submitted that their claim, if any, would commence only under Section 8(8) of the Act (i.e.) after confiscation proceedings have been initiated.

18. Thus, as per the submissions made by the learned Senior Counsel appearing for the revision petitioner/Bank, the properties attached were belonged to the Canara Bank, in view of the earlier history of the case as narrated above and as per the terms of Section 8(7) of the Act, the learned Principal Sessions Judge, Chennai, ought to have exercised his discretionary power and release the amount in favour of the Canara Bank, since the said amount is a public money. Further, the situation as contemplated under Section 8(7) of the Act closed for any other reasons and number of years have been rolled on. However, the prosecution has failed to open up the case.

19. Per contra, the contention of the learned Special Government Pleader appearing for the first respondent is that Sub-Section 7 of Section 8 of the Act can be invoked only when the trial cannot be conducted either death of an accused or accused being declared a proclaimed offender or though the trial is commenced, it could not be concluded.

20. In the above circumstances, the condition as envisaged under Section 8(7) of the Act has not arisen and therefore, he has made submission in support of the order passed by the learned Principal Sessions Judge, Chennai, and only after Section 8(8) of the Act, the revision petitioner/Canara Bank can be moved.

21. It is the further submission of the learned Special Public Prosecutor that monies were not in possession of the revision petitioner/Canara Bank. Consequently, the amount were attached from different person other than those to whom the amounts have been transferred through RTGS and further submission is that the person to whom the amount had been sent through RTGS had withdrawn, the amount in cash and handed over only 60% of the amount to Shri.Sukash Chandrasekhar, an offender of the scheduled offence and therefore, the Canara Bank was not in possession of the money relies upon under the provision of Section 8(4) of PMLA, however, the same does not arise on the facts and circumstances of the case and finally submitted that the revision petitioner/Canara Bank neither had title to the money in question nor possession of the money amounting to INR (Indian Rupee) 19,21,13,549. It is seen from the lower Court records that CrI.M.P.No.21812 of 2016 was taken up and arguments of all the parties were heard and orders were reserved on 23.03.2017 and order was passed on 28.03.2017. At this juncture, it remains to be stated that an amendment to Prevention of Money Laundering Act, 2002 was came into force with effect from 01.07.2005 wherein, various amendment has been introduced inter alia

(ii) in sub-section (8), after the proviso, the following proviso shall be inserted, namely:

"Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed".

22. It is seen from the impugned order passed by the learned Principal Sessions Judge, Chennai, the learned Judge has observed that pre-condition for invoking the provision under Section 8(7) of the Act has not been arrived and therefore, rejected the claim.

23. Considering the submission made by the respective parties and the factual issues raised thereon and also taking note of the fact that the Canara Bank is the de facto complainant before the City Crime Branch, at the earliest point of time, which has led to registration of the case in C.C.B. Crime No.64/2013, which was subsequently, transferred to CBI as per the orders of the High Court, and in the meanwhile, the first respondent has re-registered the complaint and the CBI also filed final report before the learned XI Assistant Sub Judge for CBI Cases and proceedings before the DRT-III in O.A.No.424 of 2011 which is also ended in favour of the Bank and in view of the amendments as stated above, I am inclined to remit the matter back to the learned Principal Sessions Judge, Chennai. Since I am remitting the matter back to the learned Principal Sessions Judge, I am not expressing any opinion on the various claims made by the respective parties by imposing self restriction. Accordingly, the order passed by the learned Principal Sessions Judge, Chennai, is liable to be set aside.

24. In the result, सत्यमेव जयते

(i) This Criminal Revision Case is allowed.

(ii) The order dated 28.03.2017 passed by the learned Principal Sessions Judge, Chennai, in Crl.M.P.No.21812 of 2016 in C.C.No.58 of 2016 is set aside.

(iii) The matter is remitted back to the learned Principal Sessions Judge, Chennai.

(iv) The learned Principal Sessions Judge, Chennai, is directed to take into consideration the amendments to the Prevention of Money Laundering Act, 2002 as extracted above whereby, during the course of the trial, the claim of the parties can be considered for restoration of the property and to deal with the same in accordance with law.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Jrl

To

1. The Principal Sessions Judge,
Chennai.
2. The Assistant Director,
Directorate of Enforcement
Government of India,
Ministry of Finance,
Department of Revenue 2nd & 3rd Floor,
C Block, Murugesu Naicker Office Complex,
No.84, Greaves Road, Chennai - 600 006.
3. The Section Officer,
Criminal Section,
High Court, Madras

+1cc to Mr.N.Ramesh, Advocate, S.R.No.63868

Cr1.R.C.No.830 of 2017

SPD(CO)
GSP(03/10/2018)

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