BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.03.2018**

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD)No.9578 of 2017
and
Crl.M.P.(MD)No.6541 of 2017

Canara Bank,
Rep. through its Chief Manager,
Anand : Petitioner

-Vs-

1. State rep. by,
   The Superintendent of Police,
   CBI, ACB,
   Chennai.

2. The Deputy Superintendent of Police,
   SPE, CBI, ACB,
   Shastri Bhavan,
   III Floor,
   26, Haddows Road,
   Chennai.

3. Mr.K.Jhakir Hussain,
   Managing Director/Managing Partner,
   M/s.Mantek Group of Firms,
   D-74&75, Developed Plot Estate,
   Thuvakudi,
   Trichy-620 015.

4. M/s.Mantek Group of Companies,
   rep. by Mr.K.Jhakir Hussain,
   D-74&75, Developed Plot Estate,
   Thuvakudi,
   Trichy-620 015. : Respondents

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code praying to set aside the order passed by the second respondent dated 15.02.2017 and pass such other orders as this Court may deem fit and proper in the nature and circumstances of the case.

For Petitioner : Mr.Pala Ramasamy

For Respondents 1&2 : Mr.Nagendran,
Special Public Prosecutor for CBI Cases

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O R D E R

On 02.02.2018, this Court passed the following order:

"On the directions of this Court, (1) Mr.S.Syed Bazzullah, Superintendant of Police, CBI/ACB, Chennai, (2) Mr.G.A.Suriyakumar, Inspector of Police, CBI/ACB, Chennai, (3) Mr.K.B.Anand, Chief Manager, Canara Bank, Trichy Candonment Branch, Trichy, and (4) Mr.S.Raja, Inspector of Police, K.K.Nagar P.S.Crime, Trichy City are present.

2. Heard Mr.Pala Ramasamy, learned counsel appearing for the petitioner and Mr.N.Ashok Kumar Gowtham, learned Special Public Prosecutor for CBI Cases/Respondents 1 and 2.

3. The Central Bureau of Investigation have registered a *Suo Motu* FIR in Crime No.RC MA 1 2016 A 0017 dated 26.05.2016 for the offences under Section 120-B IPC r/w Sections 420, 468 IPC r/w Sections 471 and 477 (A) IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, against the Officials of National Small Industries Corporation (NSIC) Limited, and one K.Jhakir Hussain , a private person.

4. The sum and substance of the First Information Report is that Jhakir Hussain had obtained a loan for a sum of Rs.6,00,00,000/- (Rupees Six Crores only) from the National Small Industries Corporation (NSIC) Limited, under the Raw Materials Assistance Scheme by producing fake bills. During the course of investigation, it came to the notice of the CBI that Jhakir Hussain was having account with Canara Bank, Cantonment Branch, Trichy and, therefore, the CBI have issued an order dated 15.02.2017 under Section 102 Cr.P.C., for freezing the bank account, aggrieved by which, the Chief Manager, Canara Bank has filed the present Criminal Original Petition.

5. At the outset, the power of the police under Section 102 Cr.P.C., to freeze the bank account is beyond cavil, especially, in the light of the judgment of the Supreme Court in *State of Maharashtra vs. Tapas D.Neogy*

in *1999 7 SCC 685*.

6. However, the learned counsel for the Canara Bank submitted that the accused had obtained loans from the bank and fixed deposits were credited, from and out of which, the bank had given bank guarantee to various persons including the National Small Industries Corporation (NSIC) Limited. Therefore, the learned counsel submitted that the order freezing the account of Jhakir Hussain is causing prejudice to the bank, inasmuch as the bank is not able to realise its legitimate dues. Hence, the bank has come forward with the present petition.

7. In the opinion of this Court, the present issue can be easily resolved, if there is a direct meeting between the Investigating Officer of the CBI and the Chief Manager of Canara Bank. Hence, the parties are directed to have a sitting and resolve this issue and thereafter, report to this Court.

8. Call on 16.02.2018."

2. Pursuant to the order passed by this Court, Mr.Anand, Chief Manager, Canara Bank, Trichy Cantonment Branch and Mr.G.A.Suriya Kumar, Inspector of Police, CBI/ACB, Chennai have met and discussed the issues on 12.02.2018 threadbare. Pursuant to their discussions, it transpires that the Canara Bank had granted loans to Jhakir Hussain and those loans were converted to fixed deposits and were shown as the margin money for the guarantees issued by the Bank in favour of the vendors of Jhakir Hussain. Mr.G.A.Suriya Kumar, Inspector of Police has filed a counter statement dated 23.02.2018, wherein he has stated as follows:

"4. It is further submitted that as per the direction of this Hon'ble Court meeting was held with Chief Manager, Canara Bank, Cantonment Branch, Trichy on 12.02.2018 at Chennai and discussed the source of funds for the deposits created in the name of M/s. Mantek Group of Firms. Shri Anand, Chief Manager, Canara Bank, Cantonment Branch, Trichy attended CBI office on 12.02.2018 and submitted a letter dated 07.02.2018 informing the following:

(i) All the deposits cited in the order have been created out of Bank's own funds taken as margin for guarantees issued in favour of vendors and out of genuine trade related payments received from BHEL.

(ii) The deposits have been taken as securities to the various limits provided to the firms.

(iii) The bank needs to adjust the deposits immediately to the loan accounts.

(iv) "We undertake to adjust the deposits only to the loan liabilities of the firms. We further undertake that the deposit amounts shall not be credited to the savings and current account of the parties."

5. It is further submitted that the Statement of accounts pertaining to the deposits were verified and it revealed that most of the deposits were created out of bank's own funds taken as margin for guarantees issued in favour of M/s.Mantek Group of Firms. The deposits were taken as securities for the various facilities provided by the bank to Mantek Group of Firms and lien was marked by the bank, before issue of stop operation instruction by CBI.

6. It is further submitted that verification with regard to the current accounts revealed that out of the 7 Current Accounts for which stop operation instructions were issued, 6 current accounts does not have any balance. One Current account has got a balance of Rs.26,349/-.

7. It is further submitted that the investigation revealed that the deposits for which stop operation instructions were given were created out of bank's funds. Hence, the balance available in these deposits should be utilised for adjusting the outstanding due to the Bank and shall not be credited back to Mantek Group of Firms."

3. In view of the above, this Court permits the Canara Bank to adjust the fixed deposits towards the bank loan given to Jhakir Hussain and no amount shall be credited into any of the accounts of Jhakir Hussain or his vendors.

4. This Court places on record its appreciation to Mr.G.A.Suriya Kumar, Inspector of Police, CBI/ACB, Chennai, for adopting a very pragmatic approach in settling this issue, so that, this is a win-win situation for both the CBI as well the Bank.

5. The Central Bureau of Investigation shall also record the statement of Mr.Anand, Chief Manager, Canara Bank, Trichy Cantonment Branch, showing him as a prosecution evidence in the memo of evidence, if so required.

6. With the above observation and direction, this Criminal Original Petition is closed. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Superintendent of Police,
   CBI, ACB,
   Chennai.

2. The Deputy Superintendent of Police,
   SPE, CBI, ACB,
   Shastri Bhavan,
   III Floor,
   26, Haddows Road,
   Chennai.

3. The Special Public Prosecutor for CBI Cases,
   Madurai Bench of Madras High Court,
   Madurai.

+ 1 cc TO Mr.Pala Ramasamy , Advocate in SR No. 52823

SML
AE/SV MMS/SAR2/19.03.2018/5P/5C

Order made in
Crl.O.P.(MD)No.9578 of 2017
Dated: **02.03.2018**