

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITIONS NO.30 & 31 OF 2019
CRIMINAL WRIT PETITION NO.30 OF 2019

Imran Khan
son of late Ahmed Khan,
Major of age,
Resident of 2730, Murida,
Fatorda, Margao-Goa.

.... Petitioner

V/s.

1. State of Goa,
through the Public Prosecutor.

2. The Police Inspector,
The Special Investigation Team
of the Crime Branch,
Doan Paula/Ribander, Goa.

.... Respondents

Shri Nitin Sardessai, Senior Advocate with Shri K. Noorani, Advocate
for the Petitioner.

Shri S.R. Rivankar, Public Prosecutor for the Respondents.

AND

CRIMINAL WRIT PETITION NO.31 OF 2019

State of Goa
Through Police Inspector,
The Special Investigation Team,
Crime Branch,
Ribandar, Goa.

....Petitioner

V/s.

Mr. Imran Khan,
37 years of age,
resident of 2730,
Murida, Fatorda,
Margao, Goa.

... Respondents

Shri S.R. Rivankar, Public Prosecutor for the Petitioner.
Shri Nitin Sardessai, Senior Advocate with Shri k. Noorani, Advocate
for the Respondent.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Reserved on : 24th September, 2019

Pronounced on : 21st November, 2019

JUDGMENT :

Rule, returnable forthwith. Heard finally with the consent of the learned Senior Counsel and learned Public Prosecutor. Discretionary power of this Court under Article 227 of the Constitution of India read with Section 482 of Cr.P.C. have been invoked by the petitioners by way of these two Writ Petitions challenging an order dated 14/12/2018 passed by the learned Sessions Judge, Panaji in Criminal Misc. Application No.142/2018 by which the learned Sessions Judge partly allowed the application of the petitioner Imran Khan under Section 457 of Cr.P.C. directing defreezing of an amount of ₹21,50,00,000/- (Rupees twenty one crores fifty lakhs only) from his current account with the Bank of India, *inter alia*, directing execution of an indemnity bond.

2. Shorn of unnecessary details, facts absolutely necessary for disposal of these two Writ Petitions can be summarised thus:

The petitioner Imran Khan is a businessman, who is a partner of

“Imran Traders” having its office in Fatorda, Margao, Goa. The said firm is engaged in the business of ore trading and is registered with the mining department of the respondent no.1. The petitioner is an income tax assessee holding pan card no.ANQPK3181K. An offence came to be registered against the petitioner with crime branch bearing Crime No.15/2013 under Sections 120-B, 119, 166, 277, 278, 290, 379, 409, 418, 420, 430, 465, 468, 471 IPC and Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 along with Section 4, 9, 9(A), 19 read with 21 of the Mines and Minerals (Development and Regulation) Act, 1957, Mineral Concessions Rules, 1960.

3. The respondent no.2 instructed the bankers of the petitioner namely Bank of India, Margao Branch to freeze the account of the petitioner and his family members. The petitioner was arrested by the respondent no.2 on 12/09/2017. Subsequently, he was enlarged on bail on 15/09/2017.

4. When the petitioner tried to access his bank accounts for funds required for day today expenses of his family members, he came to know that because of the freezing of the accounts by the respondent

no.2 he could not withdraw any amount even by using his ATM card. The petitioner learnt from his bankers that the respondent no.2 vide letter under reference no.PI/SIT/CR.No.15-13/761/2017 dated 05/10/2017 instructed the bankers of the petitioner namely Bank of India, Margao Branch to freeze the accounts of the petitioner and his family members.

5. An application moved by the respondents before this Court vide Criminal Misc. Application (Main) No.280/2017 on 30/10/2017 seeking cancellation of the bail of the petitioner has been rejected on 10/11/2017.

6. The petitioner, thereafter, addressed a communication dated 24/11/2017 to the respondent calling upon it to defreeze the accounts frozen by respondent no.2 and give custody of the same to the petitioner. The petitioner expressed his readiness and willingness to execute a bond to produce the same before the Court as and when required to do so as per Section 102(3) of Cr.P.C. The respondent no.2, however, rejected the request of the petitioner vide its letter dated 29/11/2017.

7. The petitioner moved Criminal Misc. Application no.212/2017 under Section 457 read with Section 451 of Cr.P.C. before the Sessions Judge, Panaji on 30/11/2017 seeking defreezing of the accounts frozen by the respondent no.2. The application was opposed by respondent no.2 by filing its response on 16/12/2017. The learned Sessions Judge partly allowed the application of the petitioner seeking defreezing of his accounts and accounts of his family members, *inter alia*, directing defreezing of an amount of ₹25,00,000/- (Rupees Twenty Five Lakhs only).

8. Being aggrieved by the order of the Sessions Judge dated 22/01/2018, defreezing the amount only to the extent of ₹25,00,000/- (Rupees Twenty Five Lakhs only), the petitioner moved this Court by way of Criminal Writ Petition No.25/2018. The said criminal writ petition came to be dismissed on 27/02/2018. The petitioner, however, sought review of the order of dismissal of the Writ Petition by filing Criminal Misc. Application No.97/2018. It is contended that the respondent in its affidavit dated 13/04/2018 admitted that non-compliance of Rule 37 of the Minerals Concession Rules is not a criminal liability. The petitioner, *inter alia*, moved a Criminal Misc.

Application No.128/2018 seeking defreezing of his current account no. 100620110000583 to the extent of ₹25,00,000/- (Rupees Twenty Five Lakhs only) by way of an interim relief. The respondent gave its no objection to release ₹5,00,000/- (Rupees Five Lakhs only) to the petitioner on humanitarian ground. On 20/04/2018, this Court defreezed an amount of ₹3,50,00,000/- (Rupees Three Crores Fifty Lakhs only) from the current account no.100620110000583 with Bank of India, *inter alia*, directing the petitioner to furnish an undertaking to bring back the amount, if so ordered by this Court. This Court had also granted liberty to the petitioner to file an application under Section 451, 457 of Cr.P.C. before the Sessions Court after filing of the charge sheet or after three months from 20/04/2018 whichever is earlier.

9. It is the contention of the petitioner that till date no charge sheet has been filed by the respondent.

10. In view of the liberty granted by this Court to the petitioner as above, the petitioner moved the Sessions Court vide Criminal Misc. Application No.142/2018 seeking defreezing of the accounts which

came to be partly allowed in view of the impugned order.

11. The State of Goa, on the other hand, impugned the same order *inter alia* praying that it needs to be quashed and set aside directing the respondent i.e. Mr. Imran Khan to bring back the amount withdrawn by him from the current account no.100620110000583 on the premise that the matter is still under investigation having a very wide magnitude. It is yet to be ascertained as to how much extraction of ore had been done by the respondent which is pending before the Directorate of Mines, Panaji for assessment report. It is the contention of Shri Rivankar, the learned Public Prosecutor that the respondent has no authority to extract iron ore from the Mining Lease no.65/01. The extraction of ore by the respondent is illegal and, therefore, the proceeds received from such illegal extracted ore is an ill-gotten money. The release of huge amount of ₹21,50,00,000/- (Rupees Twenty One Crores Fifty Lakhs only) by the learned Sessions Judge is against the ambit and scope of Section 457 read with Section 451 of Cr.P.C. as the ownership of the property in issue is yet to be ascertained. It is further contended that respondent is just a registered trader of ore and not the mine operator. A special investigation team

has been constituted by the State Government in order to unearth the illegal mining activity in the State. All the accounts of the petitioner were seized amounting to ₹69,08,00,000/- (Rupees Sixty Nine Crores Eight Lakhs only) lying with various banks. It is also submitted that money is being deposited in the accounts of the respondent and not in the account of the original lessee. Shri Rivankar took me through various provisions of Mines and Minerals Act. Shri Rivankar placed reliance on some judgments of the Supreme Court which shall be dealt with in the subsequent paras.

12. Shri Rivankar, has drawn my attention to an order passed by this Court (Coram : C.V. Bhadang, J.) in Criminal Writ Petition No.25/2018 by contending that even this Court had already observed that *prima facie* offence is made out against the petitioner. Shri Rivankar, therefore, urged to dismiss Criminal Writ Petition No.30/2019 and grant the prayer in respect of Criminal Writ Petition No.31/2019.

13. Per contra, Shri Sardesai, the learned Senior Counsel for the petitioner in Criminal Writ Petition No.30/2019 has drawn my

attention not only to the order passed by this Court in Criminal Writ Petition No.25/2018, but also to the order passed in Criminal Misc. Application No.97/2018 filed by the petitioner seeking review/modification of the order dated 27/02/2018 passed in Criminal Writ Petition No.25/2018. Shri Sardesai, while drawing my attention to the earlier orders passed by this Court also emphasized on a fact as to why the respondent has not freezed accounts of any other mine owners which, according to him, amounts to harassment of the petitioner and nothing else. He questioned as to why the petitioner is singled out and why the bank accounts of other miners, who are situated in the similar position, have not been attached? He also questioned about the genuineness of the investigating agency in obtaining a report from the Indian Bureau of Mines, Nagpur as under its pretext the prosecution agency is protracting the matter by not filing a charge sheet. Shri Sardesai, the learned Senior Counsel, in vehemence, submits that if the amount in question is “robbed” by the petitioner, why the prosecution has given no objection earlier in defreezing part of the amount when the Sessions Judge ordered defreezing ₹25,00,000/- (Rupees Twenty Five Lakhs). The said order has not been challenged by the State.

14. Shri Sardessai, the learned Senior Counsel has drawn my attention to an affidavit filed by the Investigating Officer of the respondent, more particularly, para 15 wherein it is made clear that Rule 37 of the Mineral Concession Rules, 1960 is not punishable as an offence. It is also contended by Shri Sardessai that the Director of Mines and Geology by his order dated 04/04/2017 has granted deemed extension order of TC No.65/51 till 31/03/2020 in terms of provision of sub-section 6 of Section 8(A) of the MMDR Act, 1957. The relevant para of the order reads thus:

“And whereas in terms of provision of sub-sec.(6) of Sec. 8(A) of MMDR Act, 1957, by operation of law, the renewal application pending for decision of State Government in case of non-captive leases, the period of lease is given deemed extension till 31/03/2010. T.C. No.65/51 being a non-captive mine shall get the benefit of deemed extension till 31/03/2020. Moreso in the light of Judgment and Order of Hon'ble Supreme Court of India in Common Cause V/s. Union of India & Ors. in W.P. No.114/2014 dated 04/04/2016.”

15. There is no argument so far as the offences of prevention of corruption Act are concerned. There is no reason as well as argument by the State as to why the money is required to be detained when it is the contention of the prosecution that the investigation is almost completed. The learned Senior Counsel also took me through the

provisions of Section 457 of Cr.P.C. In the alternative, it is submitted by Shri Sardessai that at the most an amount of ₹10,00,00,000/- (Rupees Ten Crores only) may be detained and the petition be kept pending. He submits that the petitioner is ready to give any undertaking that may be deemed proper in the present set of facts and circumstances.

16. Before advertng to the relief sought by the petitioner Imran Khan, it would be essential to mention few more facts which are relevant. As a matter of fact, this Court while disposing of the Criminal Writ Petition No.25/2018 on 27/02/2018 had already referred and considered all the facts, nevertheless, a brief reference is essential.

17. Deceased Amalia Figueiredo was granted the mining concession under T.C. No.65/61 at Curpem of Sanguem Taluka over an area of 58.2700 Ha. Subsequently, the concession has been abolished on being declared as a deemed lease. Deceased Amalia left the said mining concession in favour of her son Mr. Caetano Figueiredo by virtue of Will dated 13/06/1979. Mr. Caetano died interstate on 26/07/1985. One Mrs. Georgina Figueiredo, one of the legal

representatives of Mr. Caetano filed first renewal application on 22/11/1988. Georgina died on 03/04/2008 before the renewal could be granted. The second renewal application was filed on 20/10/2006 by the petitioner Imran Khan under a Power of Attorney dated 23/02/2005 executed by Georgina Figueiredo and that application was pending during the period from 2006-2012. In the year 2005, the petitioner and his brother Mohsin Khan availed of a Power of Attorney from late Georgina and yet another Power of Attorney from Mrs. Maria Figueiredo in the year 2008 “towards administrative act against title concession no.65/51”.

18. It is the contention of the prosecution that these Power of Attorneys were “criminally used by the petitioner and his brothers” in connivance with the Government/public servants and “highly influential politicians” who gave mute consent to the criminal act of theft of the natural resources.

19. Imran Traders have extracts iron ore to the extent of 9,90,644 metric tonnes amounting to more than ₹3,46,72,54,000/- (Rupees Three Millions Forty Six Crores Seventy Two Lakhs Fifty Four

Thousand only) during the relevant period. The prosecution alleges that the documents demonstrate illegal extraction of the iron ore by the petitioner. The documentary evidence has been referred to the Director of Mines and Geology in order to ascertain the exact quantity of the iron ore extracted year wise.

20. This Court in Criminal Writ Petition No.25/2018 had already discussed the scope of Section 102 of Cr.P.C. in the light of the decision of the Hon'ble Supreme Court in case of *State of Maharashtra V/s. Tapas D. Neogy* reported in (1999) 7 SCC 685 and its applicability in the case at hand. It is needless to reiterate the ratio laid down by the Hon'ble Supreme Court in case of *Teesta Atul Setalvad V/s. The State of Gujarat (Criminal Appeal No.1099 of 17)* as well as *Goa Foundation V/s.M/s. Sesa Sterlite Ltd. & Ors. (Special Leave to Appeal (Civil) No.32138 of 2015)* as there has already been a discussion in the aforesaid Writ Petition by this Court. There has been an elaborate discussion with the provisions of Section 8A of the Mines and Mineral Development and Regulation Act, 1957 (MMDR) Act as regards deemed extension and Rule 37 of the Mineral Concession Rules, 1960.

21. On the aspect of the power of attorney dated 23/02/2005, this Court in Criminal Writ Petition No.25/2018 had made the following observations :

“19. The contents and the recitals of the Power of Attorney dated 23/2/2005 may now be examined. Paragraphs 1, 2 and 3 of the Power of Attorney read thus:

(1) To work, manage and develop the said mines and to raise, extract and sell ores or any other permitted minerals, on our behalf, in such manner as our said Attorney or Attorneys may think fit.

(2) To carry or manage, conduct and supervise the mining operations on our behalf in the said Mines.

(3) To appoint, dismiss, suspend Engineers, Managers or any employee or labourers or workmen in the said Mines or otherwise accept the services of Engineers, Managers, Employees, Labourers or other persons for the purpose of working the said mines on such remuneration as pay salary, commission or otherwise and on such terms and conditions as our said Attorney or Attorneys may deem fit.

Prima facie it can be seen that under Clause 1 the petitioner has been authorized to work, manage and develop the said mine and to raise, extract and sale or the ore or any other permitted minerals on behalf of the consignor in such manner as the petitioner thinks fit. Clause 2 authorizes the petitioner to carry on manage, conduct and supervise mining operations on behalf of the consignor. Clause 3 delegates power in respect of the supervision and the disciplinary control over the employees working in the mine. Thus prima facie it appears that the operation under the Power of attorney would be in violation of Rule 27 of the Minerals Concession rules.”

22. The observations by this Court, herein above, need not be reiterated.

23. Legality, propriety and correctness of the impugned order dated 14/12/2018 has been questioned by petitioner Imran Khan, *inter alia*, praying for setting aside the same by allowing Criminal Application No.142/2018 filed by him under Section 457 read with 451 of Cr.P.C. While exercising discretionary power under Article 227 of the Constitution of India read with Section 482 the Code of Cr.P.C. what is required to be considered as to whether the learned Sessions Judge while partly allowing the application of the petitioner thereby directing defreezing of ₹21.50 crores of the amount, has committed gross abuse of jurisdiction or has unjustifiably refused to exercise jurisdiction vested in him or for that matter, assumed jurisdiction in itself not vested in him? It is equally significant to see as to whether there has been a flagrant abuse of the elementary principles of justice or a manifest error of law patent on the face of the record. It is equally important to see as to whether there is any outrageous miscarriage of justice. These are the few guidelines which have been well recognised and enunciated by a catena of decisions, more particularly, in a

decision rendered by the Hon'ble Supreme Court in case of *Shalini Shyam Shetty & Anr. V/s. Rajendra Shankar Patil* reported in (2010) 8 SCC 329. While exercising the power of superintendence over the subordinate Courts, this Court must be cautious of the aforesaid principles laid down by the Hon'ble Supreme Court.

24. As already stated, it is needless to go into the merits of the case as the respondent State has not yet filed a charge sheet against the petitioner. The prayer of the petitioner was to defreeze the entire amount of ₹69.08 crores for the purpose of payment of salary of his staff, utility bills, school fees of children, amount towards TDS, income tax, insurance premium. According to the petitioner, he also requires an amount of ₹9 to 10 crores towards costs of construction of four bungalows and around ₹78,00,000/- (Rupees Seventy Eight Lakhs only) for the purpose of paying credit card bills and ₹5 crores for paying bank loans.

25. As a matter of fact, this Court (Coram : C.V. Bhadang, J.) while disposing of Criminal Writ Petition No.25/2018 had elaborately considered each and every aspect which has been reiterated by the

petitioner Imran Khan.

26. A review of the original order passed in Criminal Writ Petition No.25/2018 also came to be disposed of on 20/04/2018 wherein this Court granted liberty to the petitioner to file an application under Section 451/457 of Cr.P.C. before the learned Sessions Judge after filing of the charge sheet or after three months from 20/04/2018. Till the arguments were heard no charge sheet was filed by the respondent State.

27. A short question would be as to whether the impugned order warrants interference by way of these two writ petitions? The answer is emphatically in the negative for the reasons that this Court had already held that the operation under the power of attorney is in violation of Rule 27 of the Mineral Concession Rules. This Court however while reviewing the earlier order defreezed an amount of ₹3.50 crores subject to the applicant furnishing an undertaking that he would repay the amount if so ordered by the Sessions Court. It is pertinent to note that such directions were issued by consent of the parties and, therefore, it would not lie in the mouth of the respondent

to seek quashing of the impugned order.

28. It cannot be lost sight of the fact that defreezing the entire amount at this stage might affect the investigation. The question would be, could the petitioner be able to satisfactorily account for the amount defreezed? If the freezing or seizure of the amount lifted fully at this stage, it would, indeed adversely affect the investigation. Normally, in such cases the property needs to be preserved, which is suspected to have been found under circumstances which create suspicion of the commission of an offence in view of Section 102 of Cr.P.C. As already stated, this aspect is no more *res integra* in view of the judgment in case of *State of Maharashtra V/s. Tapas D. Neogy* reported in (1999) 7 SCC 685.

29. Shri Rivankar drew my attention to the judgment of the Hon'ble Supreme Court in case of *State (NCT of Delhi) V/s. Sanjay* reported in (2014) 9 SCC 772. He emphasised on paras 60 to 63 and 70, which read thus:

60. There cannot be any two opinions that natural resources are the assets of the nation and its citizens. It is the obligation of all concerned, including the Central and the State Governments, to conserve and not waste

such valuable resources. Article 48-A of the Constitution requires that the State shall endeavour to protect and improve the environment and safeguard the forests and wild life of the country. Similarly, Article 51-A enjoins a duty upon every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for all the living creatures. In view of the Constitutional provisions, the Doctrine of Public Trust has become the law of the land. The said doctrine rests on the principle that certain resources like air, sea, waters and forests are of such great importance to the people as a whole that it would be highly unjustifiable to make them a subject of private ownership. (emphasis supplied)

61. Reading the provisions of the Act minutely and carefully, prima facie we are of the view that there is no complete and absolute bar in prosecuting persons under the Indian Penal Code where the offences committed by persons are penal and cognizable offence. (emphasis supplied)

62. Sub-section (1A) of Section 4 of the MMDR Act puts a restriction in transporting and storing any mineral otherwise than in accordance with the provisions of the Act and the rules made thereunder. In other words no person will do mining activity without a valid lease or license. Section 21 is a penal provision according to which if a person contravenes the provisions of Sub-section (1A) of Section 4 shall be prosecuted and punished in the manner and procedure provided in the Act. Sub-section (6) has been inserted in Section 4 by amendment making the offence cognizable notwithstanding anything contained in the Code of Criminal Procedure 1973. Section 22 of the Act puts a restriction on the court to take cognizance of any offence punishable under the Act or any rule made thereunder except upon a complaint made by a person authorized in this behalf. It is very important to note that Section 21 does not begin with a non-obstante clause. Instead of the words “notwithstanding anything

contained in any law for the time being in force no court shall take cognizance.....”, the Section begins with the words “no court shall take cognizance of any offence.” (emphasis supplied)

63. It is well known that a non-obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions. (emphasis supplied)

70. There cannot be any dispute with regard to restrictions imposed under the MMDR Act and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of Section 4 and other sections of the Act, the officer empowered and authorized under the Act shall exercise all the powers including making a complaint before the jurisdictional magistrate. It is also not in dispute that the Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorized officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitute an offence under Indian Penal Code. (emphasis supplied)

30. The Hon'ble Supreme Court has elaborately discussed the importance of natural resources which are the assets of the nation and

citizens, *inter alia*, the obligation of the citizens including the Central and State Government to conserve and not to waste such valuable resources. The Supreme Court has also reiterated Article 48-A and 51-A of the Constitution of India emphasizing duty upon every citizens to protect and improve the natural environment including various forests, lakes, rivers and wild life. There is also a detailed discussion about the scope of sub-section (1-A) of Section 4 of MMDR Act vis-a-vis Section 378 of IPC.

31. It is crystal clear that apart from initiating proceedings for commission of an offence under the MMDR Act on the basis of a complaint would not be a bar for the police to take legal action against persons for committing theft of sands and minerals by exercising powers under the Code of Criminal Procedure. and then to submit a final report to the magistrate taking cognizance of such offences against such persons.

32. The petitioner Imran Khan, as already stated hereinabove, is at liberty to move the Sessions Court to defreeze the amount which according to him is essential to meet the expenses. The learned

Sessions Judge may exercise his discretion and pass necessary orders in accordance with law.

33. Be that as it may, as stated herein above no case is made out warranting interference in the impugned order either by the State or by the petitioner Imran Khan.

34. Upshot of the aforesaid discussion would result in the following order:

O R D E R

(i) Criminal Writ Petitions No.30 and 31 of 2019 are dismissed with a liberty to the petitioner in Criminal Writ Petition No.30/2019 to approach the learned Sessions Judge seeking appropriate relief. The learned Sessions Judge shall, in the light of the observations made herein above, pass orders in accordance with law, after giving due opportunity to the State, within five weeks after an application is made by the petitioner Imran Khan.

(ii) The petitioner in Criminal Writ Petition no.31/2019 shall expedite the investigation and submit its final report

at the earliest.

(iii) In the aforesaid terms, the petitions stand disposed of.

(iv) Rule is discharged.

PRITHVIRAJ K. CHAVAN, J.

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