IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1414 OF 2019

Mehul Choksi,
Jolly Harbour,
Antigua, Barbuda ...Applicant

Versus

1. State of Maharashtra,
through Home Department,
2nd Floor, Madam Cama Road,
Hutatma Rajguru Chowk,
Mantralaya, Mumbai – 400 032

2. Enforcement Directorate,
Kaiser-E-Hind Building, 4th Floor,
Ballard Estate, Fort, Mumbai,
Maharashtra – 400 001 ...Respondents

Mr. Vijay Agarwal a/w Mr. Ashul Agarwal i/b Mr. Rahul Agarwal for the Applicant

Mr. A. R. Patil, A.P.P for the Respondent No.1-State

Mr. H. S. Venegavkar, Spl. P.P for the Respondent No. 2-E.D.

CORAM : REVATI MOHITE DERE, J.
MONDAY, 18th NOVEMBER 2019

ORAL ORDER :

1 Heard learned counsel for the parties.

2 By this application, the applicant has impugned the order dated 31st January 2019 passed by the learned Special Judge, Greater Mumbai, below Exhibit 1 in Criminal Misc. Application No. 997 of 2018.

3 Mr. Agarwal, learned counsel for the applicant submits that the learned Special Judge had failed to take into consideration the relevant provisions of the Fugitive Economic Offenders Act, 2018, in particular, Sections 4(2)(e), Section 10(1) and (2), Section 12(1) and (2) and Section 23(2)(a) of the Fugitive Economic Offenders Act, 2018 (hereinafter referred to as `the said Act') as well as Rule 3(1)(viii) of the Declaration of Fugitive Economic Offenders (Forms and Manner of Filing Application) Rules, 2018. He submits that when an application is filed by the prosecution under Section 4 of the said Act, the said application must contain the list of persons, who may have an interest in any of the properties as listed under clauses (c) and (d) of Section 4(2) of the said Act. He further submits that under Section 10(2) of the said Act, the prosecuting agency is required to "duly" file an application in terms of Section 4 of the said Act. He further submits that under Section 10(2) of the said Act, notice is required to be issued to all the persons who have an interest in the property. According to him, the word "shall" used in Section 4(2) and Section 10(2) clearly shows that it is mandatory for the prosecution agency to comply with the same.

Learned counsel for the applicant has tendered a copy of the application filed by the Enforcement Directorate under Section 4 of the said Act, along with all the annexures thereto. The same is taken on record. He submits that since the application filed by the prosecuting agency does not contain the list of all persons who have an interest in the property, the said application does not meet the requirements of Section 4(2) and Section 10 of the said Act. Learned counsel submits that the learned Special Judge has failed to take into consideration the said fact and as such the impugned order is unsustainable in law. According to the learned counsel, Exhibit `O' of the application filed by the prosecuting agency, does not contain the names of all the entities as mentioned on page 271 of the application filed by the Enforcement Directorate. He submits that the learned Special Judge has issued notices only to the entities mentioned in Exhibit `O' of the application filed by the Enforcement Directorate and has not issued notices to all the entities mentioned on page 271 of said compilation.

4 Mr. Venegavkar, learned Special P.P appearing for the respondent No.2-Enforcement Directorate opposed the application. He submits that no interference is warranted in the impugned order warranting interference under Section 482 of the Criminal Procedure Code (`Cr.P.C’). He submits that the learned Special Judge vide the said order, has only

thought it appropriate to split the hearing and decision of the application (Exhibit 1) preferred by the Enforcement Directorate) in two parts, i.e. to hear the application (Exhibit 1) first, on the issue whether the applicant can be declared as a fugitive economic offender and pass orders thereon, and thereafter, based on the outcome of the first order, take hearing on the issue whether the properties involved can be subjected to confiscation to the Central Government. He submits that pursuant to the order dated 31st January 2019, the learned Special Judge has proceeded to hear the arguments on the first point i.e. whether the applicant can be declared as a fugitive economic offender. He states that the matter is now posted for hearing the Advocate for the applicant. Learned Special P.P further submits that in Exhibit `O', the list of persons/entities, who may be interested in the properties listed in para 12 of the application (Exhibit 1) preferred by the Enforcement Directorate before the Special Court, lists the names of the of Banks, from whom Gitanjali Group of Companies have obtained loans. He submits that during investigation, it was found that the applicant-Mehul Choksi was a major stakeholder in all the entities listed on page 271 and that the said entities were mortgaged to various Banks listed in Exhibit `O'. He further submits that in Exhibit `O', clause (ii), details of entities from whose premises goods i.e. diamonds, jewellery, precious stones, etc. were seized during the course of investigation, have also been enlisted. Learned Special P.P. submits that none of the other stakeholders in the entities mentioned on page 271 have come before the Court/the Agency, nor have made any grievance i.e. they have a stake in any of the said entity/ies.

5 Perused the papers. Section 12 of the said Act contemplates how the Court is to declare an individual as a fugitive economic offender. The relevant provisions of Section 12 with which this Court is concerned, reads as under :

> ***12. Declaration of fugitive economic offender.****—(1) After hearing the application under section 4, if the Special Court is satisfied that an individual is a fugitive economic offender, it may, by an order, declare the individual as a fugitive economic offender for reasons to be recorded in writing.*
>
> *(2) On a declaration under sub-section (1), the Special Court may order that any of the following properties stand confiscated to the Central Government—*
>
> *(a) ..……………..*
>
> *(b) ……………..*
>
> *(3) to (10) …………………..”*

6 As noted above, the Enforcement Directorate has filed an application before the learned Special Judge under Section 4 of the said Act. Under sub-section (1) of Section 4, where the Director or any other

Officer not below the rank of Deputy Director authorised by the Director for the purposes of this Section, has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that any individual is a fugitive economic offender, he may file an application in such form and manner as may be prescribed in the Special Court that such individual may be declared as a fugitive economic offender. Sub-section (2) of Section 4 contemplates that the application referred to in sub-section (1) shall contain certain details as stipulated therein i.e. from clauses (a) to (e). Since this Court is concerned with clause (e) of sub-section (2), the same is reproduced hereinbelow :

> *"(e) a list of persons who may have an interest in any of the properties listed under clauses (c) and (d)."*

Sub-section (1) of Section 10 of the said Act contemplates that where an application under Section 4 has been duly filed, the Special Court shall issue notice to an individual who is alleged to be a fugitive economic offender. Sub-section (2) of Section 10 contemplates that notice referred to in sub-section (1), shall also be issued to any other person who has any interest in the property mentioned in the application under sub-section (2) of Section 4. It appears that the Enforcement Directorate has filed a detailed application under Section 4 of the said Act along with the annexures thereto. It appears that after investigation, the Enforcement Directorate has listed the Banks from whom Gitanjali Group of Companies had obtained loans. Exhibit `O' contains the names of several banks i.e. from serial Nos. 1 to 33. Exhibit `O' also contains details of entities from whose premises goods i.e. diamonds, jewellery, precious stones, etc. have been seized during the course of investigation. The names of these entities are Mahalaxmi Jewels (Patna) Pvt. Ltd., R. C. Jewellers, Ms. Shilpa M. Bhoskar and Sparkle Word.

7 Although it is contended by the learned counsel for the applicant that Exhibit `O' does not include the names of all the entities mentioned on page 271 and that the list is incomplete, it appears that the Enforcement Directorate, after investigation, has come to the conclusion that the applicant was a major stakeholder in all the entities mentioned at page 271 of the application and that the said entities have been mortgaged with different Banks mentioned in Exhibit `O'. It is not in dispute that all the Banks i.e. from serial Nos. 1 to 33 have been issued notices and that the said Banks and the other four entities from whose premises, goods have been seized are before the trial Court, pursuant to the said notices. It appears that all the stake holders i.e. the consortium of the banks and other four entities are before the Special Judge. Thus, the provisions of Section

4(2) and Section 10(1) and (2) have been duly complied with.

8 Sub-section (1) of Section 12 of the said Act contemplates hearing of the application under Section 4 and only if the Special Court is satisfied that an individual is a fugitive economic offender, it may, by order declare the said person as fugitive. Sub-section (2) of Section 12 contemplates that on a declaration under sub-section (1), the Special Court may order that any of the properties stand confiscated to the Central Gover`nment. The learned Judge is presently hearing the application filed by the prosecution under Section 4, whether the applicant is a fugitive economic offender. The learned Special Judge has rightly in terms of Section 12 of the said Act passed the order dated 31st January 2019. No infirmity can be found in the said order. The application being devoid of merit, is dismissed.

9 The Application is disposed of.

REVATI MOHITE DERE, J.