IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.02.2019

PRONOUNCED ON : 28.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.No.1527 of 2018

The Superintendent of Police
Central Bureau of Investigation (CBI)
Bank Securities and Frauds Cell
36, 2nd Floor, Bellarg Road,
Bangalore 560 032 .. Petitioner/Complainant

Vs

Sherna F Irani
Chennai-85 .. Respondent/Accused

Prayer:- This Criminal Revision Petition is filed, under Section 397 read with 401 of Cr.PC to call for the records relating to the case in RC.No.6(E)/2015-CBI/BS&FC/Bangalore pending before the Additional Chief Metropolitan Magistrate, Egmore and to set aside the order dated, 27.03.2018, passed by the Additional Chief Metropolitan Magistrate, Egmore, Chennai, in Crl.MP.No.212 of 2018, thereby defreezing the bank accounts of the Smt Sherna F Irani Respondent/A21.

For Petitioner : Mr.K.Srinivasan, SPP

For Respondent : Mr.S.Ramesh, SC for Mr.R.Baskar

ORDER

This Criminal Revision Petition is filed to quash the order dated, 27.03.2018, passed by the Additional Chief Metropolitan Magistrate, Egmore, Chennai, in Crl.MP.No.212 of 2018, defreezing the bank accounts of the Respondent/A21.

2. The case of the Petitioner, as set out in the affidavit filed in support of this Criminal Original Petition, are follows:-

a. Based on a written complaint, in

Ref.No.766/NMG/South-I/FLCIL, dated 08.09.2015, preferred by Veligeti Srinivasa Rao, Deputy General Manager, IDBI Bank, Anna Salai, Saidapet, Chennai, regarding the fraud to the tune of Rs.273.999 crores, perpetrated by M/s.First Leasing Company of India Limited (FLCIL) and the erstwhile Chairman, Managing Director, Senior Vice President, Chief Financial Officer, Statutory Auditors, Internal Auditors and unknown persons, at IDBI Bank, Specialized Corporate Finance Branch, No.115, Anna Salai, Saidapet, Chennai, the Respondent has registered a case in Ref.No.RC6(E)/2015-CBI/BS&FC/BLR, on 21.09.2015, against A.C.Muthiah/ A1, Ex.Chairman of FLCIL, Farouk Irani/A2, Ex-Managing Director of FLCIL, L.Sivaramakrishna/A4, Ex.Chief Financial Officer of FLCIL, M/s.FLCIL/A5, M/s.Sarathy and Balu, Chartered Accountants/A6, Statutory Auditors of FLCIL, M/s.Dandekar and Co. Chartered Accounts /A7, Internal Auditors of FLCIL and unknown others under Sections 120B read with 420, 467, 468, 471 and 471 and 477A of IPC.

b. After completion of the investigation, a charge sheet was filed against A.C.Muthiah/A1, Farouk M.Irani/A2, Dilli Raj/A3, L.Sivaramakrishnan/ A4, M/s.FLCIL/A5 represented by Deputy Official Liquidator, High Court of Madras, V.Balasubramanyan/A6, N.R.Sridharan/A7, Sabapathy Neelakantan/ A8, Kishor J.Dandekar/A9, T.N.Seshadri/A10, B.Rajesh/A11, R.Srinivasan/A12, Ashwin C.Muthiah/A13, M/s.Darnolly Investments Limited/A14, represented by Ashwin C.Muthiah, M/s.Ranford Investments Limited/A15, represented by Ashwin C.Muthiah, M/s.Sicagen India Limited/A16, represented by Ashwin C.Muthiah, M/s.ACM Educational Foundation/A17, represented by Ashwin C.Muthiah, M/s.ACM Medical Foundation/A18, represented by Ashwin C.Muthiah, M/s.South India House Estates Properties Limited/A19, represented by Mariappa Nadar Rajamani, Director of M/s.South India Travels Private Limited/A20, represented by Kuppuswamy Gopalakrishnan, Sherna F.Irani/A21, Farah Bakshay/A22, Lia Gagrat/A23 and M/s.MAC Public Charitable Trust/A24, for the offences punishable under Sections 120B read with 201, 409, 420, 468, 471 and 477A of IPC and the substantive offences thereof, on 19.12.2017.

c. The accused Company, FLCIL/A5, showing false profitability and healthy growth in its income, has grabbed the public money from the Bank to the tune of Rs.273.999 crores, by submitting forged documents, during the period from 2004 to 2012. The accused Company did not repay the loan and fraudulently diverted the loan funds to various accounts and hence, the Bank has declared the Account as 'Non Performing Asset' on 31.12.2013. A1 and A2, by approving and signing bogus documents, wrongfully gained by way of dividends against the false profits. A2 was responsible for fraudulently diverting a large sum of loan funds that were sanctioned and released by the Consortium Bank to FLCIL to different bank accounts maintained in his name and in the names of his family members and M/s.Irani

Family-Maintenance Trust

d. During the course of the investigation, the Investigating Officer had issued seizure orders, dated 25.5.2016 and 16.08.2016, under Section 102 of Cr.PC to the Karur Vysya Bank Limited and the Lakshmi Vilas Bank Limited, respectively, based on which, the said Banks had frozen the respective bank accounts of Farouk Irani/A2, Sherna F.Irani/A21/ Respondent, Bakshey/A22 and Lia Gagrat/A23. After the petition filed by the Respondent/A21 for defreezing of her bank accounts was dismissed by the Additional Chief Metropolitan Magistrate, Egmore, she had filed Crl.RC.No.1039 of 2017 before this Court, which was disposed of by this Court, by order dated, 5.12.2017, with a direction, "In case the Investigating Officer has enough material to proceed against any of the accounts for forfeiture or seizure, such proceedings shall be initiated within 15 days, failing which, the concerned account holder can file a petition before the Trial Court and get their accounts defreezed on furnishing bond equal to the amount in the credit of their account as on the date of freezing."

e. In compliance of the order of this Court, dated 5.12.2017 and on receipt of the order copy on 2.2.2018, the Investigating Officer has initiated proceedings under the provisions of Criminal Law Amendment Ordinance, 1944 (herein after referred to as the Ordinance) for attachment of the bank accounts of Sherna F.Irani/A21/ Respondent and her family Members, which were frozen under Section 102 of Cr.PC. The Petitioner is in the process of obtaining necessary approval from the Competent Authority. On 9.2.2018, a Memo, intimating initiation of proceedings under the Ordinance, was submitted and the said Memo was returned by this Court, with a direction to submit a detailed reply.

f. While so, the Respondent/A21 has filed Crl.MP.No.212 of 2018, before the Additional Chief Metropolitan Magistrate, Egmore, seeking defreezing of her bank accounts, based on the order of this Court, dated 05.12.2017. The Petitioner has filed a Status Report, dated 07.03.2017, before the Trial Court, opposing the petition filed by the Respondent/A21 and intimating the proposal sent from CBI to the Ministry through proper channel. However, the Trial Court, incorrectly interpreting the order dated, 05.12.2017, by the impugned order, has erroneously allowed Crl.MP.No.212 of 2018, on the ground that the proposal sent from CBI Branch to the Ministry through proper channel shall not be treated as initiation of proceedings. Hence, this Criminal Original Petition has been filed, to quash the impugned order, dated 27.03.2018, contending that proceedings had been initiated as per the directions of this Court and hence, the relief sought for by the Respondent became infructuous and without considering the said facts, the Trial Court has passed the impugned order, which is illegal and erroneous.

3. In the counter filed by the Respondent, it is averred as follows:-

a. The freezing of the accounts was challenged by the Respondent in WP.No.20541 of 2016, which was disposed of, by order dated, 15.10.2016, directing to defreeze the accounts of the Respondent and her family Members. Against the provisions of Section 102 of Cr.PC, the Respondent has filed Crl.MP.No.304 of 2017, seeking defreezing of the accounts and a counter was also filed by the Petitioner and the said application was dismissed, by order dated, 14.7.2017. As against the same, the Respondent has preferred Crl.RC.No.1039 of 2017, before this Court.

b. During the pendency of the said Criminal Revision Case, this Court has directed the Petitioner to take inventory of the lockers, which stood in the name of the Respondent and her family members, maintained at Karur Vysya Bank, Whites Road Branch and the Petitioner has also furnished a inventory report and the Respondent was permitted to operate the said lockers. By order dated, 05.12.2017, Crl.RC.No.1039 of 2017 was disposed of, with certain directions. After having waited for more than a month for the Petitioner to take action as per the orders of this Court, dated 05.12.2017, the Respondent has filed Crl.MP.No.212 of 2018, for defreezing the accounts belonging to her and her family members. The Petitioner has also filed memo, dated 9.2.2018 and a counter, dated 20.02.2018. Since no report was filed by the Petitioner, as per the directions of the Trial Court, the Trial Court has passed the impugned order, allowing the said petition, on condition that the Respondent shall furnish bond equal to the amount in the credit of their accounts as on the date of freezing. Subsequently, the Respondent executed bonds for each of the accounts for the amount stood in the respective accounts as on the date of freezing of the accounts on 02.04.2018. Thereafter, the Respondent and her family members were also permitted to operate the said accounts by the said Banks. The amounts stood in the accounts as on the date of freezing continue to remain in the accounts and only the other amounts, which have accrued thereafter, were withdrawn.

c. There is no assertion as to the steps taken by the Petitioner in initiating the proceedings as contemplated under the Criminal Law Amendment Ordinance,1944. The Petitioner did not file any material to establish any concrete steps taken by them pursuant to the order dated, 05.12.2017. This Criminal Revision Case filed, as such, without any valid reason or ground is to be dismissed.

4. This court heard the submissions of the learned counsel on either side.

5. The learned Special Public Prosecutor for the Petitioner would contend that the investigation has revealed sufficient oral and documentary evidence to prove that the accused Company, FLCIL/A5, showing false profitability and healthy growth in its income, has grabbed public money from the

Bank to the tune of Rs.273.999 crores, by submitting fudged audited financial, false profit and loss accounts, high credit ratings and various dishonest misrepresentations made by FLCIL, its Managing Director, other Directors, Authorised Signatories, during the period from 2004 to 2012. He would submit that the accused Company did not repay the loan and fraudulently diverted the loan funds and hence, the Bank has declared the Account as Non Performing Asset on 31.12.2013. A1 and A2, by approving and signing bogus documents, wrongfully gained by way of dividends against the false profits.

6. The learned Special Public Prosecutor would further contend that A2 was responsible for fraudulently diverting a large sum of loan funds that were sanctioned and released by the Consortium Bank to FLCIL to different bank accounts maintained in his name and in the names of his family members and M/s.Irani Family-Maintenance Trust and that out of the aforesaid diverted funds, a number of fixed deposits in the names of A2 and his wife, A21 and their daughters, were opened in several banks.

7. The learned Special Public Prosecutor for the Petitioner would further submit that the authorisation for moving an application for attachment under the Criminal Law Amendment Ordinance, 1944 is vested with the Government of India and that the Petitioner, by sending a proposal to the Competent Authority at CBI Head Office, New Delhi, has complied with the directions of this Court, dated 05.12.2017 and that the Trial Court failed to note that the amount sought to be attached is the proceeds of crime and once defreezed, it would not be available for attachment and that the Trial Court, misconstruing the directions of this Court, dated 5.12.2017, erred in passing the impugned order and that since the proceedings has been initiated, the relief sought for by the Respondent became infructuous. He would further submit that Trial Court has wrongly considered the earlier order passed by this Court, in Cr.OP.No.1039 of 2015, dated 05.12.2017, wherein this Court, has stated that in case the Investigating Officer has enough material to proceed against any of the accounts for forfeiture of seizure, such proceedings shall be initiated, within fifteen days and would submit that defreezing of the accounts may not preclude them from proceeding against the Respondent/A21 under the Criminal Law Amendment Ordinance, 1944 and would seek a clarification to that effect and in such circumstances, he would pray for setting aside the impugned order.

8. The learned senior counsel for the Respondent has contended that after having waited for more than a month for the Petitioner to take action as per the orders of this Court, dated 05.12.2017, the Respondent has filed Crl.MP.No.212 of 2018, for defreezing the accounts belonging to her and her family members. He would submit that there is no assertion as to the steps taken by the Petitioner in initiating the proceedings as contemplated under the Criminal Law Amendment Ordinance,1944

and that the Petitioner did not file any material to establish any concrete steps taken by them pursuant to the order dated, 05.12.2017. He would further submit that the Respondent has executed necessary bonds to protect the interest of the Department and the Respondent/A21 and her family members have not withdrawn the amounts, which were lying in their respective accounts on the date of freezing and that even after execution of the bonds by the Respondent/A21 in all the accounts, the amounts continue to remain in their respective accounts and only with a view to harass the Respondent and her family Members, this Criminal Revision Case has been filed. He would further submit the Respondent undertakes to maintain the amounts in the accounts of the Respondent/A21 and her family members as it stood on the date of the freezing of the accounts.

9. The learned senior counsel for the Respondent has ultimately supported the impugned order on the grounds of (a) non compliance of Section 102 of Cr.PC in respect of intimation by CBI to the Respondent about freezing of the accounts, (b) non compliance of the order of this Court, dated 05.12.2017, which stipulates 15 days time to the Petitioner to take a decision whether the accounts to be frozen or not, (c) delay in the Trial Court in not filing the report and (d) no cogent reasons for freezing of the accounts and that this Criminal Revision Case filed, without any valid reason or ground, as such, is to be dismissed.

10. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned order, defreezing both joint and individual bank accounts of the Respondent/A21 and her family members.

11. Since there was an earlier order, dated 05.12.2007 made in Cr.RC.No.1039 of 2017, filed by the Respondent/A21, in respect of the same relief of defreezing of the bank accounts in question, it is not necessary to go into the facts and circumstances, once again, in detail.

12. The said Criminal Revision Case was filed by the Respondent/A21 before this Court, seeking a direction for defreezing the bank accounts and lockers, belonging to her and her family members. This Court, by order dated, 05.12.2017, has disposed of the said Criminal Revision Case, with certain directions that in case, the Investigating Officer is of the opinion that if any of the account shall be allowed to operate, the same may be communicated to the bank and the account holder and that if, in case the Investigating Officer has enough material to proceed against any of the accounts for forfeiture or seizure, such proceedings shall be initiated within 15 days, failing which, the concerned account holder can file a petition before the Trial Court and get their accounts freezed on furnishing bonds equal to the amounts in the credit of their

accounts as on the date of freezing.

13. In the mean time, the Investigating Officer has submitted a memo, intimating initiation of the proceedings under the Criminal Law Amendment Ordinance, 1944, which was returned by this Court, with a direction to submit a detailed reply, regarding the steps taken by the Petitioner, but it was done so. But, according to the Petitioner, authorisation for moving an application for attachment under the Criminal Law Amendment Ordinance, 1944 is vested with the Government of India and that the Petitioner has sent a proposal to the Competent Authority at CBI Head Office, New Delhi, in compliance of the directions of this Court, dated 05.12.2017 and hence, it can be said that as per the earlier orders of this Court, the Petitioner has initiated proceedings against the Respondent/A21.

14. The Trial Court, by the impugned order, has defreezed the bank accounts of the Respondent/A21 and her family members on condition that she shall furnish bonds equal to the amounts in the credit of their bank accounts as on the date of freezing. According to the Respondent/A21, pursuant to the directions of the Trial Court, dated 27.03.2018, on 02.04.2018, she has executed necessary bonds equal to the amounts in the credit of their accounts as on the date of freezing to protect the interest of the Department and that some of the accounts were also allowed to be operated and that she has not withdrawn the amounts, which are lying in the bank accounts, belonging to her and her family members and that even after execution of the bonds by the Respondent/A21 in all the accounts, the amounts continue to remain in their respective accounts, which facts are also stated in the counter affidavit. The learned senior counsel for the Respondent/A21 also undertook that the Respondent/A21 shall maintain the amounts in the accounts of the Respondent/A21 and her family members as it stood on the date of the freezing.

15. According to the learned Special Public Prosecutor, the Investigating Officer has enough materials to proceed against the accounts of the Respondent/A21 and her family members, for forfeiture or seizure and as stated above, proceedings are also initiated and defreezing of the accounts will not preclude them from proceeding against the Respondent/A21 under the Criminal Law Amendment Ordinance, 1944.

16. The submission of the learned senior counsel for the Respondent/A21 that the Respondent/A21 undertakes to maintain the amounts as on the date of the freezing of the bank accounts, belonging to her and her family members is recorded. Taking into consideration the said undertaking of the Respondent/A21 and in view of the above facts and circumstances, this Court is of the opinion that the impugned order passed by the Trial Court, dated 27.03.2018, defreezing the bank accounts of the Respondent/A21 and her family members needs no interference by this Court. However, the Petitioner/CBI is at

liberty to take appropriate/necessary steps under the provisions of the Criminal Law Amendment Ordinance, 1944, to deal with the assets of the Respondent/A21 and her family members, in accordance with law.

17. With the above observations, this Criminal Revision Case is disposed of. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Srcm

To:

1.Additional Chief Metropolitan Magistrate, Egmore
2.The Public Prosecutor, High Court, Madras
3.The Superintendent of Police,
Central Bureau of Investigation (CBI)
Bank Securities and Frauds Cell
36, 2nd Floor, Bellarg Road,
Bangalore 560 032

+3 cc's to Mr.R.Baskar, Advocate Sr.No.29399

Order in
Crl.RC.No.1527 of 2018

CSL/03.07.2019