Crl.RC.Nos.1508 and 1509 of 2018

A.D.JAGADISH CHANDIRA, J.

The above Criminal Revision Petitions were disposed of by this Court, by the common order, dated, 15.04.2019. The matter is posted today for being mentioned.

2. The learned counsel for the Respondents/ accused has submitted that in the order dated, 15.04.2019, a typographical error is crept in mentioning the case type and that in the order, instead of **"Crl.RC"**, it has been typed as **"Crl.OP"** wrongly and hence, the said error may be corrected wherever it occurs in the order. He would further submit that in paragraph 18 of the order dated, 15.04.2019, **"two weeks time"** granted to the Respondents/ accused to deposit the amounts may be modified into one **"within two weeks from the date of receipt of a copy of the order"** and accordingly, fresh copies may be issued.

3. Considering the said submissions, in the order dated 15.04.2019 made in Crl.RC.Nos.1508 and 1509 of of 2018, wherever it is typed as "Crl.OP", it should be replaced and read as "Crl.RC." Further, in paragraph 18 of the order, dated, 15.04.2019, **"two weeks time"** granted to the Respondents/ accused to deposit the amounts as stated and directed in the order dated, 15.04.2019, is modified into one **"within two weeks from the date of receipt of a copy of this order".** In all other aspects, the order dated, 15.04.2019 shall remain unaltered. The Registry is directed to issue fresh copies, after making necessary corrections in the order, dated 15.04.2019.

30.04.2019

Srcm

A.D.JAGADISH CHANDIRA, J.

Srcm

Crl.RC.Nos.1508 and 1509 of 2018

30.04.2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.Nos.1508 and 1509 of of 2018

The Superintendent of Police
Central Bureau of Investigation (CBI)
Bank Securities and Frauds Cell
Bangalore 560 032 Petitioner in both Crl.RCs

Vs

1. Devaki Muthiah, W/o.A.C.Muthiah
   Chennai-85 Respondent/Accused-CrRC.1508/18

2. Dr.A.C.Muthiah, Ex-Chairman,
   M/s.First Leasing Company of India Limited
   Anna Salai, Chennai Respondent/A1-Cr.RC.1509/2018

Prayer:- These Criminal Revision Petition are filed, under Sections 397 read with 401 of Cr.PC to call for the records, relating to the case in RC.No.6(E)/2015, pending before the Additional Chief Metropolitan Magistrate, Egmore and to set aside the order dated, 01.10.2018, passed by the Additional Chief Metropolitan Magistrate, Egmore, Chennai, in Crl.MP.Nos.843 and 844 of 2018, thereby defreezing the bank accounts of the Respondent/A1 in Crl.RC.No.1509 of 2018 and his wife, Devaki Muthiah, the Respondent/ accused in Crl.RC.No.1508 of 2018.

For Petitioner : Mr.K.Srinivasan, SPP-CBI

For Respondents : Mr.R.Rajarathinam

COMMON ORDER

1. These Criminal Revision Petition are filed to quash the orders dated, 01.10.2018, passed by the Additional Chief Metropolitan Magistrate, Egmore, Chennai, in Crl.MP.Nos.843 and 844 of 2018, defreezing the bank

accounts of the Respondent/A1 in Crl.RC.No.1509 of 2018 and his wife, Devaki Muthiah, the Respondent/ accused in Crl.RC.No.1508 of 2018.

2. The case of the Petitioner, as set out in the affidavits filed in support of these Criminal Revision Petitions, 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, 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 Petitioner 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.Sivaramakrishnan/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. The

Respondent/A1 and A2, while acting as Chairman and Managing Director of FLCIL, respectively, by approving and signing bogus annual statements, showing false profits and by declaring and earning wrongful gain by way of dividends against the false profits, have misappropriated the assets of the Company entrusted to them, thereby amounting to criminal breach of trust of the shareholders of the Company and all the decisions for availing enhanced credit limits from various banks including State Bank of Mysore, earlier under multiple banking arrangement and later under consortium arrangement, against primary security of all the current assets of the Company both present and future were taken and approved by the Respondent/A1 and A2. 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 17.10.2015, under Section 102 of Cr.PC to the State Bank of India, Kotturpuram Branch and the Canara Bank, Kotturpuram Branch, Chennai, based on which, the said Banks had frozen the respective bank accounts of the Respondent/A1 in Crl.RC.No.1509 of 2018 and his wife, Devaki Muthiah, the Respondent/ accused in Crl.RC.No.1508 of 2018. After the petitions filed by both the Respondent/A1 in

Crl.RC.No.1509 of 2018 and his wife, Devaki Muthiah, the Respondent/ accused in Crl.RC.No.1508 of 2018, for defreezing of their bank accounts were dismissed by the Additional Chief Metropolitan Magistrate, Egmore, they had filed Crl.OP.Nos.5286 and 5294 of 2016, before this Court, which were disposed of by this Court, by order, dated, 22.12.2017, 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) While so, both the Respondent/A1 in Crl.RC.No.1509 of 2018 and his wife, Devaki Muthiah, the Respondent/ accused in Crl.RC.No.1508 of 2018, have filed Crl.MP.Nos.844 and 844 of 2018, respectively, before the Additional Chief Metropolitan Magistrate, Egmore, seeking defreezing of their bank accounts, based on the order of this Court, dated 22.12.2017. The Petitioner herein has filed their counter affidavits, dated 22.06.2018, before the Trial Court, opposing the petitions filed by both the Respondent/A1 in Crl.RC.No.1509 of 2018 and his wife, Devaki Muthiah, the Respondent/ accused in Crl.RC.No.1508 of 2018, intimating the proposal sent from CBI to the Ministry through proper channel. However, the Trial Court, erroneously interpreting the order dated, 22.12.2017, by the impugned order, has erroneously allowed Crl.MP.Nos.843 and 844 of 2018, on the ground that there is no particulars as to what steps were taken by CBI. Hence, these Criminal Revision Petitions have been filed, to quash the impugned orders, dated 01.10.2018, contending that proceedings had been initiated as per the directions of this Court and hence, the relief sought for by both the Respondent/A1 in Crl.RC.No.1509 of 2018 and his wife, Devaki Muthiah, the Respondent/ accused in Crl.RC.No.1508 of 2018, became infructuous and without considering the said facts, the Trial Court has passed the impugned orders, which is illegal and erroneous.

3. In the counters filed by both the Respondent/A1 in Crl.RC.No.1509 of 2018 and his wife, Devaki Muthiah, the Respondent/ accused in Crl.RC.No.1508 of 2018, it is averred as follows:-

(a) The Trial Court has passed the impugned orders, allowing their petitions, on condition that both the Respondent/A1 in Crl.RC.No.1509 of 2018 and his wife, Devaki Muthiah, the Respondent/ accused in Crl.RC.No.1508 of 2018, shall furnish bonds equal to the amount in the credit of their accounts as on the date of freezing. Subsequently, the Respondent/A1 in Crl.RC.No.1509 of 2018 and his wife, Devaki Muthiah, the Respondent/ accused in Crl.RC.No.1508 of 2018 had executed bonds for each of the accounts for the amount stood in their respective accounts as on the date of freezing of the accounts on

01.11.2018 and that pursuant to the order dated, 01.10.2018, of the Trial Court, both the Respondent/A1 in Crl.RC.No.1509 of 2018 and his wife, Devaki Muthiah, the Respondent/ accused in Crl.RC.No.1508 of 2018 have withdrawn the amount and closed their accounts, dissatisfied with the service of the Bank, during November, 2018.

(b) 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, 22.12.2017. These Criminal Revision Petitions filed, as such, without any valid reason or ground are 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 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 22.12.2017 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 22.12.2017, erred in passing the impugned orders and that since the proceedings has been initiated, the relief sought for by the Respondent/A1 in Crl.RC.No.1509 of 2018 and his wife, Devaki Muthiah, the Respondent/ accused in Crl.RC.No.1508 of 2018 became infructuous. He would further submit that Trial Court has wrongly considered the earlier order passed by this Court, in Cr.OP.Nos.5286 and 5294 of 2018, dated 22.12.2017, 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 both the Respondents herein under the Criminal Law Amendment Ordinance, 1944 and would seek a clarification to that effect. He would further submit that pursuant to the order passed by the Trial Court, both the Respondent/A1 in Crl.RC.No.1509 of 2018 and his

wife, Devaki Muthiah, the Respondent/ accused in Crl.RC.No.1508 of 2018, have withdrawn the entire amount, which were standing in their accounts and have also closed the accounts and in such circumstances, he would pray for setting aside the impugned order.

7. The learned counsel for the Respondents 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 22.12.2017, both the Respondents herein have filed Crl.MP.Nos.843 and 844 of 2018, for defreezing their accounts. 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, 22.12.2017. He would further submit that both the Respondents have executed necessary bonds to protect the interest of the Department and he would further submit that Mrs.Devaki Muthiah, has not been arrayed as an accused.

8. The learned counsel for the Respondents has ultimately supported the impugned orders on the grounds of (a) non compliance of Section 102 of Cr.PC in respect of intimation by CBI to the Respondents herein about freezing of the accounts, (b) non compliance of the order of this Court, dated 22.12.2017, 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 these Criminal Revision Petitions filed, without any valid reason or

ground, as such, are to be dismissed.

9. The learned counsel for the Respondents would further submit that the Respondents have closed the accounts, being dissatisfied with the services of the Bank and not with an intention to defeat the interest of the Petitioner, however, he would submit that to show their bona fides, without prejudice to the rights of the Respondents , they are prepared to deposit the amounts equal to the amounts, which were lying in their accounts, as on the date of defreezing by way of fixed deposits and undertake to produce the fixed deposit receipts before the Trial Court, so that accumulative interest will accrue to the fixed deposits and further he would submit that since they are prepared to produce the original fixed deposit receipts, before the Trial Court, a direction may be issued to the Trial Court to permit them to renew the fixed deposits on maturity and would seek three weeks time to complete such process.

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 the accounts of both the Respondent/A1 in Crl.RC.No.1509 of 2018 and his wife, Devaki Muthiah, the Respondent/ accused in Crl.RC.No.1508 of 2018.

11. Since there was an earlier order, dated 22.12.2007 made in Cr.OP.Nos.5286 and 5294 of 2018, filed by the Respondent/A1 in Crl.RC.No.1509 of 2018 and his wife, Devaki Muthiah, the Respondent/ accused in Crl.RC.No.1508 of 2018, 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 Original Petitions were filed by the Respondent/A1 in Crl.RC.No.1509 of 2018 and his wife, Devaki Muthiah, the Respondent in Crl.RC.No.1508 of 2018, before this Court, seeking a direction for defreezing the bank accounts. This Court, by order dated, 22.12.2017, had disposed of the said Criminal Original Petitions, 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 defreezed 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 22.12.2017 and hence, it can be said that as

per the earlier orders of this Court, the Petitioner has initiated proceedings against the the Respondent/A1 in Crl.RC.No.1509 of 2018 and his wife, Devaki Muthiah, the Respondent in Crl.RC.No.1508 of 2018.

14. The Trial Court, by the impugned order, has defreezed the bank accounts of the Respondent/A1 in Crl.RC.No.1509 of 2018 and his wife, Devaki Muthiah, the Respondent in Crl.RC.No.1508 of 2018, on condition that they shall furnish bonds equal to the amounts in the credit of their bank accounts as on the date of freezing. According to the Respondent/A1 and his wife, Devaki Muthiah, pursuant to the directions of the Trial Court, dated 01.10.2018, they have 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.

15.At this juncture, the learned counsel for the Respondent/A1 in Crl.RC.No.1509 of 2018 and his wife, Devaki Muthiah, the Respondent in Crl.RC.No.1508 of 2018, would submit that the Respondent/A1 in Crl.RC.No.1509 of 2018 and his wife, Devaki Muthiah, the Respondent in Crl.RC.No.1508 of 2018, undertake to maintain the amounts, viz. Rs.1,37,50,952/- and Rs.36,54,328/- respectively, which were the amounts available in their bank accounts as on the date of freezing, as fixed deposits in a separate bank account, in any branch of the Indian Bank, Chennai and that it will be a cumulative deposit and that after opening such fixed deposits, the original fixed deposit certificates will be produced before the Trial Court and such a process shall be completed within three weeks before the Trial Court.

16.According to the learned Special Public Prosecutor, the Investigating Officer has enough materials to proceed against the accounts of the Respondent/A1 and his wife, 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/A1 in Crl.RC.No.1509 of 2018 and his wife, Devaki Muthiah, the Respondent in Crl.RC.No.1508 of 2018, under the Criminal Law Amendment Ordinance, 1944.

17. The submission of the learned counsel for both the Respondents that the Respondent/A1 in Crl.RC.No.1509 of 2018 and his wife, Devaki Muthiah, the Respondent in Crl.RC.No.1508 of 2018 undertake to deposit the amounts in fixed deposits in the Indian Bank Chennai, as on the date of the freezing of the bank accounts, is recorded. Taking into consideration the said undertaking of the Respondent/A1 and his wife, Devaki Muthiah and in view of the above facts and circumstances, this Court is of the opinion that the impugned orders passed by the Trial Court, dated 01.10.2018, defreezing the bank accounts of the Respondent/A1 and his wife, Devaki Muthiah, needs no interference by this Court.

18.In view of the above undertaking given by the Respondent/A1 in Crl.RC.No.1509 of 2018 and his wife, Devaki Muthiah, the Respondent in Crl.RC.No.1508 of 2018, both the Respondents are directed to deposit the amounts equal to the amounts, which were lying in their accounts as on the date of freezing, in any one of the nationalied Banks, i.e Rs.1,37,50,952/- by the Respondent/A1 in Crl.RC.No.1509 of 2018 and Rs.36,54,328/- by Devaki Muthiah, the Respondent in Crl.RC.No.1508 of 2018. The above amounts shall be deposited, within two weeks from the date of receipt of a copy of this order and the fixed deposit receipts shall be submitted before the Trial Court, within one week thereafter. The Trial Court shall permit both the Respondents to renew the fixed deposits on maturity, on appropriate application being filed by them and on renewal, the Respondents shall resubmit the renewed fixed deposit receipts, before the Trial Court, immediately after renewal.

19. 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/A1 in Crl.RC.No.1509 of 2018 and his wife, Devaki Muthiah, the Respondent in Crl.RC.No.1508 of 2018, in accordance with law.

A.D.JAGADISH CHANDIRA, J.

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20.With the above observations, these Criminal Revision Petitions are disposed of.

15.04.2019

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

To:

1. Additional Chief Metropolitan Magistrate, Egmore
2. The Public Prosecutor, High Court, Madras