HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.3476 of 2018

ORDER :

The petitioner is the accused in R.C.No.14(A)/2018/CBI/ACB/Hyderabad, which crime is registered, for the offence under Section 7(a) of the amended Prevention of Corruption Act 16 of 2018 (for short, 'the P.C.Act') which came into force with effect from 26.07.2018, on 07.09.2018, from the alleged suspected occurrence as per para 3 of the F.I.R. 06.09.2018 evening hours.

2. The contents of the F.I.R. show the Deputy Inspector of General of Police, CBI/ACB/Hyderabad, received written complaint on 07.09.2018 addressed to DIG, CBI, Hyderabad, by one D. Laxma Reddy, partner of M/s. Bharathi Constructions of Road No.7 of Meerpet, alleging demand of undue advantage to perform public duty dishonestly of Rs.20,000/- bribe by N.Murali, who is the petitioner herein, for clearing his pending final bill regarding his completed contract work and in this regard complainant met N.Murali two times earlier to clear it, but there was no response. On 06.09.2018, said Laxma Reddy met N.Murali and requested to clear his final pending bill, for which he demanded to pay Rs.20,000/- to process his final bill, otherwise will not process and created a problem to get the bill cleared early and further instructed Laxma Reddy to bring the said amount on 07.09.2018 evening to his office by keeping in a envelop cover and as the complainant unwilling to pay, he requested to take

action and these allegations has constituting the offence under Section 7(a) of the Act, registered the crime supra on 07.09.2018 and verification report of even date enclosed to read as part of it. Leave it as it is, there was a proceeding on 05.10.2018 by the Syndicate Bank, Rail Nilayam Branch, to the petitioner/accused herein supra, by freezing of his bank account 30462010024051 as per CBI letter Ref.No.Rc.14(A)/2018/CBI/HYD, dated 10.09.2018, by mentioning that letter received from CBI to freeze the account containing an amount of Rs.19,02,213/- until further orders and said N.Murali, can operate his account except the above mentioned amount until clearance from CBI. It is the same impugned by filing petition in Crl.M.P.No.2054 of 2018 by the petitioner/accused of the crime supra before the learned Principal Special Judge for CBI cases and the order passed operative portion reads from para 27 running in 9 pages on 04.12.2018, by the learned Principal Special Judge for CBI was in allowing the petition directing that order of CBI instructing the Branch Manager, Syndicate Bank, Rail Nilayam Branch, to freeze S.B. account of the petitioner supra be withdrawn and S.B. account stand de-frozen, permitting him to operate.

3. It is not in dispute herein with any impugnment. However, the further portion of the order reads that the petitioner is directed to invest the sum of Rs.19,02,213/- in a fixed deposit in Syndicate Bank, Rail Nilayam Branch, for a period of two years with condition that he shall not encumber the same in any manner. After investing that

amount in fixed deposit in the said Branch, directed to intimate the Court and also CBI of such investment and directed to file a memo in Court upon investing that amount in fixed deposit as stated above with copy of fixed deposit.

4. Said portion referred supra of directing to invest in fixed deposit and to submit copy of the investment in fixed deposit in proof before the Court by intimating to the CBI is the impugnment herein by the petitioner/accused with contentions that the said order of the Court including the very freezing is unsustainable, besides allowing to defreeze in ordering to invest in fixed deposit with no any statutory provision or rule or proposition and it is against the very fundamental right to life to avail his amount lying in the bank account as he likes and thereby sought for setting aside that portion of the order of the learned Principal Special Judge for CBI.

5. Sri K.Surender, learned Special Public Prosecutor, for CBI cases, Hyderabad, supported the order of the lower Court saying it is a well considered and reasoned order running in nine pages, after hearing arguments elaborately also by referring to the scope of Section 102 Cr.P.C. and the expression of the Bombay High Court in saying **Dr.Shashikant D.Karnik v. State of Maharastra**[1] and thereby there is nothing to interfere with the impugned order and sought for dismissal.

6. Heard and perused the material on record.

[1] 2008 Crl.L.J. 148

7. No doubt, police in the course of investigation from any material came to their knowledge can widen the horizons of investigation by adding any new section of law or by deleting any existing section pending investigation including by filing any memo before the concerned Magistrate/Special Judge of adding or deleting of the sections of the FIR as part of development in investigation before filing final report. To that extent, from the very wording of Section 102 Cr.P.C. in the course of investigation of any pending crime permits any police officer that can seize any property which may be alleged or suspected to have been stolen or which may be found under circumstances which creates suspicion of the commission of any offence. Though it is not the stolen property, undisputedly the freezing is from the sustainable creation of suspicion of commission of offence, without which even by invoking Section 102 Cr.P.C. even the CBI officer or other police officer cannot freeze the account. Once such is the basis to presume when the contentions raised before the lower Court if there is a suspicion to freeze the account as to the amount involved in any commission of crime, it cannot be the indefinite freezing as undisputedly, leave about within one week as per the Constitution Bench expression of the Apex Court in **Lalita Kumari vs. Government of Uttar Pradesh and others**[2], not even by any enquiry into the sustainability registered a crime adding any other section of law. It is not even in the report of the *de facto* complainant

[2] (2014) 2 SCC 1

of he paid any amount for the alleged demand of Rs.20,000/- much less the total amount freezed in the account Rs.19,02.213/- and that too the freezing order as referred supra was 10.09.2018 of the CBI. By now in the first week of February 2019, there is no any adding of section of law relating to any involvement of said amount as tainted with any offence under the P.C.Act or IPC offence. Thereby, the indefinite freezing unsustainable. The lower Court having rightly observed could not have been put any rider to investing in fixed deposit, as the party, who got the amount in his SB account or current account, can deal with as he likes including to withdraw the entire amount if he requires. Thereby, the direction to invest the said amount in fixed deposit and not to encash or to file copy of the fixed deposit receipt in Court, to that extent unsustainable and set aside, and making it clear of the defreezing is with all free hold of the amount of the petitioner to use as he likes by operation of his account forthwith.

8. Accordingly, the criminal revision case is allowed.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

8th February 2019

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