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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 2978/2019 and Crl. M.A. 38704/2019**

M/S SATKAR LOGISTICS PVT. LTD. & ANR. Petitioners

Through: Mr Sukhbir Singh, Advocate.

versus

STATE & ORS. Respondents

Through: Mr Sanjay Lao, ASC for State with
Mr Karanjeet Sharma, Advocate with
SI Ajay Kumar, PS Rajouri Garden.
Mr Gaurav Kakar, Advocate for the
complainant.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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24.10.2019

1. The petitioners have filed the present petition, *inter alia*, impugning a notice dated 09.10.2019 issued by the respondent no. 2 (SHO, P.S. Rajouri Garden) under Section 102 of the CrPC and served upon State Bank of India, Okhla Industrial Area, New Delhi for freezing of the bank account (Bank Account No. 35892345825) and upon Kotak Mahindra Bank for freezing bank account (Bank Account No. 8511364000). The said bank accounts are accounts of the petitioner no.1 company.

2. The said action has been taken by the Investigating Officer in view of the allegation that funds of petitioner no.1 are being siphoned off by

petitioner no.2 into his personal accounts and accounts of other related parties.

3. The learned counsel appearing for the petitioners states that the said action has the effect of bringing the business of petitioner no.1 company to a standstill as it can no longer operate those accounts.

4. The petitioner also challenges the jurisdiction of the Investigating Officer to issue orders for freezing bank accounts under Section 102 of the Cr.P.C.

5. The question whether the police officers have the power to freeze bank accounts under Section 102 of the Cr.P.C. was considered by the Supreme Court in *State of Maharashtra v. Tapas D. Neogy: (1999) 7 SCC 685*. It was held that the expression “property” occurring in Section 102 of the Cr.P.C. must be given a wide meaning and therefore, for the purposes of Section 102 of the Cr.P.C., the operation of bank accounts which have a direct link with the commission of an offence, would be considered as a property. In view of the above, the contention that the concerned officer does not have the jurisdiction to freeze bank accounts is unmerited.

6. In view of the above, the next question to be examined is whether the said power has been exercised properly. In terms of sub-section (1) of Section 102 of the Cr.P.C., any police officer may seize any property which is alleged or suspected to have been stolen, or which may be found under the circumstances which create suspicion of the commission of any offence.

7. The credit balance in the bank account is an asset of the accountholder

as the amount is receivable from the bank. In the present case, it is stated that the bank accounts in question have a credit balance of approximately ₹64,000/- and ₹47/- respectively.

8. It is also clear that the said bank accounts have not been discovered or found; but were in the knowledge of the parties, including that of the complainant, who is stated to be one of the Directors of petitioner no. 1 company. The learned counsel appearing for the complainant also states that he has the power to operate the accounts within a limit of ₹10,00,000/-.

9. This Court is of the view that the functioning of the company ought not to be interdicted. Freezing of the bank accounts in question would, undeniably, have an adverse effect on the functioning of the company.

10. It is relevant to note that the complainant being a Director of the petitioner no. 1 company has no right in any property of the company. He is only entitled to participate in the management of petitioner no.1 company. It is stated that the complainant is also a shareholder. It is trite law that a shareholder does not have title over the property of the company. A company is an independent entity. (See: ***Bacha F. Guzdar v. Commissioner of Income-tax, Bombay: (1955) AIR SC 74***)

11. However, if it is found that the funds of the company have been siphoned off and that the company has been cheated, an action on behalf of the company can be instituted by its shareholders. It is well settled that if a wrongdoer is in control of the company, then an action to safeguard the company can be instituted by the shareholders who are not in control. This is one of the exceptions to the rule propounded in ***Foss vs Harbottle: (1843) 2***

Hare 461. However, in the present case, it appears that an action pursuant to an allegation of an offence committed in respect of the company (thereby indirectly to protect the interest of the complainant), has resulted in interdicting the functioning of the company.

12. The disputes are *inter se* the management/shareholders of the petitioner company and this Court is informed that action has been instituted in the National Company law Tribunal (NCLT) regarding the affairs of the petitioner no.1 company. NCLT is in seisin of the disputes and has the necessary jurisdiction to take appropriate action in respect of the affairs of the petitioner no.1 company.

13. The Companies Act, 2013 is a complete code regarding the conduct of the affairs of a company. It also contains specific provisions regarding the offence where a person may have committed any act, omission, concealment or has abused his position with an intent to deceive, gain undue advantage or injure the interests of a company or its shareholders notwithstanding any wrongful gain or loss. It also provides for a machinery for the redressal of grievances.

14. In the circumstances, freezing the bank accounts of the petitioner no. 1 company by the police authorities, is not warranted. In view of the above, the petition is allowed and the notice under Section 102 Cr.P.C. issued to the State Bank of India and Kotak Mahindra Bank for freezing petitioner no.1's bank accounts, are set aside.

15. However, since it does appear that the operations of the company are required to be protected, this Court considers it apposite to direct the

petitioners not to, either directly or indirectly, transfer any funds to the personal accounts of petitioner no.2 or to any other related parties for a period of three months to enable the complainant to seek remedies as available in law. The petitioners shall also furnish a statement of all related party transactions to the Investigating Officer. The scope of the present petition is limited and this Court has refrained from examining other questions that arise in regard to the proceedings instituted by the complainant.

16. As it is apparent that the disputes in the case are management disputes between the shareholders. The complainant is also at liberty to institute appropriate proceedings, if not already done, in this regard.

17. The petition is disposed of in the aforesaid terms. The pending application is also disposed of.

18. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

OCTOBER 24, 2019
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