IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 03.09.2019

\+ **CRL.A.177/2018 & CRL.M.A. 2794/2018 & 2796/2018**

FINANCIAL INTELLIGENCE UNIT - IND ..... Appellant

Versus

KOTAK MAHINDRA BANK ..... Respondent

Advocates who appeared in this case:

For the Appellant: Mr Satish Aggarwala, Advocate.

For the Respondent: Ms Jagriti Ahuja, Mr Ateev Mathur and Mr Amol Sharma, Advocates.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The Financial Intelligence Unit - Ind, Department of Revenue, Ministry of Finance (appellant – hereafter 'FIU') has filed the present appeal, under Section 42 of the Prevention of Money Laundering Act, 2002 (hereafter 'PMLA'), impugning an order dated 28.06.2017 (hereafter 'the impugned order') passed by the Appellate Tribunal, Prevention of Money Laundering Act (hereafter 'the Appellate Tribunal'). By the impugned order, the Appellate Tribunal has set aside the order dated 04.09.2015 passed by FIU imposing a penalty of ₹3 lakhs on the respondent (known as 'ING Vysya Bank Limited' at

the material time), on account of its failure to report attempted suspicious transactions, as required under the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (hereafter 'the Rules').

2. Although the Appellate Tribunal rejected the respondent's contention that there was no suspicious transaction as defined under Rule 2(g) of the Rules; it accepted the contention that the matter relating to the alleged violation stood closed by the issuance of a warning by the FIU in terms of its letter dated 18.09.2014. The Appellate Tribunal held that the matter having been closed with a direction to be vigilant, there was no occasion for the FIU to, thereafter, impose any fine. It held that the order dated 04.09.2015 was an afterthought and accordingly, set aside the said order.

3. The appellant contends that the FIU's letter dated 18.09.2014, issuing a warning and calling upon the respondent to be vigilant in future, did not relate to the failure of the respondent bank to report suspicious transactions, which were the subject of a sting operation conducted by journalists working for a media portal – cobrapost.com (hereafter 'Cobrapost'). It is contended on behalf of the appellant that the Appellate Tribunal has grossly erred in not appreciating that the warning letter dated 18.09.2014 was issued on account of the failure on part of the respondent bank to comply with the reporting obligations in respect of certain other transactions.

4. In view of the above, the limited controversy that falls for consideration of this Court in this appeal is whether the Appellate Tribunal had erred in proceeding on the basis that the letter dated 18.09.2014 was issued by the FIU in respect of failure on the part of the respondent to report suspicious transactions, stated to have been attempted by journalist of Cobrapost, as a part of the sting operation.

5. The above controversy arises in the following factual context: -

5.1 During the period between December, 2012 and February, 2013, reporters from Cobrapost visited three branches of the respondent (then known as 'ING Vysya Bank Limited') located in Hyderabad, Chandigarh and Kolkata. The said reporters met certain officials/employees of the respondent bank and conveyed their interest to launder large amounts of black money belonging to "a minister". The conversations of the journalists and the officials of the banks were recorded. The conversations, *inter alia*, related to opening of the accounts for depositing monies and for laundering the same by investing it in insurance schemes. The conversation also included the undercover reporters evincing their intention to hire lockers for storing currency. It is alleged that the conversations clearly indicate that the bank officials of the respondent bank were willing to be a party to and facilitate such transactions. The said conversations – which the FIU has held to be suspicious transactions within the meaning of Rule 2(g) of the Rules – were not reported. The FIU has held that not reporting such transactions constitutes violation of the respondent bank's reporting obligations under the Rules.

5.2 The sting operation was given due publicity by Cobrapost. This was taken note of by the FIU. And, on 10.07.2013, the Deputy Director, FIU sent a letter calling upon the respondent to provide certain information including the "*details of roles & responsibilities assigned to all the officials identified in the Cobrapost sting operation.*".

5.3 The respondent bank responded to the aforesaid letter on 05.08.2013 and forwarded the information as sought for by the FIU. It is relevant to state that the FIU had specifically called upon the respondent bank to report as to whether it had incorporated the alerts as finalized by the International Bar Association (IBA) working group, in its Anti-Money Laundering (AML) system. In response to the said query, the respondent bank communicated that it had initiated the implementation of eighty-eight alert indicators as provided in the IBA Guidelines issued in March, 2012. The FIU also called upon the respondent bank to give details as to the Suspicious Transaction Reports (STRs) submitted in relation to the sting operation.

5.4 Thereafter, on 27.01.2014, the FIU issued a show cause notice under Section 13 of the PMLA alleging non-compliance of the provisions of Section 12 of the PMLA. It is alleged that STRs in relation to the attempted transaction, as reported by Cobrapost, amounted to violation of Section 12(b) of the PMLA, read with the Rules.

5.5 The said show cause notice was followed by a letter dated 03.02.2014, whereby the respondent bank was called upon to furnish further analysis. It is clear that the said letter was in connection with the matter relating to the sting operation conducted by Cobrapost, as the subject of the said letter expressly indicated as such.

5.6 The respondent bank responded to the letter dated 03.02.2014 by a letter dated 21.02.2014 and provided the details and analysis of the various transactions as sought for by the FIU. Thereafter, on 26.02.2014, the respondent bank sent a letter in response to the show cause notice dated 27.01.2014. The respondent bank informed the FIU that it had investigated the matter so as to ascertain the facts and veracity of the video recording posted by Cobrapost. It stated that the video had also been subjected to forensic examination by an independent agency and it was confirmed that the video posted by Cobrapost was "pre-edited". The respondent bank also stated that the video recording had been edited and extracted by Cobrapost with a *mala fide* intention to create perception in the minds of the viewers and public at large. The respondent bank contended that only certain inquiries were made and no concrete act was committed or admitted by any of the individuals and therefore, the respondent bank did not deem it necessary to file STRs in respect of the enquiries made by the undercover reporters of Cobrapost.

5.7 In response to the respondent bank's request for a personal hearing, the FIU sent a letter dated 25.03.2014 acceding to the request and scheduling a hearing on 15.04.2014.

5.8 Thereafter, on 15.04.2014, a personal hearing was granted to the respondent bank. During the course of hearing, certain queries were raised and the respondent bank responded to the said queries by a letter dated 28.04.2014.

5.9 Thereafter, on 18.09.2014, the FIU issued a letter advising the respondent bank to be more vigilant and exercise caution in future by making the necessary modifications in strengthening PMLA related procedures. The respondent bank was also warned that in the event of reoccurrence of lapses, the FIU would be constrained to initiate complaint proceedings against the respondent bank and the persons responsible, in accordance with Section 13 of the PMLA.

5.10 Almost a year thereafter, the Director, FIU passed an order dated 04.09.2015, thereby imposing a penalty of ₹3 lakhs on the respondent bank. Aggrieved by the same, the respondent preferred an appeal before the Appellate Tribunal, which was disposed of by the impugned order.

Submissions

6. Mr Aggarwala, learned counsel appearing for the FIU contended that a plain reading of the letter dated 18.09.2014, indicates that it was with respect to failure on the part of the respondent bank to file STRs covering seventy-nine transactions in the year 2012-13, within time. He submitted that the said letter had no connection with the matter relating to the sting operation conducted by Cobrapost. He

submitted that a reference to the sting operation by Cobrapost, as the subject of the said letter, was an inadvertent mistake.

7. Next, he contended that the said letter was not issued by the Director, FIU but by the Additional Director, who was not authorized to pass any such order under Section 13 of the PMLA as the said powers were vested only with the Director, FIU.

8. Ms Jagriti Ahuja, learned counsel appearing for the respondent bank countered the aforesaid submissions.

Reasons and Conclusion

9. At the outset, it is important to note that all communications as noticed above bear a reference to the file numbered as F25-1/2013-FIU-IND. It is apparent from the above that the said communications were relating to a single proceeding and not separate matters, as is contended on behalf of the FIU.

10. As noticed above, the first communication issued by the FIU, after the conversations recorded during sting operation were placed in public domain, was issued on 10.07.2013. It called upon the respondent bank to furnish certain information. It is relevant to note that the subject of the said communication was stated to be: 'Sting operation by Cobrapost – Alleged Money Laundering in banks – Reg'. Extensive information was sought in terms of the annexure appended to the said communication. This included information as to how many alerts were generated during the period 01.04.2012 to 28.02.2013 on

account of specified indicators in the branches involved in the sting operation. Several queries were raised in respect of the assistance and the Anti-Money Laundering (AML) procedures incorporated by the respondent bank in its system.

11. The appellant responded to the same and had provided the information as sought. Thereafter, the FIU had issued a show cause notice alleging contravention of Section 12(b) of the PMLA, read with the Rules. Concededly, the said show cause notice was issued in respect of suspicious transaction as reported by Cobrapost. The said show cause notice was followed by another letter dated 03.02.2014 sent by the FIU. This letter was also in reference to the sting operation by Cobrapost as is evident from the fact that the subject of the letter expressly indicated so. Further, the said letter was issued in reference to the earlier letter dated 10.07.2013 issued by the FIU and the respondent's response thereto. Thus, there could be no doubt that this letter was also in connection with the controversy regarding alleged violation of Section 12 of the PMLA on account of non-reporting of the suspicious transactions, which were the subject matter of the sting operation by Cobrapost.

12. Thereafter, the respondent bank was afforded a personal hearing on 15.04.2014. Concededly, this hearing was also in respect of the Cobrapost sting operation. This is also clear from the notice dated 25.03.2014, fixing the personal hearing. The said notice clearly indicates that it was in respect of the show cause notice issued for non-compliance of Section 12 of the PMLA.

13. The minutes of the hearing held on 15.04.2014 has been placed on record. The same indicates that the respondent bank was asked to file a written response in respect of certain questions, which are set out below:-

> "1. If the Bank had in place on the details of the incidents, guidelines for staff to report attempted transactions?
>
> 2. Whether these guidelines guided the staff to distinguish between an attempted transaction and mere enquiry, a distinction made in the hearing?
>
> 3. Whether any alerts had been raised by the staff regarding these incidents to the higher levels, including the Principal Officer?
>
> 4. Whether the Bank employees had admitted to the conversation recorded in the Cobrapost's CD?
>
> 5. Whether the Banks internal inquiries had found any violation by the concerned staff?"

14. Indisputably, the said questions were raised in connection with the said show cause notice dated 27.01.2014, as the personal hearing was granted in respect of the said notice. The respondent bank had, by a letter dated 28.04.2014, forwarded its response to the questions as set out above.

15. The FIU had, thereafter, issued a letter dated 18.09.2014, issuing a warning to the respondent bank and directing it to be vigilant in future. It is relevant to note that the letter dated 18.09.2014 also

referred to the respondent's letter dated 21.02.2014. As noticed above, the letter dated 21.02.2014 had been sent by the respondent bank in response to the queries raised by the FIU by its letter dated 03.02.2014. The said letter dated 03.02.2014 was issued by FIU in reference to the letter dated 10.07.2013, which in turn was issued pursuant to the sting operation publicized by the Cobrapost. A plain reading of the letter dated 03.02.2014 also clearly indicates that it was issued in respect of the sting operation conducted by Cobrapost.

16. In view of the above, there is no doubt that the warning letter dated 18.09.2014 was issued by the FIU in respect of the alleged violation of Section 12 of the PMLA, read with the Rules. The subject matter of the allegations included the internal control systems and failure to submit the STRs in relation to the sting operation conducted by Cobrapost. It is clear from the communications that the sting operation conducted by Cobrapost had set in motion an inquiry by the FIU which was not only limited to non-reporting of the transactions, which were subject matter of the sting operation, but also an extensive examination into the internal control system and anti-money laundering procedures established for compliance of the statutory obligations by the respondent. Given the manner in which the inquiry was conducted, there is no scope for separating the allegation relating to non-reporting of transactions, which were subject matter of the sting operation and the systems put in place by the respondent bank for compliance with its reporting obligations. Thus, there is merit in

the respondent's claim that the letter dated 18.09.2014 had closed the entire matter by the issuance of a warning.

17. In this view, this Court finds no infirmity with the decision of the Appellate Tribunal holding that the order dated 04.09.2015 was an afterthought and had been issued much after the FIU had closed the proceedings by issuing a warning letter. Having issued a warning to the respondent and the respondent having accepted the same, there was no occasion for the FIU to pass the order dated 04.09.2015.

18. The contention that the letter dated 18.09.2014 is unauthorized as the Additional Director, FIU is not authorized to impose any penalty or issuing a warning, is also unsustainable. A plain reading of the said letter indicates that the same was issued with approval of the Director, FIU, who is the designated authority for imposing a fine under Section 13 of the PMLA.

19. In view of the above, the appeal is unmerited and is, accordingly, dismissed. The pending applications are disposed of.

VIBHU BAKHRU, J

SEPTEMBER 3, 2019
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