IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.533 OF 2020

Mohammad Ramzan Mohammad
Hanif Shaikh ... **Petitioner**
Versus
Tamilnadu Mercantile Bank & Anr. ... **Respondents**

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Mr.Gopal A. Ozalwar, Advocate for the Petitioner.

Mr.R.M.Pethe, the Additional Public Prosecutor for the Respondent/State.

Adv.Nupur Awasthi i/b. M/s.Consulta Juris, Advocate for the Respondent No.1/Tamilnadu Mercantile Bank.

Mr.Suresh G. Padvi, PI, EOW, Banking II is present in person.

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CORAM : A.M.BADAR J.

DATED : 29th JANUARY 2020.

ORAL JUDGMENT :

1 Heard.

2 Rule. Rule made returnable forthwith. Heard finally by consent of parties.

3 By this petition, the petitioner is challenging the Order dated 14/03/2018 passed by the learned Additional Sessions Judge, Greater Mumbai in Revision Petition bearing No.972 of 2017 filed by the State of Maharashtra, for challenging the Order dated 24/08/2017 in Criminal Case No.793/Misc./2017 below the application for de-freezing the account passed by the learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai.

4 Facts in brief are thus :

Crime No.68 of 2017 for the offences punishable under Sections 420, 465, 467, 468, 471 and 120B of the Indian Penal Code came to be registered against the petitioner and other co-accused with Police Station Paydhuni, Mumbai in pursuant to the FIR lodged by the Algarswami Ramesh, Chief Manager of Tamilnadu Mercantile Bank Ltd. Mandvi, Branch Mumbai. Subsequently, papers of that Crime came to be transferred to the Economic Offence Wing of the State of Maharashtra and it came to be re-registered as Crime No.30 of 2017. During the course of investigation of that crime, current account of firm M/s.Race Enterprises owned by the petitioner came to be freezed by the Economic Offence Wing of the Police Department. Feeling aggrieved by this act on the part of the police, the petitioner herein moved an application for de-freezing that account. It came to be registered as Case No.793/Misc./2017. After hearing the parties including the First Informant, the learned Additional Chief

Metropolitan Magistrate, 47th Court, Esplanade, Mumbai on 24/08/2017 was pleased to allow that application by directing de-freezing the current account bearing No.066150050801416 in the name of Race Enterprises with Tamilnadu Mercantile Bank Ltd., Mandvi, Mumbai with a further direction that the applicant i.e. petitioner herein can operate his bank account and conduct his business smoothly.

5 Feeling aggrieved by this Order, the State of Maharashtra preferred Criminal Revision Application bearing No.972 of 2017. After hearing the parties, the same came to be partly allowed by impugned Judgment and Order dated 14/03/2018 by the learned Additional Sessions Judge, Greater Mumbai. The impugned Order of de-freezing the subject current account of M/s.Race Enterprises owned by the petitioner came to be maintained, but a condition came to be imposed that the petitioner herein shall furnish a bank guarantee of the like amount before the learned trial Court. Feeling aggrieved by this direction, the petitioner is before this Court.

6 Heard the learned Counsel appearing for the petitioner. He argued that both Courts concurrently held that the petitioner's account needs to be de-freezed and he be permitted to operate his account. However, in submission of the learned Counsel for the petitioner, the learned Revisional Court by exercising his revisional jurisdiction arbitrarily had imposed onerous condition which will

ultimately result in losing the entire amount in the deposit with the Tamilnadu Mercantile Bank Ltd. In his submission, the petitioner will have to keep entire amount in balance with the bank giving bank guarantee as directed by the Revisional Court and apart from that he will have to spend recurring charges of the bank guaranty till disposal of the matter. This, in submission of the learned Counsel for the petitioner would virtually result in not getting a single pie to the petitioner by the time the matter is disposed of by the concerned Court. His entire amount will be spend for paying charges of the bank guaranty.

7 As against this, the learned Additional Public Prosecutor argued that unconditional Order of the learned trail Magistrate came to be corrected in revisional jurisdiction by the Additional Sessions Judge by imposing suitable condition so as to see that the amount in the account of the petitioner is secured.

8 I also heard the learned Counsel appearing for the respondent No.1/Bank. She took me through the pleadings in the Revision Petition by the State and submitted that the contention of the petitioner that his signature is not matching is incorrect. By taking me through the say given by the petition in the Revision Petition filed by the State, the learned Counsel for the respondent No.1/Bank submitted that the petitioner came to know about transfer of funds when he visited the bank.

9 At this juncture, it is apposite to note that the respondent No.1/Bank never challenged the Order passed by the learned trial Magistrate on 24/08/2017 by taking recourse to the appropriate remedy provided by the law. It was challenged by the State by filing the Revision Petition bearing No.972 of 2017 and the State has chosen not to array the Tamilnadu Mercantile Bank Ltd. as a party respondent to the Revision Petition. However, as the petitioner while challenging the revisional Order has added the said Bank as party respondent, I have chosen to hear the learned Counsel for the said Bank while deciding this petition.

10 It is well settled that normally the revisional jurisdiction should be exercised in rarest of rate cases when there is glaring defects of law or manifest error of procedure which ultimately result in miscarriage of justice. The discretionary Order cannot be varied by exercising revisional jurisdiction unless it is shown that the discretion so exercised is perverse or capricious. Keeping in mind these principles of scope of revisional jurisdiction, let us now examine whether the revisional Order suffers from illegal or perverse exercise of discretion.

11 The petitioner was maintaining the current account with the respondent No.1/Tamilnadu Mercantile Bank Ltd. and he was running the business of selling kitchen appliances. He was informed that an amount of Rs.1,26,60,258/- came to be debited to his current account. The petitioner complained about this fact

to the respondent No.1 Bank and ultimately that amount again came to be credited to his current account.

12 Subsequent to this event, it is seen that First Informant Algarswami Ramesh lodged First Information Report on 11/03/2017, which resulted in registration of the Crime in question which was ultimately transferred for investigation to the Economic Offence Wing of the State which ultimately freezed the current account of the petitioner. The learned trial Court decided the issue in favour of the petitioner by giving a specific finding that there is no ground to keep the account freezed and ultimately ordered for de-freezing the account.

13 Perusal of the impugned Order passed by the Revisional Court goes to show that the very same finding came to be recorded by the Revisional Court. Observations of the Revisional Court can be found in paragraph 15 of the impugned Order. The Revisional Court recorded categorical findings that the petitioner, who is account holder, is entitled to get his account de-freezed and he is entitled to have the amount in the credit balance in his account. After recording such observations, the learned Revisional Court further gave a finding that the said Court is not finding any illegality in the impugned Order passed by the trial Magistrate. In normal course, with such finding, the Revisional Court ought to have dismissed the Revision Petition. However, the Revisional Court went ahead and observed that in future, if any

person claims the amount, then care ought to have been taken. With this observation, which is based on surmises and conjectures, it directed the petitioner to furnish bank guaranty.

14 Once the Revisional Court has found that the Order impugned before it does not suffer from any error of law then there is no alternative with it but to dismiss the Revision Petition. Imposition of condition of bank guaranty, as stated by the learned Counsel for the petitioner, involves deposit of similar amount in the bank providing the bank guaranty. The person availing services of bank guaranty is also required to pay recurring charges to the bank furnishing such bank guaranty. In the light of concurrent findings by both the Courts below that the petitioner is entitled to get his account de-freezed and to use the amount deposited in his current account, imposition of such condition by the Revisional Court certainly amounts to illegality and perversity. Interest of justice could be served if the petitioner is directed to furnish indemnity bond of the amount in balance in his current account with the respondent No.1 Bank. The learned Counsel for the petitioner makes a statement at bar that at the conclusion of the trial if any, if ultimately he is found to be dis-entitled for the said amount, that amount shall be refunded by him to the concerned person found entitled for the same.

15 In this view of the matter, the following Order :

ORDER

(i) The petition is partly allowed by deleting the condition of the bank guaranty imposed by the Revisional Court by impugned Order dated 14/03/2018 and by directing to the petitioner to forthwith furnish an indemnity bond for the amount in credit balance in his subject current account maintained by the respondent No.1 Bank, before the learned trial Court.

(ii) Rest of the Order of the Revisional Court is maintained.

(ii) The Petition is accordingly disposed of.

(A.M.BADAR, J.)

Raju D. Gaikwad

Digitally signed by Raju D. Gaikwad
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