IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1502 OF 2021

1. Tanveer Tahir Ali Shaikh
2. Sanjay Kapoor Vaishnav
3. Vyankata Chalam Mariappa ...Petitioners

Versus

1. Poorva Satish Ghadigaonkar
2. Ramesh Chander Jindal
3. Sandip Suryakant Sagare
4. Pradeep Kumar V.
5. Balraj Vitthal Ganji
6. Rahul Subhash Chhajed
7. Rajesh Kumar Naresh Prasad Das
8. Sanjana Nayan Mehta
9. Narayan Anantkumar Bhowmick
10. Sandeep Dattu Gadade
11. Amit Vinaychandran Pallath
12. Dinesh Dadu Bansode
13. Alpesh Madhukar Kumbhar
14. Prakash Mishra S/o. Surapati Mishra
15. Rakesh Kumar S/o. Madan Prasad
16. Deepak Kumar Chaudhari S/o. Bhavanbhai Chaudhari
17. Dr. Mukesh Dhanraj More
18. Lokesh Kumar Singhal S/o. Jagdish Prasad Singhal
19. Sumit Kumar Sanjay Sharma
20. Umesh Bhaurao Bhakane
21. U. Gyana Prakash
22. Rajesh Kumar N. P. Das
23. The State of Maharashtra Through DCB CID UNIT-III
24. Sushil Naidu
25. Ravi Shankar Sharma
26. Sharad Thussu
27. Manjit Pravinkumar Borooah
28. Arun Daulat Karbele ...Respondents

….

Mr. S. Rajagopalan, Manish Varma, Surbhi Soni-Gawaskar, Mampy Karmarkar, Tanveer Nizam i/by MGV Associate, Advocate for the Petitioners.

Mr. Jitendra Mishra i/by Mr. Ajay Dube, Advocate for Respondent Nos. 5, 7, 14, 17, 18, 22, 24.

Mr. Manoj Bachate, Advocate for Respondent Nos. 8, 25 to 28.

Mr. Avnendra Kumar Advocate for the respondent No.15.

Mr. Jitu Mishra, Advocate for the respondent No.19.

Mr. S. R. Agarkar, APP for the Respondent – State.

....

CORAM : PRAKASH D. NAIK, J.
DATE : 26th SEPTEMBER, 2022

PC :

1. The petitioners are aggrieved by orders dated 10.09.2020, 22.09.2020, 31.010.2020, 08.12.2020, 14.12.2020 and 24.12.2020 passed by the Court of learned Additional Chief Metropolitan Magistrate, Esplanade, Mumbai in C.C. No.552/PW/2018 arising out of in C.R. No.41 of 2018 investigated by DCB CID Unit-III and C.R. No.188 of 2018 registered with Matunga Police Station.

2. The petitioners has pleaded in this petition as follows:-

(i) The petitioner Nos.1 to 3 are engaged in the business of training and providing technical assistance to the respondents (Original Complainants) on Mobile Forex Online Trading Platforms such as Meta Trader-4 (MT-4) and similar Online Trading Platforms to enable the respondents to trade in Foreign Exchange directly via browser with reliable date protection without any interference by the petitioners.

(ii) The respondent Nos. 1 to 22 have instituted return of property proceedings against the petitioners before the Court of learned Additional Chief Metropolitan Magistrate, Esplanade, Mumbai. Crime was registered with Matunga Police Station vide C.R. No. 188 of 2018 which was subsequently investigated by DCB CID Unit-III vide C.R. No.41 of 2018. The proceedings are filed before the aforesaid Court vide C.C. No. 552/PW/2018 for offence punishable under Sections 420, 468, 471 read with 34 of the Indian Penal Code and Sections 66-A, B, 66-D of the Information Technology Act.

(iii) The respondent Nos. 1 to 22 had preferred application for return of property which were numbered as Misc. Application No. 2206 of 2019, Misc. Application No.2208 of 2019, Misc. Application No.1260 of 2019, Misc. Application No.1822 of 2019, Misc. Application No.1823 of 2019, Misc. Application No.3028 of 2019, Misc. Application No.553 of 2019, Misc. Application No.1565 of 2019, Misc. Application No.1662 of 2019, Misc. Application No.1849 of 2019, Misc. Application No.1951 of 2019, Misc. Application No.2039 of 2019, Misc. Application No.2040 of 2019, Misc. Application No.1529 of 2020, Misc. Application No.1530 of 2020, Misc.

Application No.1550 of 2020, Misc. Application No. 1390 of 2020, Misc. Application No.1392 of 2020, Misc. Application No.1421 of 2020, Misc. Application No.1551 of 2020, Misc. Application No.1552 of 2020 and Misc. Application No.1422 of 2020. Various orders were passed by aforesaid Court in respect to the applications preferred by the respondents whereby the cash amount has been directed to be returned to them. The petitioners have challenged those orders in this petition.

3. Learned Advocate for the petitioners submitted as follows:-

(a) The orders passed by learned Magistrate were contrary to law. The respondents were not entitled for return of the said amount.

(b) The learned Magistrate vide order dated 23.01.2020 directed the Investigating Officer to deposit Rs. 5,17,34,468.50/- (Rupees Five Crore Seventeen Lakhs Thirty-Four Thousand Four hundred Sixty-Eight and Fifty Paisa Only) in the Court. The petitioners are in the business of providing training and technical assistance to individual traders on Mobile Forex Online Trading Platforms such as

Meta Trader-4 (MT-4) and similar online trading platforms to enable individual traders to trade in foreign exchange directly via browser with reliable date protection without any interference by the accused.

(c) Upon downloading the Meta Trader-4 App, the respondents were provided 2 ID's and passwords i.e. one for training on demo platform and one on Live Trading Platform. Upon completion of the training, the respondents relying upon newly acquired skill proceeded to place bets on Forex movement to USD Vs. Euro, USD Vs. CHS, USD Vs. Yen, USD Vs. GBP etc. The amount so paid by the respondents was reflected on the MT-4 live trading of the respondents and they used to trade/bets in foreign currencies as per their choices.

(d) Initial amount of USD 100 was solely for training and upon the respondents acquiring competency and skill to trade on the MT-4 platform, the accused had no control in the Live Foreign Trading. The amount seized from 16 Bank Accounts belonging to them is neither unlawful nor obtained by dishonest means. The petitioners are authorized brokers of National Stock Exchange and competent to train to enable respondents for dealing in Foreign Exchange.

(e) The learned Magistrate has mechanically passed the orders on the applications preferred by respondents without directing the parties to establish their claim before the Competent Civil Court. Reliance is placed on the decision in the case of Bharat Sanchar Nigam Limited Vs. Suryanarayan & Ors.[1]

(f) Learned Magistrate overlooked the fact that charge-sheet has been filed and amount has been deposited in the Court. The Court ought not to have entertained the claims of the respondents under Section 457 of Cr.P.C. Reliance is placed on the decision in the case of D. Rajalingam Vs. V. Venkata Ramachary and Anr.[2]

(g) In cases of return of property under Section 451/457 of Cr.P.C., the Court always insist on indemnity bond and solvent sureties to ensure that in the event of acquittal of the accused, they would be entitled to possession of the amount so recovered. The respondents are in possession of the amount and there is likelihood that they may not be

1 (2020) 12 SCC 637
2 (1996) 2 ALD (Cri) 868

available at the appropriate time. There is every likelihood of trial getting prolonged. The petitioners have relied upon the decision in the case of *Tulsi Rajak Vs. State of Jharkhand*[3], *Kaushal Kumar Srivastava Vs. State of Jharkhand*[4] and *Sunderbhai Ambalal Desai Vs. State of Gujarat*[5].

(h) The learned Magistrate ought not to have decided the ownership of monies seized from the accused and deposited in the Court under Section 457 of Cr.P.C. The petitioners relied upon the decision in the case of *Bharat Heavy Electricals Ltd. Vs. State*[6].

(i) The accused had opposed the applications on the ground that the respondents had invested amount for trading in Online Forex Trading Platforms (MT-4) and they have traded the amount and the trading accounts of respondents are not available with the petitioners and which has been confiscated and seized by Police. It is difficult to ascertain whether the seized money belong to the respondents or whether they had suffered losses in trading hence the respondents were not entitled to return of money.

3 2004 AIR Jhar R 1347
4 (2010) 3 AIR Jhar R 468
5 2003 SCC (Cri) 1943
6 1981 Cr. LJ 1529

(j) The Investigating Officer in his reply reiterated the contents of the FIR and charge-sheet and primarily took a stand that the respondents had transferred the money to petitioners through Pay U Money and that the accused did not invest the money in foreign trading and instead apportioned the money for their personal use.

(k) The respondents had admitted to Forex Trading on Meta Trader-4 trading platform and they also admitted that they had earned profits on Forex Trading and withdrawn the same.

(l) The Investigating Officer has refrained from producing documents pertaining to trade transactions on Meta Trader-4 platform by the respondents. It is supported by respondent Nos. 18 that the individual trader always had an opportunity to withdraw their money whenever they desired subject to reconciliation of their Foreign Trading Accounts on MT-4. The respondent No.18 has admitted that he had withdrawn Rs.2000 dollars from his investment but continued to trade.

(m) The accused deposited Rs.4,40,00,000/- (Rupees Four Crores and Forty Lacs Only) as refundable security deposit for a period of 5 years with Mr. Chandulal B. Kubadia and Mr. Alkesh C. Kubadia under the Leave and License Agreement dated 30.12.2017 for property situated at 202, 2nd Floor, Palai Plaze, Dadar(E.), Mumbai. The accused deposited Rs. 2,10,00,000/- (Two Crores and Ten Lacs Only) as refundable security deposit for a period of 5 years with Mr. Hitesh C. Kubadia under the Leave and License Agreement dated 21.12.2017 for property situated at 202, 3nd Floor, Palai Plaza, Dadar (E), Mumbai. Under the Deed of Cancellation dated 01.03.2019, Mr. Hitesh C. Kubadia cancelled the Leave and License Agreement dated 21.12.2017 and returned Rs.1,87,00,000/- (Rs. One Crore and Eighty-Seven Lacs Only). Under the Deed of Cancellation dated 01.03.2019, Mr. Chandulal B. Kubadia and Mr. Alkesh C. Kubadia cancelled the Leave and License Agreement dated 21.12.2017 and returned the amount of Rs.3,90,00,000/- (Rs. Three Crores and Ninety Lacs Only).

(n) The Police have failed to establish that Rs.5,77,00,000/- are proceeds of crime. The deposit of Rs.6,60,00,000/- (Rs. Six Crore and Sixty Lacs Only) made by the petitioners is from self-earned money prior to the date of alleged crime. The petitioners have declared the amount of Rs.6,60,00,000/- (Rs. Six Crore and Sixty Lacs Only) in their Income Tax Returns for the corresponding year. The amount of Rs.5,17,34,468.50 (Rs. Five Crore Seventeen Lakhs Thirty-Four Thousand Four Hundred Sixty-Eight Fifty Paisa Only) is deposited before the Court of learned Magistrate and there is substantial amount more than of Rs.3,00,00,000/- (Rs. Three Crores Only) which can be made available to the respondents after conclusion of trial and subject to conviction of accused.

(o) The respondents had incurred losses in trading for which the petitioners are not responsible.

(p) The petitioners be permitted to withdraw the amount of Rs.5,77,00,000/-. The impugned order passed by learned Magistrate be set aside.

4. The respondent No. 18 has filed affidavit-in-reply. The respondent No.18 and 24 has filed written submissions.

5. Learned advocate for the respondents submitted that there is no infirmity in the orders passed by learned Magistrate. The accused are not entitled for the amount

deposited in the Court and directed to be returned to the respondents. The respondent No.18 is the investor/victim/ complainant/witness in C.C. No.552/PW/2018. The petitioners were carrying online business in the name and style “Capital Trade” in the Forex Trading by making bogus company which was not registered under the provision of Company Act. The petitioner No.1 was the Director and petitioner Nos. 2 and 3 were working in the capacity of the merchants of the Forex Trading in the Company. They gave advertisement on the website as a trader for Forex Trading. The respondent No.18 came across the advertisement about Foreign trading as traders of international market given by capital trade. The respondent No.18 clicked the link of website and which was represented to him by person, who contacted him, who was broker of international trading market having head officer in Colombo and they provide trading platform in the Forex Trading by way of META TRADER-4 (MT-4) Application (APP). The respondent No.18 invested huge amount. The *modus operandi* was that during the business, the respondent No.18 was being shown always in losses in his business account and to recover the loss. He continuously used to deposit the amount in the account of accused as per instructions of account manager.

The respondent No.18 took loan from the Bank to comply the demand of company. The respondent No.18 then learnt about FIR being registered against the accused. The application was preferred before the Court of learned Magistrate. There is no infirmity in the orders passed by learned Magistrate. There are several investors, who had invested the amount. Learned advocate for respondents further submitted that the Investigating Officer after verifying correctness of the claim filed reply to each applications providing details about amount belonging to each applicants therein based on the documentary evidence like statement and documents produced by Pay U Money. The claim of the petitioners is false. The return of property under Section 451/457 of Cr.P.C. is an interim major. Reliance is placed on the decision of Supreme Court in the case of Sunderbhai Ambalal Desai Vs. State of Gujarat (supra), decision of Kerala High Court in the case of V. Suresh Serve Vs. State of Kerala delivered in Criminal M.C. No. 6554 of 2019[7] and decision of this Court in the case of Narerndra Dejoo Shetty Vs. Saumyalata Shyama Shetty Indian Inhabitant & Another delivered in Criminal Application No.1160 of 2015[8].

7 CDJ 2020 Ker HC 532
8 CDJ 2020 BHC 349

6. Learned APP submitted that the FIR was registered for offences punishable under Sections 420, 468, 471 read with 34 of the Indian Penal Code and Sections 66-A, B and C of the Information Technology Act. The accused had cheated the investors. Invested amount was not utilized in trading and it was siphoned off for personal use. Investigation revealed that the amount were accepted by Pay U Money as well as correspondence was exchanged with the said company. Report was received from the said company. The Statement of the officer of the company was recorded. It was found that amount of Rs. 15 Crore was deposited into the account of accused Nos.4 to 8 through Pay U Money which was invested by citizens. The e-mail and mobile phone of investors were collected. They were called for investigation. The investors were from various States. Some of them could not remain present for investigation. Statement of various investors were recorded. Charge-sheet has been filed. Permission has been sought for further investigation under Section 173(8) of Cr.P.C. The case is pending in the Court as C.C. No.552/PW/2018. The amount of Rs.5,17,34,468.50/- has been deposited in the Court. Office of the accused/company was situated at 201 to 203,

2nd floor, Plot No.9, Palai Plaza, Dadar (E), Mumbai. The premises is owned by Chandulal Kubadia, Alkesh Kubadia and Hitesh Kubadia. Notice was issued under Section 91 of Cr.P.C. to deposit the amount of Rs.6,00,00,000/- (Rs. Six Crore) collected as deposit for the premises. During investigation, it was found that 80% investors had invested 100 dollars to 1000 dollars i.e. Indian Rs.7,500/- to 75,000/-. The investors were from West Bengal, Assam, Delhi, Karnataka and other States. To induce the investors, initially some profit was shown in the account of the investors. They were cheated by accused. Arrangement was made by Investigating Officer to return the amount, pursuant to applications being made by investors and as per orders of the Court.

7. It is pertinent to note that proceedings are pending before the Competent Court. The investigation revealed that huge amount was invested by investors on the promises by accused. It is the case of the prosecution that the investors were mislead to invest the amount. The invested amount was not used for trading which was deposited into the account of accused. The respondents preferred applications before the Court. The Court passed

reasoned orders. The petitioners are accused in C.R. No. 41 of 2018 investigated by DCB CID Unit-III arising out of C.R. No. 188 of 2018 registered with Matunga Police Station. The case of the prosecution is that the accused created bogus company and lured the people for investment in the Forex Trading. The respondents were victims of crime. They had invested the amount in the company of accused on assumption that they will get the good returns. Investors were cheated. The accused were arrested. The bank account were frozen. Rs. 5,17,34,468/- has been freezed. The case of the prosecution is that about 2000 people were cheated by accused. Charge-sheet is filed. The Investigating Officer deposited the amount of Rs.5,17,34,468/- in the Court. Learned Magistrate while passing order in respective applications have considered the factual aspects and also took into consideration the statement of witnesses and material available on record which shows that the respondents have invested the amount with the accused. The Investigating Officer recovered the amount by freezing the accounts of the accused. The learned Magistrate had observed that there is no satisfactory explanation on record to show that how and from which source the amount is deposited in the bank accounts. The trial would take its own time for decision. It would not be proper to keep the amount lying in the account. The learned Magistrate in the respective orders have directed that the amount be returned to the respondents on executing indemnity bonds. The respondents were directed to produce the amount as and when required as per the order of Court.

8. I do not find any infirmity in the impugned orders passed by learned Metropolitan Magistrate. No interference is warranted in the impugned orders. The petition is devoid of merits. Hence, I pass the following order:-

ORDER

(i) Writ Petition No. 1502 of 2021 is rejected and disposed of.

(ii) Interim relief granted by this Court vide order dated 09.04.2021 stands vacated.

(iii) The trial Court shall proceed with the pending applications.

(PRAKASH D. NAIK, J.)