IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.518 OF 2021

Kartik Anil Kapoor ...Applicant
Versus
The State of Maharashtra and Ors. ...Respondents

Mr. Shahbaz Khan S. Pathan, for the Applicant.

Mr. S. S. Pednekar, A.P.P for the Respondent Nos.1 and 2.

CORAM : REVATI MOHITE DERE, J.

DATE : 24th JANUARY 2022

(THROUGH VIDEO CONFERENCING)

P.C. :

1. Heard learned counsel for the applicant and the learned APP for the Respondent Nos.1 and 2.

2. By this application, the applicant has impugned the order dated 15th September 2020, passed by the learned Metropolitan Magistrate, 71st Court, Bandra, Mumbai, in C.C. No.346/N/2020, by which, the learned Magistrate was pleased to reject the applicant's application seeking return of the amount lying in the bank account freezed by the Santacruz Police

Station in C.R. No.211 of 2020 as well as the order dated 5th February 2021, passed by the learned Additional Sessions Judge, Greater Bombay, in Criminal Revision Application No.418 of 2020, by which, the learned Additional Sessions Judge, rejected the applicant's revision application filed against the order of the learned Magistrate.

3. Learned Counsel for the applicant submits that both the aforesaid orders be quashed and set aside and the amount of Rs.2,85,800/- alongwith accrued interest, if any, lying in the account of Dinesh Enterprises with the Canara Bank be transferred immediately in the applicant's account-M/s. MKM Impex bearing No.0014102000036412 of IDBI Bank, Khar West Branch.

4. Learned Counsel for the applicant submits that the applicant had started his business of gloves, masks, oxygen cylinders etc., during the pandemic of Covid-19 and as such during the said period was connected with several people on the social media, as the applicant could not travel physically due to the Covid-19 restrictions. He submits that the applicant on his facebook messenger received a message from one Mr. Edward

Brown (original accused No.1) i.e. Dinesh Enterprises, through his proprietor - Nitin Shukla. The said person is alleged to have informed that he would sell a Petonic M.Q. Liquid to the applicant. He submits that the applicant was scammed by the respondent No.3 and that an amount of Rs.9 lakhs was transferred by the applicant to the said company, which the applicant realized only later that it was a fictitious Company. He submits that pursuant thereto, the applicant filed a police complaint and the police freezed the account where the amounts were deposited by the applicant i.e. an amount of Rs.2,85,800/-. He submits that despite the police attempting to serve the said respondent No.3, till date only one person has been arrested in the said case. He submits that the applicant had transferred Rs.9 lakhs odd to the said account which has been frozen by the police during the course of investigation and that the police found only a sum of Rs.2,85,800/- odd in the said account which was frozen by the police. He submits that merely because the respondent No.3 cannot be traced/found as the address are fictitious, the matter cannot be adjourned and as such prays that the applicant be returned the said money.

5. Learned APP has filed an affidavit of Vinod Narhari Gaonkar, Police Inspector attached to the Santacruz Police Station, Mumbai, as on on the last date i.e. on 10th January 2022, the learned APP had pointed out that the addresses were fictitious and that no person was found at the address of Nitin Shukla i.e. the respondent No.3.

6. Perused the papers. The applicant during the pandemic in connection with his business had made profiles on various social networking websites like Linkedin, Facebook, Twitter etc., in order to generate orders through E-commerce platform. Pursuant thereto, the applicant received several inquires and orders pertaining to surgical gloves, masks etc. The applicant is also alleged to have received a message on his facebook messenger from one Edward Brown i.e. original accused No.1, an alleged member of group "Surgical & Medical Gloves and Mask." According to the applicant in the said message, the accused No.1 - Edward Brown informed the applicant that he is a Purchase Manager in a Company by the name 'Zoological Welfare Ghana Limited', situated in Ghana. Accused No.1 - Edward Brown informed the applicant that his company was in need of Petonic M.Q. Liquid**,** which is used for veterinary purpose.

Pursuant thereto there was some e-mail exchanges between the parties. According to the applicant, accused No.1 - Edward Brown requested the applicant to contact the company independently i.e. to contact the CEO Dr. Dora Eghan, after which the applicant contacted Dr. Dora, who informed the applicant that the sample would be collected by a person named Dr. James Pong, who was working as a Chemist in the Ghana Embassy, Mumbai. According to the applicant, accused No.1 - Edward Brown informed the applicant that the applicant would receive an advance payment for sending Petonic M.Q. Liquid and was asked to contact an Indian Company by the name – Dinesh Enterprises i.e. (accused No.3), which would provide the liquid through another distributor. According to the applicant, the accused No.1 - Edward Brown sent a website link, which was verified by the applicant that it belonged to Dinesh Enterprises and that the said website had the complete information of the Company, its CEO, Directors, Company Secretary etc. According to the applicant, after verifying the information of the Company, its employees, on the website, he contacted the Sales Executive of Dinesh Enterprises i.e. Deepak Chandra (accused No.2) via e-mail. After negotiations, the applicant contacted accused No.1 - Edward Brown and requested him to transfer the advance for sending the Petonic M.Q. Liquid. The applicant has further alleged that on 19th June 2020, accused No.1 - Edward Brown separately and Dr. Dora Eghan i.e. CEO of Zoological Welfare Ghana Limited followed-up with the applicant and informed him that if he did not sent the sample early, they will give the order to some other person. The applicant fearing losing the business contacted accused No.2 - Deepak Chandra and requested him to provide a sample. The accused No.2 - Deepak Chandra is also alleged to have informed the applicant that as he is a new customer, the applicant would have to deposit a sum of Rs.2,85,800/- and then he would send a sample to the applicant. Pursuant thereto, the applicant was provided details of a Current Account in a Nationalized Bank i.e. Canara Bank bearing Account No.2565201001310. The applicant assuming that the account being in a Nationalized Bank was a genuine account, transferred the said amount from his account No.0014102000036412 with the IDBI Bank, Khar West Branch, Mumbai (Account holder's name M/s. MKM Impex) on 19th June 2020. The applicant was informed that on transferring the said amount he would receive one liter of Petonic M.Q. Liquid, which was required by accused No.1 - Edward Brown. Thereafter, the accused No.2 - Deepak Chandra is stated to have informed the applicant for a improvised liquid named Petonic Active and asked the applicant to again pay an additional amount of Rs.6,28,000/- for sampling charges of the said Petonic Active Liquid. The applicant again fearing that he would loose business, deposited Rs.6,28,000/- from his account with IDBI Bank, Khar West Branch, Mumbai, in the accused persons Account i.e. Account No. 50100340633912 with the HDFC Bank, in the name of – Chandra Ramani Badi on 20th June 2020. According to the applicant, after transferring the aforesaid amount on 20th June 2020, the accused No.2 - Deepak Chandra called up and informed the applicant to go and collect the sample of Petonic Active Liquid. It appears that when the applicant went to collect the said liquid at Khar Railway station, a taxi drive came and handed over a bottle of liquid to the applicant, which he took to his residence. According to the applicant, again there was exchange of mails between the parties. The applicant has further stated that on 22nd June 2020, while surfing the internet to gather more information of Petonic Active Liquid and Zoological Welfare Ghana Limited, he came across several news articles on the Google Platform pertaining to Zoological Welfare Ghana Limited, and the fraud, when he realized that he too had been defrauded and scammed. The applicant realized that he had been defrauded in the on-line scam, by the accused persons, by hatching a criminal conspiracy by giving false Bank Accounts, false websites and names of fictitious persons. Pursuant thereto, the applicant approached the Santacruz Police Staiton and lodged an FIR on 26th June 2020, as against the said persons, for the offences punishable under Sections 406, 420 r/w 34 of the Indian Penal Code. Pursuant thereto, the police freezed the account of the Canara Bank, where the applicant had deposited the sum of Rs.2,85,800/. The applicant filed an application before the trial Court praying for return of the amount lying in the bank account freezed by the Santacruz Police Station. The said application was rejected, as the respondent No.3 could not be traced. The said order was confirmed by the Revisional Court. During the course of the hearing of the aforesaid application, this Court issued notice to the respondent No.3 and even issued a Non-Bailable-Warrant, as against the respondent No.3. The Investigating Officer was also directed to collect the KYC details of Dinesh Enterprises from the bank where he was operating his accounts including his photographs.

7. Learned APP has filed an affidavit of Vinod Narhari Gaonkar, Police Inspector attached to the Santacruz Police Station, Mumbai. In the said affidavit, it is stated that the investigating officer - Mahesh Bolkatagi attached to Santacruz Police Station, had taken the following steps to execute the Bailable/Non-Bailable Warrant issued by this Court.:

(a) *That as per the Order dated 15.11.2021 passed by this Hon'ble High High Court (Coram: Hon'ble Justice Shri Sandeep K. Shinde), the bailable warrant dated 29.10.2021 was issued against Respondent No.3 Nitin Shukla (Proprietor of M/s. Dinesh Enterprises);*

(b) *Three bank accounts viz. 1) Canara Bank Account No.2565201001310, 2) ICICI Bank Account No.655405600559 and 3) Karnataka Bank Account No.8172500100372001 are found in the name of Nitin Shukla (Proprietor of M/s. Dinesh Enterprises), the KYC details and linked mobile number are obtained;*

(c) *That the CDR reports of the said mobile numbers are obtained, the said linked mobile numbers are not in use and found switched off;*

(d) *That the KY details of Nitin Shukla (Proprietor of M/s. Dinesh Enterprises) are obtained from the Canara bank in which the copy of Aadhar number (5668 4513 4173) in the name of Nitin Shukla (Proprietor of M/s. Dinesh Enterprises) is found and the address i.e. Room No.24, Avaishya Apartment, Near Link Road Sion, Mumbai – 32 is not existence;*

(e) *That the Santacruz Police Station deputed PSI Shri Sarolkar to serve notice upon Nitin Shukla, the said PSI Shri Sarolkar visited at shop No.211, Ground Floor, Lila Heights, Sr. No.116/1/1/2, Amli village, Div Daman; it is revealed that Nitin Shukla was taken the said shop on Leave on License and since January 2021, Nitin Shukla left the said shop without intimation and disappeared, due* *to which the police officials failed to serve the said notice;*

(f) That the Ld. Metropolitan Magistrate of 71st Court, Bandra was issued Bailable warrant vide No. BD Cri. No. 607040/2021, dated 29.10.2021 against Respondent No.3 Nitin Shukla. Therefore, the Senior Police Inspector of Santacruz Police Station deputed one Police Constable Shri Subhash Gaikwad, Buckle No.031347, the said Police Constable visited the residence address of Nitin Shukla viz. 24, Ramanbhai Complex, Talwa Faliya, Dabhel, Nani Daman. The said address was found to be fake, report of the same is came to be filed before this Hon'ble High Court vide report dated 14.11.2021;

(g) That the Hon'ble High Court satisfied that Nitin Shukla is keeping himself away from the process of law, hence the Non-bailable warrant is issued against Nitin Shukla. In which the Police Officials were failed to serve the Non-bailable warrant due to fake residential address of Nitin Shukla. The report dated 06.12.2021 came to be submitted before this Hon'ble High Court."

8. In para 6 of the said affidavit, the police have given their no objection to release and return the amount of Rs.2,85,800/- lying with the Canara Bank subject to requisite conditions in favour of the applicant - Kartik Anil Kapoor.

9. Considering the peculiar facts of this case and the report of the Investigating Officer, as well as the affidavit filed by Police Inspector attached to the Santacruz Police Station, Mumbai, both the impugned orders i.e. order dated 15th September 2020, passed by the learned

Metropolitan Magistrate, 71st Court, Bandra, Mumbai, in C.C. No.346/N/2020 as well as the order dated 5th February 2021, passed by the Additional Sessions Judge, Greater Bombay, in Criminal Revision Application No.418 of 2020, are quashed and set aside.

10. The Branch Manager of Canara Bank to forthwith transfer the sum of Rs.2,85,800/ alongwith accrued interest if any, thereon, lying in the account of Dinesh Enterprises in the applicant's account- M/s. MKM Impex bearing No.0014102000036412 of IDBI Bank, Khar West Branch, after the applicant executes a Supratnama to the satisfaction of the Trial Court, with respect to the said amount i.e. Rs.2,85,800/-.

11. Application is allowed in the aforesaid terms and is accordingly disposed of

12. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.