IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 211 OF 2020

Pushp Ishwarsingh Chauhan ...Applicant
Versus
Union Of India And Anr. ...Respondents

WITH
CRIMINAL REVISION APPLICATION NO. 212 OF 2020

Kaushal Manish Panchal ...Applicant
Versus
Union Of India And Anr. ...Respondents

WITH
CRIMINAL REVISION APPLICATION NO. 217 OF 2020

Cyberace Info Vision Pvt. Ltd.
(Through Director Kaushal Manish Panchal) ...Applicant
Versus
Union Of India And Anr. ...Respondents

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Mr. Sudatta Patil i/by Mr. Vikram Singh Parmar, Advocate for the Applicant.

Mr. Shreeram Shirsat a/w Mr. Amandeep Singh Sra a/w Ms. Nishi Singhvi a/w Mr. Anna Oommen, Advocate for Respondent No.1 – CBI.

Mr. Arfan Sait, APP for the Respondent No.2 – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 6th SEPTEMBER, 2022.

PER COURT:

1. The applicants are accused in First Information Report (for short 'FIR') registered by CBI-ACB Mumbai vide C.R.

No.RC0262020A0007 for offences punishable under Sections 120B, 201, 420, 467, 468, 471 477(A) of Indian Penal Code (for short "IPC") r/w Section 13(2) and 13(1)(d) of the Prevention of Corruption Act.

2. The applicant in Criminal Revision Application No.211 of 2020 and the applicant in Criminal Revision Application No. 212 of 2020 were directors of Ms. Cyberace Infovision Pvt. Ltd.. The applicant in Criminal Revision Application No.217 of 2020 is the Company.

3. In nutshell the case of the prosecution is that the accused had acted in connivance with officers of the Indian Navy and raised seven fraudulent bills against which allegedly, no services were provided and defrauded Western Naval Command, Indian Navy, Mumbai to the tune of Rs.6,76,33,176/-.

4. During the course of investigation two bank accounts of company were debit freezed viz. Account No.124405000111 and 001105030127 with ICICI Bank at Mulund and Andheri (West) Mumbai. The company preferred an application for de-freezing the accounts. The application was rejected vide order dated 29.10.2020. The bank account of applicant in Criminal Revision Application No.211 of 2020 was attached. The account No. is

0001101575930 in ICICI Bank at New Delhi. The said applicant preferred application for de-freezing account, which has been rejected by order dated 29.10.2020. Similarly the bank account of applicant in Criminal Revision Application No.212 of 2020 viz Account No.124401500786 with ICICI Bank, Mulund Mumbai was also freezed. Application for de-freezing is rejected by order dated 29.10.2020.

5. Learned Advocate for the applicants submitted that no proper procedure was followed while freezing the bank accounts as per Section 102 of the Code of Criminal Procedure. The amount lying in the frozen bank accounts has no connection with the crime. The amount in the bank account of the applicants is not proceeds of the crime. The trial Court had rejected the application for de-freezing the accounts on the ground that the investigation is in progress. However, subsequently the investigation was completed and the charge-sheet is filed. The applicant – Pushp Ishwarsingh Chauhan (Criminal Revision Application No. 211 of 2020) has been dropped as an accused from the charge-sheet in question.

6. Learned Advocate for the respondent No.1 on instructions submitted that, on completing investigation the charge-sheet is filed. During the course of investigation, the action was initiated

under Section 102 of Cr.P.C. and the accounts of the applicants herein were frozen for the purpose of investigating the crime. The respondent No.1 has filed reply. He opposed to grant of prayers in this application on the ground that the amount is connected with the offence.

7. I have perused the documents on record. The applications were rejected by special Court by orders dated 29th October, 2020 primarily on the ground that the investigation is in progress. In paragraph – 7 of the said order it is observed that the case is at the stage of investigation. Many transactions are yet to be unearthed. At the stage of investigation, if the order of de-freezing the accounts is passed, that would be fatal to the process of investigation. This is not the proper stage to de-freeze the accounts of the applicants, wherein the alleged illegal transactions had taken place. It is pertinent to note that investigation is concluded and the charge-sheet is filed. Case is pending before the Court of Sessions. The impugned order dated 29th October, 2020 does not indicate that the amount lying in the bank accounts of the applicants form the incriminating evidence to show their involvement in the crime. One of the applicant has been dropped from array f accused. I have perused Affidavit-in-reply filed by respondents. The reply is

silent about non-compliance of Section 102 of Cr.P.C. There is nothing on record to show compliance of said provision. There has to be evidence to show that the amount lying in Bank account is proceeds of crime. According to applicants, there has been a receipt of amount of Rs.89,94,233/- on 23rd March, 2016 in the bank account of company, however, amount of Rs.88,80,955/- has been immediately transferred to account of accused M/s. ACME Networks Pvt. Ltd. on 28.03.2016. The company has received Rs.1,13,276/- towards margin money. The company had deducted TDS on same amount and also showed it in its books of account. Copy of Bank statement of company bearing account No.12440500011 with ICICI Bank has been annexed to application are required to be allowed.

8. Hence, I pass the following order:

ORDER

i) Criminal Revision Application Nos.211 of 2020, 212 of 2020 and 217 of 2020 are allowed and disposed off.

ii) Impugned orders dated 29th October, 2020 passed by the Special Judge for CBI, City Civil and Sessions Court, Gr. Bombay In Misc. Application Nos.888 of 2020, 887 of 2020 and 889 of 2020 are set aside.

iii) The Bank Account No.001101575930 of revision applicant in Criminal Revision Application No.211 of 2020, Bank Account No.124401500786 of revision applicant in Criminal Revision Application No.212 of 2020 and Bank Account Nos. 124405000111 and 001105030127 of revision applicant/Company in Criminal Revision Application No.217 of 2020 are de-freezed.

(PRAKASH D. NAIK, J.)