AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3425 OF 2021

Rajiv Arora & Anr. …Petitioners

V/s.

The State of Maharashtra & Anr. …Respondents

Mr. Kripashankar N. Pandey i/by Ms. Mranmai G. Kulkarni for the petitioners.

Ms. G. P. Mulekar, APP for respondent no.1/State.

Mr. Sachin Pande for respondent no.2.

Mr. P. M. Rasam, PSI, Malad Police Station, is present.

CORAM: AMIT BORKAR, J.

DATE: OCTOBER 3, 2022

P.C.:

1. **Rule**. Rule is made returnable forthwith by consent of the parties.

2. Rejection of an order to defreeze accounts passed under Section 102 of the Criminal Procedure Code is the subject matter of the petition.

3. First Information Report came to be registered at the instance of the respondent no.2 against the petitioner for the offenses under sections 406 & 420 read with section 34 of the Indian Penal Code. The Investigating Agency after completing investigation filed charge-sheet against the petitioner before the Metropolitan Magistrate 24th Court, Mumbai. As per the allegations in the charge-sheet, the alleged offense had been committed from January 2011 to February 2011 and proceeds of crime had been deposited by the petitioners in the month of February 2012. The Investigating Officer by communication dated 5th August 2015 communicated to the Magistrate that by an intimation bearing outward no. 2104 of 2012 dated 2nd February 2012 the Manager, Canara Bank, Juhu Branch, Mumbai was intimated to freeze accounts of the petitioners. Charge-sheet was filed on 5th May 2012.

4. The petitioners, therefore, filed an application before the Magistrate for defreezing the accounts on the ground that procedure under section 102 of the Criminal Procedure Code was not followed. The learned Magistrate rejected the said application. Aggrieved thereby, the petitioners filed Revision No. 168 of 2015 before the Sessions Court. By the impugned order, the learned Sessions Judge rejected the Revision, principally on the ground that whether the intimation was given to the learned Magistrate is a matter of evidence which cannot be considered at this stage.

5. I have carefully considered the submissions made on behalf of the petitioners and the intervenor who is original complainant. It appears that there is no serious dispute amongst the parties that the procedure required under section 102 of the Criminal Procedure Code had not been complied with nor there is post-seizure intimation issued by the Investigating Officer.

6. The issue of procedure to be followed by the Investigating Officer while taking action under section 102 of the Criminal Procedure Code is no longer *res integra* in view of the authoritative pronouncements of the Supreme Court made in **Teesta Atul Setalvad & Anr. v. State of Gujarat** reported in (2018) 2 SCC 372 wherein the Apex Court held that issuance of prior notice to the account holder before seizure of account is not required, but the requirement to report seizure would be met by post-seizure intimation.

7. The Investigating Officer is present in Court. On instructions, the learned APP states that neither the procedure for freezing the account prior to seizure under section 102 had been followed nor post-seizure intimation had been given.

8. In these circumstances, the impugned orders passed by the Sessions Judge and the learned Magistrate rejecting application to defreeze the accounts of the petitioners cannot be sustained.

9. Rule is made absolute in terms of prayer clauses (b) and (e), which read as under:-

> "(b) That this Hon'ble Court may be pleased to quash and/or set aside order dated 7th February, 2020 passed by the Hon'ble Sessions Court, At Dindoshi in C.C. N.1012/PW/2012 pending before Learned Metropolitan Magistrate, 24th Court, Borivali, Mumbai arising out of F.I.R. No.10 of 2012 dated 5th January 2012 registered with Malad Police Station under Sections 406, 420 r/w 34 of the Indian Penal Code wherein order dated 3rd September, 2015 was passed thereby rejecting the prayer of the Applicants for defreezing their bank accounts.
>
> (e) That this Hon'ble Court be pleased to direct the Respondent No. 1 to defreeze the folowing bank account and FDR's which have been mentioned below and to allow the Petitioners to operate the Bank Accounts and FDRs:
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> i) Saving accounts no. SB0121101113408 and

SB0121101113410;

ii) FDR's 0121303000665/1, 0121303000664/1, 01213-3000664/2 and 0121303000664/3 at Canara Bank in the name of the Petitioners."

10. It is made clear that it will be open to the Investigating Officer to freeze the accounts after following due procedure under section 102 of the Criminal Procedure Code, if necessary.

11. The writ petition is disposed of accordingly. No costs.

ATUL GANESH KULKARNI Digitally signed by ATUL GANESH KULKARNI Date: 2022.10.06 10:36:31 +0530

(AMIT BORKAR, J.)