

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Digitally
signed by
BALAJI
GOVINDRAO
PANCHAL
Date:
2023.01.18
14:45:05
+0530

WRIT PETITION NO.1841 OF 2018

Jignesh Prakash Shah

..Petitioner

Versus

The Central Bureau of Investigation (CBI),
Anti Corruption Branch, Mumbai & Ors.

..Respondents

Mr. Arvind Lakhawat a/w Mantul Bajpai, Vrushabh Vig, Vikrant Nalavade & Priyam Sharma i/by M/s. Crawford Bayley & Co., for the Petitioner.

Mr. Kamar Ali Shaikh h/f Venegavkar, for the Respondent No.1/CBI.
Smt. M. M. Deshmukh, APP for the Respondent/State.

**CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ.**

DATE : 10th JANUARY, 2023

PC.

1. Heard counsel for the petitioner, Mr. Venegavkar for the respondent No.1/CBI and learned APP, Smt. M. M. Deshmukh for the respondent No.3/State.

2. The petitioner, who has suffered a search at the behest of respondent No.1 pursuant to the provisions of Section 93 of the Code of Criminal Procedure, 1973 (hereinafter referred as "the CrPC" for the sake of brevity) has moved before this Court for quashing and setting aside the impugned order 22nd March, 2018 passed by the Special Judge, CBI Court, Mumbai in MA No.419 of

2018 in RC 0682018E0001. The petitioner has also sought declaration that the search of the petitioner's premises by the respondent No.1 on 23rd March, 2018 is illegal and bad in law with a prayer for awarding compensation as it is claimed that the petitioner's privacy and right to live with dignity guaranteed under Article 21 of the Constitution of India is violated.

3. According to the petitioner, a company by name MCX was incorporated in 2002 and has commenced its operation in 2003. The said company was in the business of commodity of which the petitioner was managing director for a period from 1st August, 2003 to 31st March, 2008 and a non-executive Vice Chairman of the board of directors from 1st April, 2008 to 31st October, 2013. The petitioner claims that after his resignation from the board of directors of the MCX, he was not concerned with the day to day affairs of the operational management of the concerned company, as the management was handled by the management team.

4. The respondent/CBI in the investigation of the crime has referred to the petitioner as one of the accused. The offence is punishable under Sections 120B r/w 420 of IPC and Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

5. According to the petitioner, he attended the office of respondent on 20th June, 2016 and was questioned. He claims that he has also submitted a written response on 27th June, 2016. He

would further claim that the petitioner was protected pursuant to the provisions of Section 41-A of the CrPC by virtue of an order passed in Writ Petition (Criminal) No.4330 of 2016 on 20th December, 2016.

6. The petitioner claims that he was shocked when on 23rd March, 2018 at 7.45 a.m. respondent conducted search at the petitioner's residence in relation to MCX IPO matter. It is claimed that in spite of request being made by the petitioner copy of the FIR was not provided and the search was continued upto 12.20 p.m. wherein no incriminating material or documents were found or seized. It is further claimed that on very same day i.e. on 23rd March, 2018, a press release was issued on the website about registration of FIR and search being carried out. According to the petitioner, the said act of carrying out search violates provisions of Article 19(1)(g) of the Constitution of India, particularly, because of such search has branded him criminal in the minds of the public. As a consequence of which the petitioner has suffered his goodwill and reputation. It is further claimed that the search is carried out pursuant to the order passed by the Special Judge, CBI Court, Mumbai on an application dated 22nd March, 2018 preferred by respondent Nos.1 and 2. He would urge that neither the application moved under Section 93 contains the very necessary ingredients nor the order impugned granting search warrant passed by the Special Judge discloses application of mind. So as to substantiate his contention, he has drawn support from the judgment of the Delhi

High Court in the matter of *Shyam M. Sachdev Vs. State and Anr.* reported in *1991 CriLJ 300*. He would further urge that the order impugned goes contrary to the clause 13.4 of the CBI manual, which provides for avoidance of unnecessary searches. As such according to the petitioner, this Court needs to set aside the impugned order thereby declaring that the order of issuance of search warrant under Section 93 of the CrPC and the act of respondent in targeting the petitioner thereby carrying out avoidable search is illegal and bad in law.

7. Mr. Venegavkar, counsel appearing for the respondent/CBI would support the order impugned. According to him, the respondents have followed due process and due procedure as prescribed by law. So as to substantiate his contentions, he has drawn support from the provisions of Section 93 of the CrPC. According to him, once the preliminary inquiry was registered in 2015 and during investigation of such preliminary inquiry, it was noticed that *prima-facie* offence is committed, the petitioner erstwhile director, was rightly so prompted to be proceeded under Section 93 of the CrPC. He would urge that the order impugned passed by the Special Judge is in tune with the very scheme of Section 93 of the CrPC. As such, he has sought dismissal of the petition.

8. We have appreciated the said submissions.

9. At the outset, it is required to be noted that the petitioner has raised a challenge to the order dated 22nd March, 2018 passed by Special Judge, CBI Court, Mumbai. Even if the impugned order is dated 22nd March, 2018 and the petition is preferred in 2018, no efforts are made by the petitioner to move the petition before this Court for last more than four years. The petition is listed before the Court in regular course.

10. Apart from above, what can be noticed from the provisions of Section 93 of the CrPC which reads thus :-

“93. When search warrant may be issued. - (1) (a) Where any Court has reason to believe that a person to whom a summons or order under section 91 or a requisition under sub-section (1) of section 92 has been, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition, or

(b) where such document or thing is not known to the Court to be the possession of any person, or

(c) where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the

execution of such warrant shall then search or inspect only the place or part so specified.

(3) Nothing contained in this section shall authorise any Magistrate other than a District Magistrate or Chief Judicial Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the postal or telegraph authority.”

are in aid of the investigating agency in the matter of investigation of a crime. The Chapter VII of the CrPC provides for processes to compel the production of things. Section 93 provides for the satisfaction of the Court to believe that a person to whom a summons order under section 91 or a requisition under sub-section (1) of section 92 has been, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition. The investigation of an offence is in various steps amongst other are discovery and arrest, collection of evidence in relation to commission of crime which includes examination of various persons and search of places for effecting seizure of the material considered necessary in investigation to be produced before the Court. As such, search and seizure is one of the important step in the investigation process.

While exercising powers under Section 93 of the CrPC i.e. issuance of search warrant, the Presiding Judge is required to apply its mind so as to form a satisfaction that a case is made out for issuance of search warrant, as the issuance of search warrant is not

a sheer formality as same infringes life and liberty of an individual. The application of mind by the Magistrate can be inferred from the contents of the order and such Magistrate is neither conferred unfettered discretion to issue warrant nor in an arbitrary manner search warrant can be issued. Of course, it is a discretionary act on the part of the Magistrate, however, such discretion should be exercised in judicial manner and the satisfaction should be objective. As such, for recording satisfaction so as to depict application of mind, there has to be a sufficient material before the Magistrate which justifies the prayer of the Investigating Agency.

11. In the case in hand, it is not in dispute that the present petitioner was on the Board of Directors of the MCX upto 31st October, 2013. The said MCX applied for setting up of nationwide Multi Commodity Exchange in 2002. The Forward Market Commission who has invited the application for setting up nationwide Multi Commodity Exchange has processed the request of the MCX of which petitioner was Managing Director. It is alleged that the Forward Market Commission had extended undue favour to MCX in recommending its name and for getting approval of the Ministry of Consumer Affairs Food and Distribution, New Delhi for setting up of nationwide Multi Commodity Exchange. It is alleged in the offence that the company which was chaired by the petitioner has drawn undue benefit thereby making its liable under the provisions of the Companies Act, as the petitioner's company has derived undue, unlawful and fraudulent gain of Rs.137 Crores.

12. The respondent/CBI in the aforesaid background has taken recourse to the provisions of Section 93 of the CrPC claiming that the company of which petitioner was Managing Director i.e. MCX, even though was not fulfilling stipulated criteria for setting up of nationwide Multi Commodity Exchange, has derived undue benefit of Rs.137 Crores. It is specifically claimed that the petitioner or its staff including that of former office bearers such as Chairman, MD etc. are in possession of vital evidence in the form of documents and are not likely to produce such evidence. The application also contains the list of documents in relation to which search was to be carried out. The said application was considered by the Special Judge and was allowed on 4th September, 2018 by recording reasons viz. (a) the nature and gravity of offence; (b) possibility of destruction of evidence; and (c) necessity for collecting evidence, and in the interest of justice to issue search warrant.

13. Pursuant to the order of issuance of search warrant, the search was carried out and nothing incriminating was recovered from the place of the petitioner.

14. Merely because nothing incriminating was recovered during the search that by itself will not render the order of issuance of search warrant under Section 93 of the CrPC illegal, as carrying out search is a step in the aid of investigation of an offence. The order impugned in fact records the reasons and also reflects the application of mind by the Judge viz. it has considered the pleadings

in the application *qua* justifying the claim under Section 93 of the CrPC. As such, the order impugned is in tune with the very ingredients of Section 93 of the CrPC and cannot be faulted with.

15. Even though it is claimed by the counsel for the petitioner that the search which is ordered by the Special Judge is contrary to the clause 13.4 of the CBI manual, however, it cannot be inferred from the record i.e. contents of the application under Section 93 of the CrPC that the search was carried out so as to harass or infringe the privacy of the petitioner. As such, in view of aforesaid observation, what can be noticed is the order impugned since discloses the application of mind and also contains the reasons, same cannot be termed to be an arbitrary or suffering from non-application of mind. As such, the law laid down by the Delhi High Court in the matter of *Shyam M. Sachdev (supra)* cited by the petitioner will be of hardly any assistance. In this background, no case for interference is made out.

16. The petition as such stands dismissed.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]