IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2994 OF 2022

Lijo Mathew And Anr. ...Petitioners
Versus
Union Of India And Ors. ...Respondents

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Mr. Girish Kulkarni, Sr. Advocate a/w Mr. K. N. Pandey, Mr. Mayur T. i/by Mr. Darshan Juikar, Advocate for the Petitioner.

Mr. H. S. Venegavkar, Spl. P.P. for UOI.

Ms. Faiza Shaikh a/w Ms. Payal Upadhyaya i/by ANP chambers, Advocate for Respondent No.2.

Mrs. Anamika Malhotra, APP for Respondent – State.

CORAM : PRAKASH D. NAIK, J.

DATE : 28th JULY, 2023.

P.C.:

1. The Petitioners have challenged Order dated dated 28th March, 2016 passed below Exh.30 in CBI Special Case No.42 of 2014 passed by Special CBI Judge.

2. Special Case No.42 of 2014 was registered against several Accused for misappropriation of amounts to the tune of Rs.180 crores transferred by JNPT to Oriental Bank of Commerce, Malvani Malad for the purpose of creation of term deposits. It is alleged that the amount misappropriated was swindled by the Accused and transferred to various accounts. During the course of

investigation, the investigating agency seized/freezed various bank accounts anticipating some link with the alleged offences.

3. The Oriental Bank of Commerce preferred an Application before the learned Special Judge (CBI) seeking directions to CBI to return the amounts and properties and other assets seized by them. It was contended that amount of Rs.180 crores was received as a term deposit from JNPT, Mumbai by bank. Complaint was filed against Manager of Bank Ms. Suja Koshy and others. FIR was registered for offences under Sections 120-B r/w 409, 420, 468 and 471 of IPC and Sections 13(2) r/w 13(1)(d) of P.C. Act. Huge amount was transferred from Applicant bank to various accounts in various banks. CBI had seized amount to the tune of Rs.115.29 crores as per the provisions of Section 102 of Cr.P.C. The Applicant bank made an Application seeking return of properties vide Misc. Application No.83 of 2014 for return of amount by CBI. Vide Order dated 9th June, 2014, the Court directed CBI to transfer amount frozen to Applicant bank. CBI thereafter completed investigation and filed charge-sheet. During investigation several other amounts were seized by CBI. Letter dated 8th January, 2015 was forwarded to Applicant bank by CBI intimating that supplementary charge-sheet has been filed. The details of bank account frozen by CBI

were enclosed. The bank prayed that CBI may be directed to return the amount and properties and other assets seized by them as per letter dated 8th January, 2015. CBI filed reply Exh.30(b). The learned Special Judge vide Order dated 28th March, 2016 observed that reply by CBI Exh.30(b) reveals that, the amount made through wrongful gain particularly described in Paragraph No.11 of reply. Apart from the amount lying in the respective accounts, in aforesaid reply CBI has also described cash actually seized during investigation from co-accused. The learned Judge directed CBI to issue suitable directions to respective banks so as to deposit the amount lying in the accounts referred in table in Paragraph No.11 of the reply Exh.30(b) and particularly amount which was transferred through wrongful gain from the amount concerned, subject to bank giving undertaking that in the event it is held that bank is not entitled for aforesaid amount returned from the accounts as well as cash seized, then it shall refund the said amount together with interest @ 12% p.a. from the date of receiving the amount till realization.

4. Learned Advocate for the Petitioners submitted that the Petitioners are not the Accused in the case and they have no nexus with the alleged crime resulting into misappropriation. The

Petitioners are residence of UAE and accounts were seized are the NRE accounts maintain by them in the daily course of business for the purpose of saving their their hard-earned money. The Petitioners are original residence of Kerala. They left for UAE on 2011 and presently residing at Sharjah. The Petitioner was working in Air Arabia Airlines and presently working as Accounts Manager in Lumiere Middle East FZE and the Petitioner No.2 was working in international foods company LLC Sharjah and presently running a business. The Petitioners were acquainted with Geevarghese T.V. @ Nair, who is one of the Accused. He is related to the Petitioners. The Petitioners had trnaferred and amount of Rs.10,00,000/- to the account of Sosamma Geevarghese, (sister of Petitioner No.1) (wife of Geevarghese T.V.) between June, 2014 to August, 2014 as a loan and merely on this ground that there is trail of money from the account of the Petitioner to the Accused an inference was drawn the said money is part of underline fraud. The Petitioner No.1 had availed a loan from Sharjah Islamic Bank, United Arab Emirates to the tune of AED 2,52,000/- i.e. Rs.46,00,000/- approximately for construction of his house in India. The Petitioners are maintaining NRE accounts with South Indian Bank, Vennikulam, Kerala and as and when they required funds in India they transfer their money from their bank account to that account. The Petitioner No.1 maintained NRE account bearing No. 0373050000000829 and the Petitioner No.2 has a separate NRE account bearing No. 0373050000000851 with South Indian Bank. Transaction in respect of both the above accounts were always done through foreign banks. There was no transaction between any Accused and the Petitioners. The Petitioner had given Rs.10,00,000/- as a loan to their sister and brother-in-law for their sons education. Agreement was executed between the parties on 1st May, 2014 with regards to the loan advance to them. The said amount was transferred from Petitioners NRE account and loan obtained against their NRE Fixed Deposits. They show that no amount has been received from the alleged offence. The accounts of the Petitioners were freezed under Section 102 of Cr.P.C. on 11th September, 2014. Vide Order dated 28th March, 2016 the Deputy Superintendent of Police seized entire amount from the account of Petitioners alongwith others. On 19th November, 2015 amount of Rs.95.42 lakhs was transferred from the account of Petitioner No.1 and amount of Rs.87.24 lakhs was transferred from the account of Petitioner No.2 to Respondent No.2 bank. The Petitioner No.1 had issued a legal notice to Respondent No.1 to release the attachment with immediate effect. There was no response. Hence, the impugned Order dated 28th March, 2014 passed below Exh.30 in

CBI Special Case No.42 of 2014 may be quashed and set aside and the amount transferred to Respondent No.2 may be directed to retransferred to the Petitioners. The NRE accounts to the Petitioners may be defreezed.

5. Mr. Venegavkar, Special P.P. for Respondent No.1 submitted that amount of Rs.180 crores was deposited with Oriental Bank of Commerce by JNPT. The Accused which included bank officials dishonestly transferred the said amount to various accounts of the Accused. The Petitioners are related to one of the Accused T.V. Geevarghese. There were bank transactions which shows link with the account of the Petitioners with the said Accused. The amount deposited and credit balance held by the concerned persons were ordered to be seized under provisions of Section 102 of Cr.P.C. issued by CBI, since the same were found under circumstances which created suspicion of commission of the offences. Statements of Petitioner No.1 and Smt. Sosamma Geevarghese (wife of Accused T.V. Geevarghese) were recorded. During investigation, the two NRE accounts and four Fixed Deposits of Petitioner Nos.1 and 2 maintained with South Indian Bank, Vennikulam Branch, Kerala were freezed on the ground that immediately after the commission of fraud, in March, 2014, there

were large volume of NEFTs and RTGS amount in their NRE accounts and further during from June, 2014 to August, 2014 part of the said NEFT/RTGS amount credited in NRE account was transferred to the account of T.V. Geeverghese, his family members and persons known to him. Considering the circumstances, the amount were frozen and on the Application preferred by Respondent No.2 the amounts were directed to be transferred to the account of Respondent No.2.

6. Mr. Venegavkar has relied upon the decision of the Supreme Court in the case of ***State of Maharashtra V/s. Tapas D. Neogy***[1]

7. During the pendency of this Petition the counsel for the CBI had submitted that the Petitioner No.1 shall report to office of BSFB, Mumbai and render co-operation in ascertaining the details of NRE accounts. The Petitioner No.1 with a resident of UAE reported to the investigating officer in CBI office on 3rd May, 2023, 4th May, 2023, 16th May, 2023 and 17th May, 2023. He was examined and necessary documents were collected from him and his statement was recorded in the context of foreign remittance received in NRE accounts and huge amount invested in FDs created

1 (1999) 7 SCC 685

with South Indian Bank and subsequent transfer of part of the amount to the accounts of T.V. Geeverghese, his family members and persons known to him. The credit entries were shown to the Petitioner No.1 in respect of NRE Account Bearing No.0373050000000829 maintained during the period from 1st January, 2014 to 10th September, 2014 and photocopy of statement of account in respect of NRE Account No.0373050000000851 of Petitioner No.2 maintained during the period from 20th February, 2014 to 1st September, 2014 with South Indian Bank, Vennikulam Branch, Kerala was shown Petitioner No.1. Explanation was given by the Petitioner No.1. The explanation is apparently recorded during the examination of the Petitioners.

8. The Respondent No.2 supported the submissions of learned Advocate for Respondent No.1. It is submitted that the trial Court has considered the factual aspect and directed to transfer the amount to the account of Respondent No.2. The impugned Order dated 28th March, 2016 was passed on the Application preferred by the Respondent No.2. The case of the prosecution is that an amount of Rs.180 crores deposited with Oriental Bank of Commerce by JNPT was transferred to various accounts by paying fraud upon the bank. The Respondent No.2 had contended that if the amount

remains in the account these respective persons as well as co-accused or their banks then the Respondent No.2 will have to suffer irreparable loss as the amount is very huge. The accounts of various persons including the Petitioners were frozen during the course of investigation. JNPT and CBI conveyed no objection for the prayer sought in the Application preferred by Respondent No.2 before the trial Court. The Accused and the respective accounts holders objected the Application by contending that the amount is having nexus with the alleged wrongful gain.

9. CBI has filed Affidavit-in-reply dated 30th November, 2022. The Respondent No.2 has also filed reply dated 23rd March, 2023. The reply by CBI mentions that Accused Geevarghese T.V. @ Nair was involved in the crime. He was in touch with other Accused. Amounts were transferred to account of Petitioners. Funds were transferred to accounts of Accused from Account No.307305000000 and 037305000000851 belonging to Petitioners. Amount was received in above accounts were transferred to Accused Geevarghese.

10. It appears that the accounts of the Petitioners were seized/frozen as they were transactions in their account and that

an amount of Rs.10,00,000/- was transferred to the account of T.V. Geeverghese and Smt. Sosamma Geevarghese. The Petitioners have contended that Smt. Sosamma Geevarghese is the sister of the Petitioner No.1. The amount of Rs.10,00,000/- was transferred by way of loan. There is an agreement executed between the parties. The Petitioner No.1 was interrogated during the pendency of the Petition. The prosecution could not establish any link with the amount lying into the account to the Petitioners with the crime. For seizure of the amount under Section 102 of Cr.P.C. the property is required to be involved in the crime. There is no such evidence in the present case. The seizure was effected on inferences. Inspite of investigation, it is not shown *prima facie* that the amount lying into the accounts of the Petitioners has any link with the crime and the impugned Order dated 28th March, 2016 is required to be caused to the effect of transfer of money from the account of Petitioners hence, the freezing of accounts of the Petitioners is required to be set aside by defreezing them and the impugned Order dated 28th March, 2016, passed below Exh.30 is required to set aside to the extent of transfer of the amount from the Petitioners account.

ORDER

i. Criminal Writ Petition No.2994 of 2022 is allowed.

ii. Order dated 28th March, 2016 passed below Exh.30 in CBI Special Case No.42 of 2014 along with 10 of 2015 and 32 of 2016 is quashed and set aside and the amount if transferred to Respondent No.2 from Petitioner's account as per operation of order dated 28th March, 2016 be re-transferred of Petitioner's account.

iii. NRE account bearing No.0373050000000829 standing in name of Lijo Naikamparambli Mathews Petitioner No.1 and NRE account bearing No. 0373050000000851 in the name of Nisha Lijo Mathews Petitioner No.2 both with South India bank Limited, Vennikulam Branch, Kerala are defreezed.

iv. The Fixed Deposits bearing No.0373101000008049 and 0373202000008050 standing in the name of Nisha Lijo Mathews i.e. Petitioner No.2 and the Fixed Deposit No.0373101000008037 standing in the name of Mr. Lijo Naikamparambli Mathews i.e. Petitioner No.1 with South India Bank limited, Vennikulam Branch, Kerala are defreezed.

v. Petition stands disposed off.

(PRAKASH D. NAIK, J.)