IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1501 OF 2019

Mehul Choksi …..Applicant
Versus
1. State of Maharashtra,
2. Enforcement Directorate, Mumbai …. Respondents

Mr. Vijay Aggarwal, Advocate a/w. Rahul Agarwal, Yash Agrawal, Abhiraj Rai, Jasmin Purani, Rohit Kaul, Yashwardhan Tiwari for the Applicant.

Mr. A.R. Patil, APP for the Respondent No.1-State.

Mr. H.S. Venegavkar, Special P.P. a/w. Aayush Kedia for the Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

RESERVED ON : 08th SEPTEMBER, 2023
PRONOUNCED ON: 21st SEPTEMBER, 2023

ORDER:

1. Heard Shri Vijay Aggarwal, learned counsel for the Applicant, Shri A.R. Patil, learned APP for the Respondent No.1-State and Shri H.S. Venegavkar, learned Special P.P. for the Respondent No.2.

2. The Applicant has challenged the order dated 14/12/2018 passed by the learned Special Judge, Greater Bombay below Exhibit-19 in Criminal Misc. Application No.997 of 2018. The application was preferred by the Applicant before the Special Court for declaring the complaint as *non est* in the light of non compliance of Rule 3 of the Declaration of Fugitive Economic Offenders (Forms and Manners of Filing Application) Rules, 2018 (for short, 'FEO Rules'). Said application was rejected by the impugned order dated 14/12/2018 and therefore this application is preferred before this court.

3. The brief background of the case is mentioned in the present application as follows:

i. An FIR No.RC02(E)/2018 was registered with BS & FC (CBI) Mumbai on 15.2.2018 under section 120-B read with 420 of IPC and under section 13 (2) read with 13(1)(d) of the Prevention of Corruption Act 1988. Pursuant to the FIR, the charge sheet was filed by the CBI before the learned Special CBI Judge on 15.5.2018. The learned judge took cognizance against the Applicant and other accused on 22.5.2018. It was registered as Special CBI Case No.38/2018 and is pending before the Special Judge for CBI, Sessions Court, Greater Bombay. In pursuance to the registration of the FIR by the CBI, The Enforcement Directorate (for short, 'ED') registered Enforcement Case Information Report [ECIR] No. MBZO-I-04/2018. The ED filed a complaint under section 45 of the Prevention of Money Laundering Act, 2002 (for short, 'PML Act') before the Special PMLA Court. That court took cognizance on 3/7/2018 against the Applicant and the other accused and the case is pending before that court at the stage of appearance.

ii. On 10/7/2018, the ED filed an application under section 4 read with Section 12 of the Fugitive Economic Offenders Ordinance, 2018 praying that the Applicant be declared as a fugitive economic offender and his properties be confiscated under the Fugitive Economic Offenders Act, 2018 (hereinafter referred to as 'FEO Act').

iii. After the application under Section 4 of the FEO Act was filed by the Respondent No.2 herein, the Applicant filed application at Exhibit-19 which was rejected, as mentioned earlier.

4. Shri Aggarwal learned counsel for the Applicant submitted that there was total non compliance of the Rule 3 of FEO Rules. He submitted that when a thing is required to be done in a particular way, it has to be done in that way alone. The application under section 4 of the FEO Act can have serious consequences of confiscating the properties and therefore it was absolutely necessary that Rule 3 of the FEO Rules is complied with in its letter and spirit. There was differentiation between the index and the material which could be submitted along with the index. Those two documents, by their very mention separately in the said Rules are different. The word ‘index’ is used for a specific purpose and therefore it was necessary that Rule 3 was followed exactly as per its requirement. He submitted that, in particular, the index does not mention the statement of reasons to believe that an individual is a fugitive economic offender. The index in the present case does not mention the statement that any information is available as to the whereabouts of the individual believed to be a fugitive economic offender and it does not refer to any proof of effort undertaken to bring the individual, believed to be a fugitive economic offender, back to India. He submitted that these three averments are made in the material, but not in the index and therefore this is non-compliance of the Rule 3 of FEO Rules. He therefore submitted that, on the ground of non-compliance of Rule 3, the application under Section 4 of the FEO Act itself was not maintainable and therefore the learned Special Judge should have allowed the application below Exhibit-19 in Criminal Misc. Application No.997/2018.

5. Shri Venegavkar, on the other hand, submitted that there is proper compliance of the said Rule. The material supplied along with the index is more important and all the requirements of Rule 3 are mentioned in the material, which is filed along with the index. He submitted that the statements referred to hereinabove are specifically mentioned under different categories in paragraphs 9, 10 and 11 of the application under those respective headings. He therefore submitted that there is no substance in the contention of the Applicant, and that the learned Special Judge has rightly rejected the said application and consequently even the present application is liable to be rejected.

6. I have considered these submissions. In this context, Section 4 of the FEO Act and Rule 3 of the FEO Rules are important, which are as follows.

> "**4. Application for declaration of fugitive economic offender and procedure therefor.** (1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that any individual is a fugitive economic offender, he may file an application in such form and manner as may be prescribed in the Special Court that such individual may be declared as a fugitive economic offender.
>
> (2) The application referred to in sub-section *(1)* shall contain—
>
> (a) reasons for the belief that an individual is a fugitive economic offender;
>
> (b) any information available as to the whereabouts of the fugitive economic offender;
>
> (c) a list of properties or the value of such properties believed to be the proceeds of crime, including any such property outside India for which confiscation is sought;

(d) a list of properties or *benami* property owned by the individual in India or abroad for which confiscation is sought; and

(e) a list of persons who may have an interest in any of the properties listed under clauses *(c)* and *(d)*.

(3) The Authorities appointed for the purposes of the Prevention of Money-laundering Act, 2002 (15 of 2003) shall be the Authorities for the purposes of this Act.”

“3. Form and manner of application for declaring an individual as a fugitive economic offender.—(1) The Director or the authorised officer, as the case may be, shall prepare an index containing the following materials, namely:-

(i) a copy of a warrant of arrest in relation to prosecution of a Scheduled Offence against the individual believed to be a fugitive economic offender issued by any Court in India;

(ii) a statement of reasons to believe that an individual is a fugitive economic offender;

(iii) a statement on any information available as to the whereabouts of the individual believed to be a fugitive economic offender;

(iv) any proof of effort undertaken to bring the individual believed to be a fugitive economic offender back to India;

(v) a list of properties or value of such properties believed to be the proceeds of crime, including any such property outside India for which confiscation is sought;

(vi) a list of properties or benami property owned by the individual believed to be a fugitive economic offender in India or abroad for which confiscation is sought;

> (vii) a copy of a confiscation order issued by the Adjudicating Authority under the Prohibition of Benami Property Transactions Act, 1988, if any;
>
> (viii) a list of persons who may have an interest in any of the properties listed under clauses (v) and(vi).
>
> (2) The index and material prepared under sub-rule (1) shall be signed on each page and forwarded to the Special Court in a sealed envelope, indicating a reference number and date of despatch.
>
> (3) The Director or the authorised officer, as the case may be, shall maintain registers and other records such as acknowledgement slip register and dak register and shall ensure that necessary entries are made in the register immediately as soon as a copy of the application along with the materials are forwarded to the Special Court."

7. The opening sentence of Rule 3(1) is thus "The Director or the authorised officer, as the case may be, shall prepare an index containing the following materials". Sub-rule (2) thereof mentions that the index and material shall be signed on each page and forwarded to the Special Court in a sealed envelope. Thus, the requirement of the above Rule is that the index must contain the material which is enlisted in clauses (i) to (viii) under sub-rule (1) of Rule 3 the FEO rules. The material which is sent along with the index contains paragraph-9 with the heading "Statement of reasons to believe that the accused above named is a fugitive economic offender". Paragraph-10 starts with the heading "Statement on information available on the whereabouts of the accused person believed to be a fugitive economic offender". Paragraph-11 starts with the heading "Efforts taken to bring the fugitive offender back to India". The following sub-paragraphs under these headings elaborate those aspects further. Thus, there is sufficient compliance of Rule 3(1)(ii)(iii) & (iv) of the FEO Rules. The requirement of the said Rule is that the index should contain all these materials. In the present case, the index was accompanied by all these materials and therefore it cannot be said that there was non-compliance of the said Rule.

8. I am unable to accept the submissions of Shri Aggarwal that the index itself must contain those particular materials. In the present case, Sr.No.1 of the Index mentions the Application under Section 4 read with Sections 5 & 10 of the Fugitive Economic Offender Ordinance, 2018 at pages 1 to 24 and from Sr.No.2 onwards the copies of different documents are mentioned in the index. The first serial number itself contains the material under Section 4, which can be seen from the Application itself. Therefore, it cannot be said that the index did not contain the material as required under Rule 3. Therefore, I do not find any substance in the submissions made by Shri Aggarwal in that behalf. The learned Judge has rightly held that the word ‘index’ cannot be read in isolation to give meaning that all the requirements in Rule 3 should be incorporated in the index. In that case, the word ‘material’ was not necessary in the said Rule. I do not find fault with this reasoning of the learned Special Judge. Consequently I do not see any reason to interfere with the impugned order. The Application is, therefore, rejected. The interim relief stands vacated.

(SARANG V. KOTWAL, J.)

PRADIPKUMAR PRAKASHRAO DESHMANE

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