IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 5837 OF 2019

Central Bureau of Investigation	.. Petitioner
Versus	
Dena Bank (Now Bank of Baroda) and Anr	.. Respondents

…

Ms.Ameeta Kuttikrishnan for the petitioner
Mr.Kashil A. Khan with Ms.Sana A. Khan, Mr.Shakir Qureshi i/b KSK Legal for respondent no.1.
Mr.S.R. Agarkar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 6th SEPTEMBER, 2023

P.C:-

1 The present application is filed by the CBI being aggrieved by an order dated 30/4/2019 passed by the Special Judge, CBI, below Exhibit-100 in Special Case No.64/2015.

The learned counsel Ms.Kuttikrishnan representing the CBI would submit that the grievance of the Agency is, that the CBI apprehend that it may be dragged into unnecessary litigation and then, it would be compelled to defend the matter to protect it's interest. The said assumption, on perusal of the impugned order, appear to be completely unfounded.

2 The background facts would reveal that the Dena Bank lodged a complaint, alleging fraud to the tune of Rs.244.81 crores and during investigation, CBI tracked chunk of the amount and seized substantial sum of Rs. 1,28,98,97,379/-. Out of this amount, on the application filed by Public Health Foundation, India, a sum of Rs.26 crores and Rs. 11 crores was released in it's favour.

Apart from this, even a sum of Rs.1,90,000/- on an application filed by one Ramakant Deshpande was directed to be defreezed.

Since the complainant in the subject C.R was the Bank, it moved an application for return of the seized money lying in various accounts and being conscious of the fact that some amount was already released in favour of PHFI, it claimed that the balance amount of Rs.91,43,66,552/- be returned along with the interest.

3 By order dated 18/9/2017, the application filed by the Dena Bank was allowed and the CBI was directed to defreeze the account with the following direction :-

> *"(1) The Application Exh.67 is allowed.*
>
> *(2) The CBI is directed to de-freeze the account Sr.1 to 18 and 20 to 32 of Annexure-I for total Rs.91,43,66,552/- and transfer the amount to the complainant bank along with principal and accrued interest thereon on the condition that the complainant*

> *to execute indemnity bond with undertaking that the complainant will deposit the amount as and when directed by the Court."*

4 Another application (Exhibit-100) was filed by the Bank, seeking direction that the CBI be directed to comply with the earlier directions issued on 18/9/2017, whereas the CBI filed an application (Exhibit-117) for recalling of the order dated 18/9/2017, as it contemplated that the order was passed without hearing it, and they are not the custodian and not having control over the funds, and if this amount is claimed by any other person, he would be put to inconvenience.

The Special Judge, CBI considered both the applications and re-iterated the background facts, which prompted him to pass an order on 18/9/2017, recording that certain amount which was de-freezed, was directed to be returned to one of the investors i.e. PHFI.

5 The Court took note of the fact that during the course of hearing, CBI came forward with the names of the Bank along with the description of the branches and the name of the beneficiaries, but it did not furnish any details as to how much amount was lying in the respective bank accounts.

6 Being convinced by the fact that since Dena Bank is the informant and primarily, the victim of the fraud, the remaining amount of Rs.91,43,66,552/- was directed to be

transferred to the Bank and the Court also took note of an important aspect that this order was not challenged by the CBI or any third party and in fact, there was compliance of the said direction at the end of the CBI, as it had addressed letters to the concerned Banks, though there was no follow-up.

The Court noted that Dena Bank had executed an Indemnity Bond and undertaking and however, since it is a nationalized bank that there can be no apprehension, that if the amount is directed to be brought back, it would not do so. As a consequence, finding no merit in Exhibit-117, it came to be rejected.

7 Though the Banks in which the amounts were lying, were not party to the applications, the CBI had forwarded letters to those Banks, and CBI do not intend to act as a recovery agent, once the accounts were freezed by the Investigating Officer of CBI.

The Court record that though it was the duty of the CBI to comply with the order of defreezing the concerned bank accounts, the CBI did not succeed in it's venture. However, since the Court would not have remained a mute spectator to the whole episode, the Special Judge deemed it appropriate to issue notices to the respective Branch Manager and since the letters were issued by CBI to 26 Banks and the Bank at Sr. No.10 had moved the High Court, and in case of the Bank mentioned at Sr Nos.23 and

25, it was mentioned that the High Court had ordered defreezing subject to certain conditions, keeping aside these three Banks, the notices came to be issued by the Special Judge to the Branch Manager of the concerned Bank seeking their explanation as to why the accounts were not freezed and the amount along with interest was not transferred to the informant – Dena Bank on the order of the Court being passed.

It was not understood as to what part of the order has prejudiced the CBI. The only probable reason appear to be recorded in paragraph no.10 of the impugned order that CBI do not want to act as an agent, but I do not think that the purport of the impugned order is to that effect.

Since the amount involved was alleged to have been deposited in the distinct bank accounts by cheating the applicant i.e. Dena Bank, what the Court had ensured by its earlier order dated 18/9/2017, is to transfer the amount to the complainant along with the interest accrued thereon, and this was subject to a situation that the complainant shall execute indemnity bond with an undertaking that it shall bring the amount as and when directed by the Court.

8 The submission of Ms.Kuttikrishnan that there were certain investors who had deposited the amount in different accounts. Worth it to mention that they have not lodged any complaint at any point of time about a fraud being perpetrated

against them, nor did they raise any grievance, even after the order dated 18/9/2017 was passed.

9 In the wake of the aforesaid circumstances, since the impugned order by no stretch of imagination, has caused any legal injury, nonetheless prejudice to the CBI, the relief sought of setting aside the said order, do not deserve any consideration and the same is declined.

As a consequence to this, Writ Petition is dismissed.

(SMT. BHARATI DANGRE, J.)