IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

****

CRM-M-25816-2023
Reserved on: 11.10.2023
Pronounced on: 18.10.2023

****

Anupama Sahoo

. . . . Petitioner

Vs.

State of Punjab and others

. . . . Respondents

****

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

****

Present: - Ms. Isha Goyal, Advocate, with
Mr. Raja Paramdeep Saini, Advocate, for the petitioner.

Mr. M.S. Nagra, AAG, Punjab.

****

DEEPAK GUPTA, J.

Petitioner and her husband Manoj Kumar Sahoo are the stated to be Directors of Bluepen Laboratories Pvt. Limited (Dehradun), which is stated to be the licensed wholesale distributor to sell, stock, exhibit or offer for sale to distribute various drugs specified under the Drugs and Cosmetic Act ['for short 'the Act']. Husband of the petitioner is involved in case FIR No.305 dated 21.12.2022 registered at Police Station A Division, District Amritsar City under Sections 22-C of the NDPS Act [Sections 27A and 29 of the NDPS Act; and Sections 420, 468, 471, 120B and 34 IPC added later on].

2. Allegations, in brief, against the husband of the petitioner are that his company i.e., M/s Bluepen Laboratories Pvt. Limited, by violating the terms of his license, not only purchased various narcotic drugs from a manufacturer namely M/s Rapport Remedies, despite the fact that

manufacturing license of said company had already been canceled, but further sold the said narcotic drugs to various existing and non-existing firms, whose licenses were found to be fake.

3. During the investigation of the case, the Investigating Officer had sent communications bearing No.80-5E dated 21.02.2023, and 81-5E dated 21.02.2023 *[Annexures R16 & R17]* to the respective managers of HDFC Bank, Amritsar and ICICI Bank, Amritsar, directing them to stop the operation of bank accounts of Manoj Kumar Sahoo, as it was found that said Manoj Kumar Sahoo used to receive drug proceeds in his Account No.097905002733 of ICICI Bank and Account No.50200067062071 of HDFC Bank. These accounts have been freezed on account of aforesaid communications.

4. By way of the present petition, the petitioner, who also claims to be one of the Directors of Bluepen Laboratories Pvt. Limited, has challenged the aforesaid communications to be invalid being in violation of Section 68-E and 68-F of the NDPS Act.

5. (i) It is contended that neither the procedure regarding freezing of the illegally acquired property has been followed nor any opportunity of hearing was provided to the petitioner or her husband, thereby rendering the entire proceedings to be nullity in the eyes of law.

(ii) Ld. counsel has referred to the provisions of Section 68F to be read with Section 68E of the NDPS Act to contend that specific procedure is required to be followed by the police officials while passing orders for freezing the bank accounts or ceasing property of the accused under the NDPS Act and in the absence of the following said procedure, the entire proceedings are actuated with malice and are unconstitutional, arbitrary and *void ab initio*. Ld. counsel has referred to decision of Hon'ble Supreme Court rendered in ***Aslam Mohd. Merchant vs Competent Authority & Ors*** *(2008) 14 SCC 186,* in support of her submissions.

(iii) Ld. counsel contends that Section 68F of the NDPS Act clearly postulates that there must be reasons to believe that such acquisitions are illegal and the order passed under the section must be served upon the concerned person. In the present case, none of the provisions have been complied with either in letter or in spirit.

(iv) Ld. counsel further submits that operation of the bank accounts is required for making payment of salaries of the employees of the company and EMI's of the loans taken by the company and also for fulfilling the various tax liabilities including GST payment etc.

Prayer has accordingly been made to quash the communications issued by respondent No.4 to the concerned banks, freezing the two bank accounts in questions.

6. In their detailed reply, the respondents/State have justified their action on the ground that husband of the petitioner has been found to be involved in sale and purchase of intoxicating drugs illegally under the garb of his firm M/s Bluepen Laboratories Pvt. Limited and in contravention of the terms and conditions of his drug license and that he has been receiving the drug money in the bank accounts in question pertaining to the firm and so, the sources of drug money received in the account are under financial investigation, which is still going on. Ld. State counsel contends that there is strong apprehension that firm of the petitioner and the accused Manoj

Kumar Sahoo may withdraw the drug money deposited in the accounts. However, it is conceded that appropriate freezing order under Section 68F of the NDPS Act is yet to be issued by SHO, Police Station A Division, Amritsar. It is contended that bank accounts have been seized till the conclusion of the investigation in order to ascertain the source of drug money. With these submissions, prayer is made to dismiss the petition.

7. I have considered submissions of both the sides and have appraised the record.

8. The NDPS Act was enacted to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operation relating to narcotic drugs and psychotropic substances, to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Convention on Narcotic Drugs and Psychotropic Substances and for matters connected therewith.

9. Chapter VA containing Section 68A to Section 68Z of the NDPS Act, providing for forfeiture of illegally acquired property, was inserted in the NDPS Act by Act No. 2 of 1989 w.e.f. 29.05.1989. Section 68A of the NDPS Act applies to persons specified in sub-section (2) thereof, which as per clause (cc), also include every person who has been arrested or against whom a warrant or authorisation of arrest has been issued for the commission of an offence punishable under the NDPS Act with imprisonment for a term of ten years or more, and every person who has been arrested or against whom a warrant or authorisation of arrest has

been issued for the commission of a similar offence under any corresponding law of any other country.

10. In the present case, husband of the petitioner is accused of commission of offences punishable under the NDPS Act with imprisonment for a term of ten years and more. Besides, as per Section 68A (2) (e) of the NDPS Act, the provisions of this Chapter also apply to every associate of a person referred to in Clause (a) or Clause (b) or Clause (c) or Clause (cc) of Section 68A (2) of the NDPS Act.

11. Section 68B Sub Clause (b) of the NDPS Act defines "associate" to mean various kind of persons, which inter alia, also include any association of persons, body of individuals, partnership firm, or private company within the meaning of the Companies Act, of which such person had been or is a member, partner or director.

12. In the present case, since Manoj Kumar Sahoo, husband of the petitioner, is director of M/s Bluepen Laboratories Pvt. Limited, therefore, said firm shall be considered to be an 'associate' within the meaning of Section 68B Clause (b) of the NDPS Act.

13. Section 68C of the NDPS Act, prohibits holding of illegally acquired property. Said provision reads as under: -

> "68C. Prohibition of holding illegally acquired property. -- (1) As from the commencement of this Chapter, it shall not be lawful for any person to whom this Chapter applies to hold any illegally acquired property either by himself or through any other person on his behalf.
>
> (2) Where any person holds any illegally acquired property in contravention of the provisions of sub-section (1), such property shall be liable to be forfeited to

the Central Government in accordance with the provisions of this Chapter:

Provided that no property shall be forfeited under this Chapter if such property was acquired, by a person to whom this Act applies, before a period of six years from the date he was arrested or against whom a warrant or authorisation of arrest has been issued for the commission of an offence punishable under this Act or from the date the order or detention was issued, as the case may be."

14. The term 'illegally acquired property', in relation to any person to whom this Chapter applies, means, as per Section 68B Clause (g) of the NDPS Act, as under: -

"(g) illegally acquired property", in relation to any person to whom this Chapter applies, means, --

(i) any property acquired by such person, whether before or after the commencement of this Chapter, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to the contravention of any provisions of this Act or the equivalent value of such property; or

(ii) any property acquired by such person, whether before or after the commencement of this Chapter, for a consideration, or by any means wholly or partly traceable to any property referred to in sub-clause (i) or the income or earning from such property or the equivalent value of such property; or

(iii) any property acquired by such person, whether before or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014, wholly or partly out of or by means of any income, earnings or assets the source of which cannot be proved, or the equivalent value of such property,

and includes--

(A) any property held by such person which would have been, in relation to any previous holder thereof, illegally acquired property under this clause if such previous holder had not ceased to hold it, unless such person or any other person who held the property at any time after such previous holder or, where there are two or more such previous holders, the last of such previous holders is or was a transferee in good faith for adequate consideration;

(B) any property acquired by such person, whether before or after the commencement of this Chapter, for a consideration, or by any means, wholly or partly traceable to any property falling under item (A), or the income or earnings therefrom;

15. Section 68E of the NDPS Act provides as to how 'illegally acquired property' shall be identified. It reads as under:

"**68E. Identifying illegally acquired property** - (1) Every officer empowered under section 53 and every officer-in-charge of a police station shall, on receipt of information is satisfied that any person to whom this Chapter applies holds any illegally acquired property, he may, after recording reasons for doing so, proceed to take all steps necessary for tracing and identifying such property.

(2) The steps referred to in sub-section (1) may include any inquiry' investigation or survey in respect of any person, place, property, assets, documents, books of account in any Bank or public financial institution or any other relevant matters.

(3) Any inquiry, investigation or survey referred to in sub-section (2) shall be carried out by an officer mentioned in sub-section (1) in accordance with such directions or guidelines as the competent authority may make or issue in this behalf."

16. Section 68F of the NDPS Act provides for seizure or freezing of illegally acquired property. It reads as under:

"**68F. Seizure or freezing of illegally acquired property** - (1) Where any officer conducting an inquiry or investigation under Section 68E has reason to believe that any property in relation to which such inquiry or investigation is being conducted is an illegally acquired property and such property is likely to be concealed, transferred or dealt with in any manner which will result in frustrating any proceeding relating to forfeiture of such property under this Chapter, he may make an order for seizing such property and where it is not practicable to seize such property, he may make an order that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, or of the competent authority and a copy of such order shall be served on the person concerned."

17. The procedure in relation to forfeiture of property is contained in Sections 68H and 68I.

18. As is evident from the aforesaid provisions that every officer empowered under Section 53 of the NDPS Act and every officer-in-charge of the Police Station is duly empowered ***to identify*** the illegally acquired property as per Section 68E of the NDPS Act, but for that, he is required to record reasons for doing so and then he can proceed to take all the steps necessary for tracing and identifying such property.

19. Section 68F of the NDPS Act further empowers an officer conducting an inquiry or investigation under Section 68E of the NDPS Act that if he has reasons to believe that any property in relation to which such inquiry or investigation is being conducted, is an illegally acquired property and that such property is likely to be concealed, transferred or dealt with in any manner, which will result in frustrating any proceeding relating to forfeiture of such property under the Chapter, then he may make an order for seizing such property and where it is not practicable to seize the property, then he may make an order that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such an order, or of the competent authority and a copy of such order shall be served on the concerned person. Besides, competent authority is required to be informed of any order passed under sub section (1) and copy of the order is also required to be sent to the competent authority within forty-eight hours of its being made. Not only this, Section 68F (2) of the NDPS Act clearly provides that any order made under sub section (1) shall have no effect, unless the said order is confirmed by an

order of the competent authority within a period of thirty days of its being made.

20. In the present case, respondent No.4 - SHO Police Station A Division, District Amritsar, simply sent communications dated 21.02.2023 to the respective managers of the HDFC Bank and ICICI Bank to stop the operation of the accounts in question, which accounts admittedly, pertain to M/s Bluepen Laboratories Pvt. Limited. It has been conceded by ld. State counsel that no order as contemplated under Section 68F of the NDPS Act has been passed till date. Not only this, even the impugned communications (Annexures R16 & R17), assuming the same to be orders, have not been confirmed by the competent authority within a period of 30 days, though a period of more than 7 months has since lapsed from the date of issuance of these communications (Annexures R16 & R17), which were issued on 21.02.2023.

21. In ***Aslam Mohd. Merchant (Supra),*** it has been held by Hon'ble Supreme Court as under: -

> "17. Chapter VA contains stringent provisions. It provides for forfeiture of property. Such property, however, as the heading of the Chapter shows, must be derived from or used in illicit traffic. Illegally acquired property in relation to any person to whom the chapter applies would mean only such property which was acquired wholly or partly out of or by means of any income attributable to the contravention of any provision of the Act or for a consideration wholly or partly traceable to any property referred to in sub-clause (i) or the income or earning from property.
>
> 18. It is, therefore, evident that the property which is sought to be forfeited must be the one which has a direct nexus with the income etc. derived by way of contravention of any of the provisions of the Act or any property acquired therefrom. What is meant by identification of such property having regard to the

definition of `identifying' is, that the property was derived from or used in the illicit traffic.

19. The property having regard to the said definition would include any of the properties described therein and deeds of instruments evidencing interest therein derived from or used in the illicit traffic.

In the aforementioned context, the word "person" also assumes importance which leads to determining the nature, source, disposition, movement, title or ownership of the property. Direction to forfeiture of a property is in two parts. Firstly, it has to be identified in terms of Section 68-F of the Act. For the said purpose, **a satisfaction must be arrived at by the authority specified therein to the effect that the person concerned had been holding any illegally acquired property. Secondly, on the basis of such information, he is entitled to take steps for tracing and identifying the property.**

The Authority is also entitled to seize or freeze such a property.

20. Before, however, the actual order of forfeiture of such illegally acquired property is passed, issuance of a notice to show cause is essential so as to fulfill the requirements of natural justice.

Such a notice is to be issued by the Authority having regard to:

(i) The value of the property held by the person concerned,

(ii) His known source of income, earning or assets,

(iii) Any other information or material made available as a result of a report from any officer making an investigation under Section 68-E of the Act or otherwise.

21. When the aforementioned conditions are satisfied, the competent authority would be entitled to issue a show cause notice, if he has reason to believe, wherefore reasons are to be recorded in writing that the properties are illegally acquired properties.

22. Once the notice to show cause is found to be satisfying the statutory requirements which are condition precedent therefor, a valid proceeding can be said to have been initiated for forfeiture of the property. Only in a case where a valid proceeding has been initiated, the burden of proof that any property specified in the notice is not illegally acquired property, would be on the `person' affected.

23. Before, however, an order of forfeiture can be passed, the Competent Authority must not only comply with the principles of natural justice, he is also

required to apply his mind on the materials brought before him. It is also necessary that a finding that all or any of the properties in question were illegally acquired properties is recorded."

22. In the present case, the respondents having not followed the procedure as laid down in Section 68F of the NDPS Act to be read with Section 68E of the NDPS Act, therefore, communications dated 21.02.2023 (Annexures R16 and R17) sent to the respective Managers of the HDFC Bank and ICICI Bank cannot be sustained in the eyes of law. Consequently, the said communications are hereby set aside.

23. However, it is made clear that respondents will be well within their rights so as to seize/forfeit the accounts in question, but only after following the due procedure of law as laid down in Section 68F to be read with Section 68E of the NDPS Act, as duly explained by Hon'ble Supreme Court in ***Aslam Mohd. Merchant's case (supra).***

Present petition is hereby disposed of accordingly.

(DEEPAK GUPTA)
JUDGE

18.10.2023
Vivek

1. Whether speaking/reasoned? ***Yes****/No*
2. Whether reportable? *Yes/No*