IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.598 OF 2023

Jatinder Kaur Chilotra,
Aged 33, Adult Indian Inhabitant
R/at : Flat No.301-302, B Wing Shiv
Darshan Eden Rose Complex, Beverly Park,
Kanakia, Opp. Cinemax Mira Road, Dist. Thane,
Thane. … Petitioner

versus

1. Intelligence Officer, Directorate of Revenue Intelligence, Mumbai Zonal Unit, Mumbai.

2. The State of Maharashtra … Respondents

Mr. Mandar M. Goswami with Mr. Samyak A. Bhatkar, for Petitioner.
Mr. Advait M. Sethna with Ms. Ruju R. Thakker, Mr. Rangan Majumdar, Mr. Sandeep Raman, for DRI.
Mr. M.G.Patil, APP for State

CORAM: N.J.JAMADAR, J.

DATE : 27 FEBRUARY 2024

JUDGMENT :

1. Heard the learned Counsel for the parties.

2. Rule. Rule made returnable forthwith. With the consent of the learned Counsel for the parties, heard finally.

3. This Petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of the order dated 3 December 2021 passed by the learned Additional Sessions Judge, Thane, on an application for defreezing of bank

account No.001905004912 of M/s. Allied Air Express maintained with ICICI Bank, Mira Road Branch, which has been frozen by the Respondent No.1 – Directorate of Revenue Intelligence, Mumbai Zonal Unit in connection with F.No.DRI/MZU/C/INT-117/2016 registered against Manjit Singh, husband of the Petitioner and others for the offences punishable under Sections 22(c), 23(c), 27-A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the Act, 1985).

4. The background facts can be summerized as under :

4.1 Pursuant to a specific intelligence that Manjig Singh (A1) was involved in illegal export of psychotropic substances namely Alprazolam, Zolpidem, Diazepam, etc., through Foreign Post Office, New Delhi, by way of mis-declaration and use of fake prescriptions, search and seizure operations were conducted at various places. Contraband substances were recovered. Manjit Singh (A1) and other accused came to be arrested. Post completion of investigation, chargesheet has been lodged leading to NDPS Case No.48 of 2017.

4.2 In the meanwhile, the Authorized Officer after having found that illegally acquired property has been deposited in the various bank accounts, ordered the freezing of the accounts, including bank account No.001905004912, standing in the name of M/s. Allied Air Express maintained with ICICI Bank, Mira Road Branch (the subject account). It transpired that the prime accused Manjit Singh (A1) was operating the subject account which stood in the name of M/s. Allied Air Express, a proprietary firm of the Petitioner.

4.3 The Petitioner preferred an application for defreezing the bank account on the ground, inter alia, that the order of freezing of the bank account having not been confirmed by the Competent Authority within a period of 30 days as mandated under sub-Section (2) of Section 68-F, the said order ceased to operate.

4.4 Respondent No.1 – DRI resisted the application on the ground that though the account stood in the name of M/s. Allied Air Express, yet the subject account was exclusively operated and managed by Manjit Singh (A1) – husband of the Petitioner. Therefore, the amount standing to the credit of the subject account being in the nature of the proceeds of the drug trafficking, the confirmation as envisaged by sub-Section (2) of Section 68-F of the Act, was not warranted.

4.5 By the impugned order, the learned Special Judge was persuaded to reject the application opining, inter alia, that the amount which stood to the credit of the subject account represents proceeds of illicit supply of psychotropic substances. Since the said account was used and operated by Manjit Singh (A1) for elicit trafficking in psychotropic substances and the applicant was a mere proxy, no case for defreezing of the subject account was made out.

4.6 Being aggrieved, the Petitioner has invoked the writ jurisdiction.

5. An affidavit in reply is filed on behalf of the Respondent No.1. An endeavour has been made to support the impugned order on the premise that in the

voluntary statement of the Petitioner under Section 67 of the Act, 1985, the Petitioner had feigned complete ignorance of the subject account and had claimed that she was unaware of the affairs of M/s. Allied Air Express, including the bank accounts maintained in the name of the said firm. The Petitioner had further stated that the subject account was opened and operated by Manjit Singh (A1). Thus, the Petitioner cannot turn around and lay a claim over the amount standing to the credit of the said account, which is essentially an illegally acquired property.

6. I have heard Mr. Goswami, learned Counsel for the Petitioner, and Mr. Sethna, learned Special PP for Respondent No.1. I have also perused the material on record, including the impugned order.

7. Mr. Goswami submitted that the impugned order suffers from a manifest error in law. In the face of an express statutory provision which warrants that any order passed under sub-Section (1) of Section 68-F, will have no effect unless the said order is confirmed by an order of Competent Authority within 30 days of its being made, the learned Special Judge could not have rejected the application as it was not the case of DRI that such an order of confirmation was passed by the Competent Authority. What exacerbates the situation, according to Mr. Goswami, was the fact that the learned Special Judge while allowing the application of other accused in the very same case, took note of the mandatory nature of sub-section (2) of Section 68-F and defreezed the accounts and yet declined the same dispensation to the Petitioner.

8. In opposition to this, Mr. Sethna, the learned Special PP for Respondent No.1 submitted that the Petitioner who has disowned the proprietary title to the subject account cannot be permitted to take advantage of the provisions contained in sub-Section (2) of Section 68-F. Since the Petitioner herself had claimed that she had no concern with the subject account, the learned Special Judge was justified in declining to grant the prayer to defreeze the account. In a situation of this nature, according to Mr Sethna, the exercise of writ jurisdiction is not warranted as disputed questions of fact as to the proprietary title to the subject account, which is sought to be defreezed, arise for determination. Mr. Sethna would urge that the provisions contained in Section 68-F (2) have no application to the facts of the case.

9. I have given anxious consideration to the rival submissions. Incontrovertibly, the Petitioner is the proprietor of M/s. Allied Air Express. There is not much qualm over the fact that account No. 001905004912 is maintained by M/s. Allied Air Express with ICICI Bank Ltd., Mira Road (E) Branch. From the own showing of the DRI – Respected No.1, the subject account, along with other accounts, were opened and operated by Manjit Singh (A1) – the husband of the Petitioner.

10. At this stage, the question of the character of the money which stands to the credit of the subject account need not be necessarily delved into. The Court may proceed on the premise that the money which stood to the credit of the subject account partakes the character of an illegally acquired property. The moot question

that wrenches to the fore is whether, in the absence of a confirmation order under sub-section (2) of Section 68-F, an order of freezing of the bank account, which purportedly retains illegally acquired property, remains valid beyond 30 days.

11. Chapter VA which came to be inserted by Act 2 of 1989 contains a fasciculus provision under title 'Forfeiture of illegally acquired property'. Sub-Section (2) of Section 68-F of the Act, provides that the provisions of the said Chapter shall apply, inter alia, to every person who is 'relative' of a person referred to in clause (a) or clause (b) or clause (c) or clause (cc) of the Act. Sub-clause (cc) of sub-Section (2) of Section 68-A reads as under :

> "(cc) <u>every person who has been arrested or against whom a warrant or authorization of arrest has been issued for the commission of an offence punishable under this Act with imprisonment for a term of ten years or more,</u> and every person who has been arrested or against whom a warrant or authorization of arrest has been issued for the commission of a similar offence under any corresponding law of any other country;"

12. Clause (i) of Section 68-B defines the 'relative' as under :

> "(i) "relative" means -
> (1) spouse of the person;
> (2) brother or sister of the person;
> (3) brother or sister of the spouse of the person;
> (4) any lineal ascendant or descendant of the person;
> (5) any lineal ascendant or descendant of the spouse of the person;
> (6) spouse of a person referred to in sub-clause (2),

sub-clause (3), sub-clause (4) or sub-clause (5);

(7) any lineal descendant of a person referred to in sub-clause (2) or sub-clause (3);"

13. Clause (g) of Section 68-B defines illegally acquired property 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) ………..."

14. Sections 68-E and Section 68-F contain the provisions for identification and seizure or freezing of illegally acquired property. Section 68-E reads as under :

> "68-E 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 <u>is satisfied that any person to whom this Chapter applies holds any illegally acquired property,</u> <u>he may</u>, after recording reasons for doing so, <u>proceed to take all steps necessary for tracing and identifying such property</u>.
>
> (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."

15. Evidently, Section 68-E envisages the measures for tracing and identification of illegally acquired property by resorting to inquiry, investigation or survey, in respect of an illegally acquired property by a person to whom Chapter VA applies.

16. Section 68-F with which we are primarily concerned, reads as under :

"68-F Seizure or freezing of illegally acquired property – (1) Where any officer conducting an inquiry or investigation under section 68-E 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:"

Provided that the competent authority shall be duly informed of any order made under this sub-section and a copy of such an order shall be sent to the competent authority within forty-eight hours of its being made.

(2) Any order made under-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.

………..."

17. From a plain reading of Section 68-F, before an empowered officer proceeds to seize or freeze the property, two conditions are required to be satisfied. One, the officer should have reason to believe that such property is an illegally acquired property. Second, the Officer should have reason to believe that such illegally acquired property is likely to be sold, transferred or dealt with in any manner which will result in frustrating any proceedings relating to forfeiture of such property under the provisions of Chapter VA. Upon such subjective satisfaction, the empowered officer may make an order for seizing or freezing the property. The provisions of Section (1) of Section 68-F cast a duty on the empowered officer passing an order for seizure or freezing of property to apprise the competent authority designated under Section 68-D of the Act, about such order and also send a copy of such order within 48 hours of its being made. The text of sub-Section (2) of Section 68-F is peremptory.

18. In the backdrop of the aforesaid analysis of the provisions of Chapter VA, reverting to the facts of the case at hand, it becomes evident that even if the case of Respondent No.1 – DRI is taken, as it stands, the amount which stands to the credit of the subject account would fall within the ambit of sub-clause (i) of clause (g) of Section 68-B, as the DRI alleges that the money has been derived or obtained in contravention of the provisions of the Act, 1985. Since the said account stands in the name of the Petitioner, who, being a wife of Manjit Singh (A1), falls within the ambit of the 'relative' the provisions of Chapter VA apply to the Petitioner in view of clause

(d) of sub-Section (2) of Section 68-A.

19. The submission on behalf of DRI – Respondent No.1 that since the Petitioner had feigned ignorance of the amount standing to the credit of the said account when her statement was recorded under Section 67 of the Act, 1985, and, therefore, she cannot now take a somersault and lay claim over the said account, loses sight of the substance of the matter. The stand of the Petitioner, during the course of investigation, will not change the character of the property substantially. Since the Respondent No.1 – DRI alleges and the empowered officer proceeded under Section 68-F (1) of the Act, as he had reason to believe that the said property was illegally acquired property, the stand of the Petitioner, in whose name the account stands, pales in significance. Once the authorities proceeded to freeze the property on the premise that it constituted illegally acquired property, the provisions contained in sub-section (2) of Section 68-F will get attracted irrespective of the stand of the person in whose name such property stands.

20. The submission of Mr. Sethna that in exercise of extra ordinary writ jurisdiction, this Court cannot venture into evaluation of disputed questions of fact as to the proprietary title over the money standing to the credit of the account, may carry conviction. However, in the instant Petition, this Court does not profess to delve into the disputed questions of fact, nor is that warranted. What has to be seen is whether the order of freezing of property remains valid beyond the period prescribed under

sub-Section (2) of Section 68-F. To enthuse life into an order passed under sub-Section (1) of Section 68-F, confirmation by the Competent Authority is the only legal mode. The provisions contained in sub-section (2) of Section 68-F, are required to be read in conjunction with the proviso to Section 68-F (1) which enjoins the empowered officer ordering seizing or freezing of the property not only to duly inform the Competent Authority, but also forward a copy of such order to the Competent Authority within 48 hours of its being made.

21. The approach of the Court in construing the aforesaid provisions ought to be in consonance with the constitutional recognition of the right to property. On a proper construction, the power to seize or freeze the property under Section 68-F of the Act, 1985, cannot be said to be unregulated or uncanalized. The empowered officer must have reason to believe that the property is illegally acquired property and it is likely to be concealed, transferred or dealt with in any manner which will result in frustrating any proceedings relating to forfeiture of such property under Chapter VA. He is enjoined to duly inform the competent authority and also forward a copy of such order to the competent authority. Sub-Section (2) of Section 68-F envisages further control over the exercise of such power, by vesting in competent authority the power to confirm such order and upon non-confirmation thereof, within a period of 30 days, render such order nugatory. The compliance of these provisions justifies the deprivation of the right to property.

22. A useful reference in this context can be made to the decision of the Supreme Court in the case of **Aslam Mohammad Merchant V/s. Competent Authority and Ors.**[1] wherein the Supreme Court emphasised that the scrupulous compliance of the statutory requirement is imperative where persons are to be deprived of their right in a property. The Supreme Court concluded, inter alia, as under :

> "60. We are not unmindful of the purport and object of the Act. Dealing in narcotics is a social evil that must be curtailed or prohibited at any cost. Chapter VA seeks to achieve a salutary purpose. But, it must also be borne in mind that right to hold property although no longer a fundamental right is still a constitutional right. It is a human right.
>
> 61. The provisions of the Act must be interpreted in a manner so that its constitutionality is upheld. The validity of the provisions might have received constitutional protection, but when stringent laws become applicable as a result whereof some persons are to be deprived of his/her right in a property, scrupulous compliance of the statutory requirements is imperative."

23. It is also well recognized that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. (**The King Emperor V/s. Khawaja Nazir Ahmad**[2].)

24. Reliance placed by Mr. Goswami on the judgment of the Delhi High Court in the case of **Vikas Kumar V/s. D.R.I.**[3] appears to be well founded. In the

1 (2008) 14 SCC 186
2 AIR 1945 PC 18 (Vol. 32)
3 2010 SCC Online Del. 4329

said case, it was enunciated that in the absence of confirmation of the order passed under Section 68-F(2), the provisions of which are mandatory in nature, the order of freezing of bank accounts deserves to be set aside.

25. Admittedly, in the case at hand, the competent authority had not passed an order confirming the order freezing the aforesaid bank account. The learned Special Judge was, therefore, not justified in rejecting the application by adverting to the matters which were not germane for the determination of the question of defreezing in the light of the non-compliance of the statutory mandate. Hence, an interference is warranted in the impugned order.

26. The conspectus of aforesaid consideration is that the Petition deserves to be allowed.

27. Hence, the following order :

ORDER

(i) The Petition stands allowed.

(ii) The impugned order dated 3 December 2021 stands quashed and set aside.

(iii) The application preferred by the Petitioner for defreezing of the Bank account No. 001905004912 stands allowed.

(iv) The Bank Account No. 001905004912 standing in the name of M/s. Allied Air Express stands defreezed.

(v) Rule is made absolute to the aforesaid extent.

(vi) No costs.

(N.J.JAMADAR, J.)