IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 119 OF 2024

1. Sahebarao Ramdas Shinde

2. Suresh Bhika Chavan ...Applicants

Versus

State of Maharashtra …Respondent

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Mr.Yashodeep Deshmukh a/w Ms.Vaidehi Pradeep i/b. Mr.P.R. Patil:	Advocate for Applicants.
Mr.A.D.Kamkhedkar:	APP for Respondent-State.
Mr.Vishwajit Jadhav:	Deputy Superintendent of Police – Anti Corruption Bureau – Nashik Unit – Investigating Officer.

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CORAM : S. M. MODAK, J.

DATE : 28th MARCH 2024

P. C. :-

1. Heard learned Advocate Shri.Deshmukh for the Applicants / Accused Nos.2 and 3 and learned APP.

Complaint to ACB

2. There was a complaint made by the Commissioner – Nashik Municipal Corporation to the Superintend of Police – Anti Corruption

Nashik on 17th May, 2016. He has requested for conducting an enquiry about the connection in between the then corporator – Sudhakar Bhika Badgujar on one hand and Partnership Firm by name M/s. Badgujar and Company of which, present two Applicants are the Partners. On the other hand, on the basis of said complaint, an *'open enquiry'* was conducted and FIR came to be lodged on 17th December, 2023 at Nashik City Police Station under Sections 120-B, 420, 467, 468, 471 of Indian Penal Code, 1860 (hereinafter "the IPC") and under Sections 13(1)(d)(i), 13(1)(d)(ii) read with Section 13(2) of the Prevention of Corruption Act, 1988. (hereinafter "the PC Act"). This FIR was lodged against the corporator and present two Applicants.

Freezing of Accounts

3. During investigation, the Agency has frozen the Bank Accounts standing in the name of the Firm. Those details are tendered by way of a chart signed by the Deputy Superintendent of Police – Anti Corruption – Nashik. There are in all 5 Bank Accounts. They are as follows:-

Sr. No.	Name of the Bank	Nature of Account/Account No.
1.	Saraswat Bank – Branch Mahatma Nagar – Nashik City	Current Account No.210100100000772

2.	Saraswat Bank – Branch Mahatma Nagar – Nashik City	C.C./OD Account No.210500100001007
3.	HDFC Bank – Branch Sharanpur Road – Nashik City	Account No.5020012426980
4.	Union Bank – Branch Pawannagar – Nashik City	Account No.499205010068026
5.	Union Bank – Branch Pawannagar – Nashik City	Account No.499201010035248

4. That chart which is marked as Annexure-X also depicts how much amount is standing to the credit of the Firm in those accounts. It is Rs.91,17,727.76 in total as on 27th March 2024.

Order of trial Court

5. After freezing all Accounts, both these Applicants have approached the trial Court for **de-freezing**. However, the trial Court has not accepted their request as per the order dated 24th January 2024. That is why, they have filed present Revision Application.

Submissions

6. During the hearings, Mr.Deshmukh made submission that immediately his clients are required to make payments towards the salary of the employees and towards the Government dues. He sought for urgent interim orders. Direction was given to file the synopsis of all these payments and accordingly, a chart was filed. It was also served to the Office of Anti Corruption Bureau at Nashik.

7. There are in all **37 heads** which suggest all the payments to be made. Broadly, it can be classified into three categories:-

(a) The payment to staff towards the **salary** at Sr.Nos.1 to 4

(b) The **Government outgoings** at Sr.Nos.5 to 9. It consists of Provident Fund Contribution as per the Employees' State Insurance, GST and Advance Income Tax.

(c) The items from Sr.Nos.10 to 37 pertain to payment to be made to those **contractors / suppliers** from whom, they have purchased the materials or award of service.

It was made clear that for dealing with items at Sr.Nos.10 to 37, Court is required to hear the Revision finally. Mr.Deshmukh after taking instructions, consented for deciding interim prayer in respect of Sr.Nos.1 to 8.

Overdraft facility

8. On the last date, learned APP Shri.Kamkhedkar made submission that even though these Accounts are frozen, there is overdraft facility available with Saraswat Bank and Applicants can avail it. So, direction was given to the Applicants to take instructions. So also, direction was given to learned APP to take instructions about their stand in respect of the items from Sr.Nos.1 to 9.

9. In pursuance to the said directions, Mr.Deshmukh has produced

on record a letter sent by Saraswat Bank dated **27th March 2024** addressed to the Firm. It is taken on record and marked as Annexure-Y. The facts mentioned therein are as follows:-

(a) The sanction limit as on 27th March 2024 is Rs.0.00.

(b) Ruling limit of Account was Rs.284,00,000/- (with monthly deduction of Rs.2,00,000/-).

(c) Account current balance is Rs.7128947.95.

Readiness of Bank

The Bank has shown readiness for Account utilization and renewal of the limit subject to the following two conditions:-

(a) Clearance from Anti Corruption Bureau to de-freeze debits from the Account

And

(b) Satisfactory clarification from the Firm for the said action initiated by Anti Corruption Bureau.

A query is made to learned Advocate Shri.Deshmukh about this condition for satisfaction. After taking instruction, he submitted that his clients will do the needful.

Documents

10. To justify the claim, he invited my attention to the documents annexed to the compilation. It consists of following documents:-

(a) Salary to be paid to the employees,

(b) The challans for CGST payment

(c) Electronic challan cum return for Employees Provident Fund

And

(c) Copy of Income Tax Challan by way of advance tax.

According to Mr.Deshmukh, these payments will not be pocketed by his clients but once the payments are made, his client can certainly produce the necessary documents.

Grounds for rejections

11. Learned APP after taking instructions strongly opposed for any interim relief on all these heads also. He invited my attention to the averments in the FIR and according to him, the Anti Corruption Bureau started with the enquiry on the complaint of Municipal Commissioner and the Deputy Superintendent of Police – Anti Corruption Bureau after conducting the enquiry, has concluded about misuse of the position by Accused No.1, the then corporator. He made following submissions:-

(a) Even though, Para No.1 mentions that **he is retired** from the Partnership business on 6th December 2006, in fact, there are numerous circumstances which suggest that still, he was having a control over the business of the Partnership Firm. He has elaborated those circumstances mentioned by the **Commissioner** and in the **present FIR**.

(b) Earlier, the business of Badgujar Company was conducted on proprietary basis of which the corporator was sole proprietor. **It continued by 30th November, 2006**.

(c) The proprietary Firm was undertaking various works from the Corporation and over Government agencies and it was coming in his way for contesting the election as a member of the Corporation.

(d) That is why, he has added the present Applicants as partners by having their nominal contribution and in fact, the deed of partnership was only prepared to portray that they are the partners.

(e) Subsequently, the corporator retired from the Firm and there was clause that he will get the amount by way of goodwill but this was all prepared to portray that he has retired. But, the fact is otherwise.

(f) He invited my attention to the averments on Page No.35 (FIR) which depicts that the amount of Rs.6,36,76,195/- was withdrawn by way of self-withdrawal from the Union Bank of India Account standing in the name of Partnership Firm and the First-Informant concluded that all these withdrawals are suspicious.

(g) According to him, the investigation is still going on and there is an apprehension that the corporator has purchased

> the properties with the help of the funds generated in the name of Firm and that too, by abusing the position by Accused No.1 as a corporator.

<u>Reply</u>

12. Mr.Deshmukh also raised the contention that an *'open enquiry'* was conducted for 8 years and in fact, election of Accused No.1 was challenged by way of Election Petition and it was dismissed and at that time, an internal enquiry was also conducted about misuse of power as a corporator by Accused No.1 and he was exonerated at that time.

13. Learned APP also emphasized on one fact that is, the income derived by the Partnership Firm after the Bank accounts are frozen and he seeks direction to the Applicants to deposit that income in those Bank Accounts and also give a declaration how much income, they have earned after freezing of those Accounts.

14. It is true that for deciding whether the action of Anti Corruption Bureau in freezing all these Accounts is justified or not, detailed hearing is required and even though Court has shown readiness to hear this Revision finally, Mr.Deshmukh insisted that it will take sometime and urgent relief is required in view of the completion of this financial year on 31st March 2024. Considering that urgency, I have taken up the

matter for hearing on interim relief.

15. It is true that there are supporting documents to show the claim for item Nos.1 to 9. Except the salary, all the heads belong to payment to Government. It is also true that they are arising out of statutory responsibilities. It is also true that if those dues are not fulfilled, the law will take its own course. It is also true that the Applicants ought have earned income after freezing of the Accounts and they must have deposited it somewhere. However, when after taking instructions, Mr.Deshmukh has shown readiness to furnish an undertaking about that income, I think, the limited prayer for item Nos.1 to 9 can be considered. At the same time, Applicants can be asked to furnish details of income earned by them upto 31st March 2024. This will be the income after freezing of Accounts. This direction is required as investigation is still going on. So, this Court is inclined to grant an interim relief in respect of item Nos.1 to 9 subject to following conditions. Hence, following order:-

-: **O R D E R** :-

(I) Let the Applicants are permitted to withdraw an amount towards Item Nos.1 to 9 for the heads described therein by way of an *'Interim Arrangement'* subject to following conditions :-

(i) The Applicants are directed to furnish the documents after the payments are made to the concerned Persons / Authorities to the Anti Corruption Bureau – Nashik, within 15 (Fifteen) days after the payments are made.

(ii) The Applicants to furnish an undertaking that they will give the details of the income which they have accrued from 1st January to 31st March within 3 (Three) weeks after 31st March to the Office of Anti Corruption Bureau – Nashik.

(iii) This liberty is restricted only to Saraswat Co-operative Bank – Branch – Mahatma Nagar – Nashik in respect of C.C./O.D., Account No.210500100001007.

(II) Let the Applicants as well as the Anti Corruption Bureau – Nashik to approach the Bank and inform them about this order.

(III) Now, it will be for the Applicants to satisfy the Bank as mentioned in that letter.

(IV) Parties to act on an authenticated copy of this order.

(V) Let operative order be uploaded today itself.

(VI) Matter be kept on **29th April, 2024**.

[S. M. MODAK, J.]