

IN THE COURT OF SESSION FOR GREATER BOMBAY

MISC. APPLICATION NO.259 OF 2018

IN

M.P.I.D. CASE NO.1 OF 2014

Seema Arunkumar Sharma
Age : --years, Occ.: Business,
Having address : A-204,
Boomerang Building, Chandiwali
Farm Road, Andheri (East),
Mumbai.

...Applicant

Vs.

1. The State of Maharashtra
Through the Competent Authority
under MPID Act.

2. Sr. Inspector of Police
EOW Unit – V, Mumbai in
C.R.No.89/13

...Respondents

And

Mr. Pankaj Ramnaresh Saraf
Age 44 years, Occ.: ---,
R/at.: 182, Venus Apartment,
Cuffe Parade, Mumbai – 400 005.

...Intervenor

Mr. Srimangale, Ld. Advocate for applicant.
Ms. Kalapana Chavan, Ld. SPP for State EOW.
Mr. Karnik, Ld. Advocate for 1st informant/Intervenor.

CORAM : H.H.THE SPECIAL JUDGE
SHRI. MILIND V. KURTADIKAR
(C.R. No.33)

DATE : 05th June, 2018

(Dictated and Pronounced in Open Court)

ORDER

This is an application under Section 457 of Cr.P.C. for defreezing the Bank account with direction to the Competent Authority to return the amount invested in FDR to the tune of Rs.68,80,966/-.

2. It is the contention of applicant Seema Arunkumar Sharma that her husband Arunkumar Sharma is one of the accused in C.R. No.89/13 registered with EOW Mumbai under Section 409, 465, 467, 468, 471, 474, 477 and 120(B) of IPC and under Section 3 and 4 of the MPID Act. The crime was registered as per the report given by first informant Pankaj Saraf. After investigation, EOW has filed chargesheet bearing MPID Case No.1/14 before this Court. In said case, it is alleged that Arunkumar Sharma and other Companies in collusion with NSEL have defrauded several investors to the tune of Rs.5,600 Crores. Her husband is Director of M/s. Lotus Refineries Pvt. Ltd. (hereinafter referred to as 'LRPL'). It is also alleged that LRPL has defrauded to the tune of Rs.177.34 Crores. Therefore, during course of investigation total 27 Bank accounts of LRPL and its Directors and their family members are seized including account of applicant maintained in UCO Bank bearing A/c. No.1550110027776 with last lying amount of Rs.68,80,966/- and same is kept in FDR in the name of Competent Authority.

3. It is her contention that her husband has traded with NSEL

and he has no concern with the money of investors. On 28/9/12, applicant has opened said Bank account. Deposits made therein are self earnings of applicant from her business with different clients. It is the amount received against the order for goods and services to various clients. It has no concern with husband's business nor concerned with his Company LRPL. No any money from the depositors had come to said account. The EOW has seized said account only on suspension that Arunkumar Sharma has diverted the amount received from investors to the account of family members including wife. However, there is no such material on record to show that it is the amount of investors and depositors.

4. It is further submitted that initially, applicant and her husband have preferred MA No.375/15 for defreezing personal accounts for their daily expenses. Said application was rejected by order dated 12/8/16. Being aggrieved thereby her husband has preferred Criminal Appeal No.344/16 before Hon'ble High Court Mumbai. On 9/10/17, he has withdrawn said appeal with liberty to make fresh application in accordance with law before the Designated Court. Accordingly, applicant has filed this application. So, considering above contentions, her account be defreezed with directions to release the amount.

5. Respondent / EOW and Competent Authority have resisted the application by their say at Exh.3. It is submitted that LRPL has received the crime money and therefore during investigation 27 Bank

accounts of LRPL, its Directors and their family members are attached. After attachment, all the amount vest with the Competent Authority and as such, amount of Rs.16.61 Crores is transferred to the account of Competent Authority. It includes the Bank account of applicant referred in present application. LRPL has preferred Criminal Appeal No.344/16 which was withdrawn on 9/10/17 granting liberty to file fresh application before Designated Court. However, applicant was not party to said Criminal Appeal nor LRPL has filed present application. Moreover, in the application no details are given as to how the applicant is related to LRPL. Even there is no any clarification whether it is filed in personal capacity or on behalf of LRPL. The money trail has established that crime proceed has gone through NSEL to LRPL and its Director Arunkumar Sharma has diverted said funds in the account of his family members. In such circumstances, the application may not be allowed and it is liable to be dismissed.

6. The first informant Pankaj Saraf has intervened this application and submitted his say at Exh.4. It is his contention that admittedly, the LRPL of which Arunkumar Sharma is Director has traded through NSEL platform. It has received the money of investors and depositors. As per money trail crime proceed has gone to account of Arunkumar Sharma and he has diverted it to the account of his family members. At present liability of LRPL is amount of Rs.177 Crores. Present account was opened on 20/8/12 which is within the crime period. As per statement of Arunkumar Sharma before the ED, his wife Seema is housewife and Director of some Companies. Whatever money

lying in her account is diverted through LRPL. Therefore, it is nothing but the money of investors.

7. It is further contention of intervenor that as per High Court order dated 4/3/16 in Criminal Appeal No.344/16 liberty was given to LRPL to withdraw earlier application Exh.123 and to file fresh application challenging the attachment of properties. Here neither earlier application (Exh.123) is withdrawn nor the LRPL has filed this application. Therefore, applicant has no locus standi to file application by taking shelter of High Court order. The attachment of her account is already made absolute and therefore there is no merit in the application and it is liable to be dismissed.

8. I have heard the submissions advanced by Ld. Counsel appearing on behalf of applicant, Ld. SPP for the Competent Authority and EOW and Ld. Counsel appearing on behalf of Intervenor.

9. Applicant Seema Arunkumar Sharma has filed this application for defreezing her account and release of the amount therein. Here it is not disputed that her husband Arunkumar Sharma is the Director of LRPL and one of the accused in C.R. No.89/13 registered with EOW, Mumbai under Section 409, 465, 467, 468, 471, 474, 477 and 120(B) of IPC and under Section 3 and 4 of the MPID Act. It is also not disputed that as per prosecution the liability of LRPL is of Rs.177.34 Crores. It is also a matter of record that during course of investigation,

total 27 Bank accounts of LRPL, its Directors and their family members including the account of applicant are seized and near about Rs.16 Crores is kept in FDR in the name of Competent Authority. The account of applicant was with UCO Bank bearing No.1550110027776 having last lying amount of Rs.68,80,966/-.

10. It is the contention of applicant that the amount lying in her account is not concerned with C.R.No.89/13. Said amount is not the amount received from investors and depositors nor LRPL has any concern with said amount. In fact, said amount is her self earned amount which she has received from the advance against order for goods or services. Therefore, the EOW ought not have been attached her account.

11. As against this, it is the defence of EOW / CA and Intervenor that said account in the name of applicant is opened in the year 2012 i.e. during the crime period. She is housewife not doing any business. It goes to show that she has no self earning. Moreover, all the amounts credited in her account are went through account of LRPL. So also, as per forensic audit, crime proceed has gone to the account of LRPL, its Directors and its family members. The liability against LRPL is more than Rs.177 Crores. Mr. Arunkumar Sharma has diverted the siphoned amount in the account of his relatives including his wife. Therefore, applicant is not entitled to defreeze her account. More particularly, to release the amount therein.

12. As per applicant, said amount is her earning through the goods and services rendered to her clients. Section 2 deals with definition of various terms and nomenclatures. Section 2(c) defines the word “deposit”. Similarly, Section 2(c)(v)(d) says that deposit does not include advance against order for goods or services. So, it is clear that if the amount is earned or came from advance against order for goods or services, then it is not deposit as defined under Section 2(c) of the MPID Act.

13. In order to show that amount lying in account is the self earnings of applicant, Ld. Counsel invited my attention towards page No.18 and 19 of compilation. It is the account statement of applicant's account bearing seven entries. It has also given the client details from whom the amount is received, amount and mode of transaction. As per mode of transaction, the amount is deposited by way of cheque or RTGS. It also shows that all the amount credited in the account of applicant are received from account of LRPL maintained with UCO Bank having account No.2025. Ld. Counsel further argued that there are separate entries specifying as to how and from whom the amount has come. There are certain agreements between LRPL and so called clients for rendering goods or services to them.

14. I have gone through all the relevant documents. At page No.44 to 49 there is one copy of agreement between LRPL and M/s. Ritika Enterprises. It is worth to mention that said agreement is signed on behalf of one party only i.e. LRPL. There is no signature on second

part of M/s. Ritika Enterprises. Same is situation with another agreement with Mr. P. M. Ramchandran. There is no signature on second part of Mr. P. M. Ramchandran. In my opinion, these exparte signed agreements by LRPL only are not sufficient to come to the conclusion that said money is self earned money of applicant Seema Arunkumar Sharma received from the goods and services rendered. More particularly, I am unable to understand why entire money is routed through the account of LRPL when it was her self earned money having no concern with accused Arunkumar Sharma and its Company LRPL.

15. As against this, Ld. Counsel for Intervenor invited my attention towards the statement of her husband Arunkumar Sharma before the Directorate of Enforcement. In said statement, he has clearly admitted that his wife Seema Sharma is housewife. Even answering to the question of outstanding amount in NSEL, he answered that his outstanding with NSEL on account of unsettled contracts was Rs.177.34 Crores. Therefore, on perusing either side submission, defence of EOW / CA and Intervenor looks to be probable that Seema Sharma has no self earning source and whatever amount was lying in her account was diverted from the account of LRPL out of amount received by LRPL from depositors of NSEL. At the cost of repetition, I say that the contention about said self earning amount is not digestible as the entire amount is received from the account of LRPL. No reason is coming forth from her why self earning was routed from the account of LRPL. There is substance in the defence that it is the amount received by LRPL

from the deposits which was subsequently diverted in the account of applicant / wife.

16. Here, it is not disputed that previously applicant and her husband have preferred MA No.375/15 for defreezing their personal account for their personal use. Said application is rejected by this Court by order dated 12/8/16. Being aggrieved thereby LRPL has preferred Criminal Appeal bearing No.344/16 before Hon'ble High Court, Mumbai. On 9/10/17, LRPL has withdrawn said appeal. While withdrawing said appeal, it is submitted on behalf of LRPL that if the appellant's already filed application Exh.123 in MPID 1/14 before Designated Court is incomplete and did not raise objections specifically, then liberty may be given to withdraw that application with liberty to make fresh one objection according to law. Therefore, while allowing withdrawal, the Hon'ble High Court has granted liberty to LRPL to withdraw earlier objections Exh.123 with liberty to file objection afresh.

17. Above series of litigation is specifically pleaded in the application (Exh.1). So also, it is argued by Ld. Counsel for applicant that High Court has given liberty to file a fresh objection. It is also argued that as Hon'ble High Court has given liberty to file objection afresh, then the earlier order of this Court making attachment of properties absolute is impliedly set aside.

18. However, when the query is raised by the Court whether

present application is filed in view of Hon'ble High Court's orders in Criminal Appeal No.344/16, Ld. Counsel appearing on behalf of applicant fairly submitted that this application is not filed taking aid or the basis of order of Hon'ble High Court in Criminal Appeal No.344/16. Ld. Counsel further fairly submitted that this application is filed for return of property as contemplated under Section 457 of Cr.P.C. Even he invited my attention towards title of application wherein it is clearly mentioned that present application is filed under Section 457 of Cr.P.C.

19. If it is the position then in my humble opinion, applicant cannot take aid of the Hon'ble High Court order dated 9/10/17 in Criminal Appeal No.344/16. It is so because appeal was filed by LRPL and accordingly, Hon'ble High Court granted liberty to LRPL. Here LRPL is not the party. This application is filed by Seema Arunkumar Sharma who is wife of Arunkumar Sharma, Director of LRPL. Even there are no details as to how she is concerned with LRPL so as to take aid of Hon'ble High Court order. Therefore, I am of the opinion that applicant cannot take aid of order of Hon'ble High Court which is in favour of LRPL.

20. This MPID Act is quasi civil and quasi judicial in nature. Section 3 relates to offence on account of fraudulent default by financial establishments. The procedure and powers of Designated Court while dealing offences are given in Section 13 of the MPID Act. Section 13(2) says that provision of the Code of Criminal Procedure shall so far as may be apply to the proceedings before a Designated

Court and for the purposes of the said provisions a Designated Court shall be deemed to be a Magistrate.

21. Similarly, Section 4, 5, 6 and 7 deals with the procedure of attachment of properties on default of return of deposits, appointment and powers of Competent Authority and powers of Designated Court in dealing with the objections regarding attachment and thereby allowing or rejecting those applications and making attachment absolute. Section 7 specifically deals with the procedure regarding attachment. It says that after attachment Competent Authority shall apply before Designated Court for making the attachment absolute. On receipt of said application, Designated Court has to issue notices to the concerned Company or person or person having interest in the property calling upon their objections to the attachments. After filing of such objection Court has to hear the Objector and Competent Authority and then either pass order for making attachment absolute or varying it by releasing the property from attachment.

22. So, considering the above specific provisions, I am of the opinion that this application is nothing but objection to the attachment of Bank account of applicant. Therefore, instead of filing it under Section 457 of Cr.P.C. applicant it ought to have been filed under Section 7(1) of the MPID Act. When the specific provision are given in MPID Act for release of the attachment then in my opinion application for release of property filed under Section 457 of Cr.P.C. is not tenable.

23. To conclude, application is not tenable on legal aspect (it is not filed under Section 7 of the MPID Act) nor on factual aspect that amount lying in the seized account of applicant is self earned amount. Therefore, application deserves to be rejected. Accordingly, the order.

ORDER

Misc. Application No.259/18 is hereby rejected.

Dt.05/06/2018

(Milind V. Kurtadikar)
Special Judge,
City Civil & Sessions Court,
Gr. Bombay.

Order Dictated on : 05/06/2018, 13/6/18

Transcribed on : 05/06/2018, 14/6/18

Signed on

“ I affirm that the contents of this PDF file order are the same, word to word, as per the original order.”

Name of Steno with post : Mrs. M. A. Kale
(Stenographer H.G.)

Name of the Judge (with Court No.) : H.H.J. Shri. M. V. Kurtadikar,Court No.33

Date of pronouncement of order : 5/6/18

Order signed by the P.O. on : 14/6/18

Order uploaded on : 14/6/18

"Certified to be true and correct copy of the original signed Judgment / Order."

Upload date and time
14/6/18 4.52 p.m.

Name of Stenographer
Mrs. M. A. Kale