

HIGH COURT OF BOMBAY**Bench : M. S. Karnik, J.)****Date of Decided : 26-03-2024**

Criminal Appeal No. 281 of 2024

LATHA MAHALINGAM ...APPELLANT(S)**VERSUS****CENTRAL BUREAU OF INVESTIGATION ...RESPONDENT(S)****Legislation:**

Sections 409, 420, 468, 471, 477A read with 120B of the Indian Penal Code, 1860 (IPC)

Sections 13(2) read with 14(c)(d) of the Prevention of Corruption Act, 1988 (PC Act)

Subject:

Appeal for quashing and setting aside the order regarding the seizure and freezing of the appellant's bank accounts in connection with a corruption case against her husband, an employee at Canara Bank.

Headnotes:

Seizure and Freezing of Bank Accounts – Connection with Corruption Case – The appellant's bank accounts were seized and frozen during the investigation of her husband (Accused No. 3) in a corruption case involving Canara Bank - [Paras 3-6, 13].

Trial Court's Order on Seized Amounts – Allowed partial utilization of the seized funds; the rest was to be invested and its fate decided during the trial – Accused No. 3 acquitted of PC Act offenses but convicted under IPC sections - [Paras 4, 6, 7, 12].

Appeal for Release of Invested Funds – The appellant, suffering from cancer, appealed for release of the invested Rs. 2 lakhs for medical treatment; Trial Court deemed itself functus officio post-trial – [Paras 8-9, 13].

Bombay High Court Decision – Appeal allowed; Trial Court's order set aside – Held that there was no finding linking the seized funds to the crime, and the appellant should not be deprived of her legitimate entitlement - [Paras 13-16].

Referred Cases: Not specified.**JUDGMENT****M. S. Karnik, J.** - Heard learned counsel for the appellant and learned counsel appearing for CBI.

2. This is an appeal for quashing and setting aside the order dated 15/04/2023 passed by the trial Court in Misc. Application No. 570 of 2023 in CBI Special Case No. 60 of 2004.

3. The appellant is the wife of original accused no. 3. The original accused no.3 along with 5 other accused persons were charged in CBI Special Case No. 60 of 2004 for commission of offences under sections 409, 420, 468, 471, 477A read with 120B of the Indian Penal Code, 1860 ('IPC', for short) along with sections 13(2) read with 14(c)(d) of the Prevention of Corruption Act, 1988 ('PC Act', for short) and tried before the CBI, Mumbai in Special Case No. 60 of 2004.

4. The respondent no.1 is the Central Bureau of Investigation, Economic Offences Wing, Mumbai at whose instance the present RC came to be registered. The appellant's husband i.e. original accused no.3 was then serving as a Branch Manager in Canara Bank, Chunabhatti Branch, Mumbai in the year 2001-2002. By the judgment and order dated 09/03/2023, the Special Judge, CBI, convicted all the accused persons facing trial under sections 420, 468, 471 read with 120B of IPC. The accused were acquitted for the offences punishable under sections 409, 477A of IPC and for offences punishable under sections 13(c) read with 13(2) of the PC Act.

5. During the pendency of the trial, the account of the accused no.3 came to be freezed. During the course of investigation in 2003, a search warrant dated 20/03/2003 came to be issued by the Special Judge Greater Mumbai in the name of S. Mahalingam (accused no.3) at the flat where he was residing along with the present appellant. A Panchnama dated 21/03/2003 came to be drawn and 17 documents belonging to the appellant were taken charge. Two accounts were freezed by the Bank at the instance of CBI due to the alleged involvement of appellant's husband in the criminal case. The two accounts i.e. SB A/c. No. 16897 belonging to appellant and another SB A/c. No. 16534 jointly belonging to the appellant along with Miss. Maya Madhuwanti (daughter of S. Mahalingam and the appellant) maintained with Andhra Bank, Ghatkopar East, Mumbai were freezed by CBI, EOW, Mumbai with an amount of Rs. 2,55,181/- (Rupees Two lakhs Fifty-five Thousand One Hundred Eighty-One only) lying in the said accounts.

6. The appellant had preferred an application before the Special Judge for return of all the 17 documents and for defreezing the above mentioned accounts. By an order dated 21/07/2004, the trial Court had partly allowed the

application and permitted the appellant to withdraw and utilize the amount of Rs.55,181/-. Balance amount of Rs. 2,00,000/- was directed to be invested by the respondent- CBI in the name of S.P.CBI.EOW, Mumbai in the State Bank of India, D.N. Road Branch, Fort, Mumbai initially for a period of 3 years to be renewed from time to time during the pendency of the trial.

7. The order order dated 21/07/2004 has a bearing on the present appeal and hence needs to be reproduced which reads thus:

"Heard the Ld. Advocates. Seen CBI say dated 14.6.2004 about Applicant Mrs. Latha Mahalingam. Seen and noted the contents of CBI report dated 24.6.2004 about the ownership of documents claimed by the Applicant. Seen and noted the contents of another CBI report dated 13.7.2004 about the position of S.B. Accounts Nos. 16897 and 16534 of the Applicant and Applicant jointly with her daughter Ms. Maya Madhuvanti respectively in Andhra Bank, Ghatkopar (West), Mumbai. It is the stand of the Applicant that documents enlisted by her at serial nos. 1 to 17 in para 2 of her application which are her own documents and have nothing to do with the alleged involvement of her spouse being Accused No.3 in a scam in Canara Bank covering this RC have been seized by CBI during their house search as per search list dated 21.3.2003 which should be returned to her forthwith. She has also pleaded that after her retirement from bank services she is having her own independent business income and such lawful income has been deposited by her in her own account and also another joint account with her daughter - Maya which have been freezed by the bank at the instance of CBI due to alleged involvement of her spouse A.3 in the crime covering this RC which is putting her to lot of hardship when she herself has no role to play in any alleged wrong of her spouse or even co-accused in this RC. State has pointed out to me the official record of this RC which shows that original documents which are claimed by the Applicant have been lost from office safe custody of CBI and the State after promptly apprising the Court about it has taken remedial measures to reconstruct the record and put forth all evidence touching the case before the Court according to law. The Court having taken judicial notice of the official papers concerning RC 44/A/2003 CBI ACB Mumbai and present RC 1/E/2003 CBI EOW Mumbai, with rival claims of the State and the Applicant kept open in this RC, it is hereby ordered that since documents claimed by the Applicant are reported to be officially lost by the State, Applicant shall be at liberty to apply to the Competent Authorities for issue of duplicate documents to her by complying with necessary office

procedures of such authorities and item nos.1 to 17 shall form part of this order and the State through CBI has no objection about it. To evenly protect the interest of the State and the Applicant alike, it is further hereby ordered that out of the total amount of Re 2,55,181/-covering S.B. A/c Nos. 16897 and 16534 Andhra Bank, Ghatkopar (West), Mumbai, a lumpsum of Rs.2,00,000/- shall be invested in the name of S.P. CBI, EOW, Mumbai in State Bank of India, D.N. Road Branch, Fort, Mumbai initially for a period of 3 years and shall be renewed from time to time during the pendency of this RC and for the balance amount of Rs.55,181/- the Applicant shall furnish an Indemnity Bond in the sum of Rs.55,000/- in favour of the State on or before 10.8.2004 with official intimation to CBI by the Registry about it in terms of this order. Upon the Applicant furnishing this Bond in time, both S.B. Accounts: Nos.16897 and 16534 Andhra Bank, Ghatkopur (West) Branch shall stand de-frozen forthwith and the Applicant shall be at liberty to withdraw and utilise the abovesaid amount of Rs.55,181/- and do normal banking as per Rules without any let or hindrance from any State agency of any kind whatsoever. It is made clear that if the abovesaid monies are required by the State during the trial of this case the Applicant shall produce those monies being Rs.55,181/- before the Court. Applicant to accompany the IO to Andhra Bank for completing necessary bank formalities about withdrawal of the amount of Rs.2,00,000/- in due compliance of this order. Undertaking accepted. It is further clarified that as regards the amount of Rs.2,00,000/- being invested by the State the claim of the Applicant or the State to it would be decided by the Court during the trial of the case. CBI. Applicant the concerned banks and various Competent Authorities covered under item nos.1 to 17 of the Application to act on certified copy of this order. CC expedited. MA. NO.178/2004 stands disposed off accordingly."

8. After the trial concluded, the appellant made an application under section 452 of the Code of Criminal Procedure being Misc. Application No. 570 of 2023 seeking orders for disposal of the property viz. the amount of Rs.2,00,000/- with interest. The trial Court by the impugned order dated 15/04/2023 rejected the application. The relevant portion of the order reads thus:

"2. Applicant was ex-employee of Canara Bank. She is the wife of accused No.3 S. Mahalingam who was convicted in CBI Spl. Case No.60 of 2004 by judgment dt. 9.3.2023. Said case is arising out of RC. No.1/E/2003. Ld. Adv. for the applicant submits that during the course of investigation of the said

crime, the CBI conducted the search wherein the documents were seized and Saving Accounts bearing No.16897 and 16534 maintained with Andhra Bank, Ghatkopar (E) Branch pertaining to the applicant and her daughter Ms. Maya Madhuwanti were freezed. Applicant placed application before this Court for the release of documents and de-freezing of saving accounts. This court by order dt.21.7.2004 returned the documents and de-freezed the saving accounts. In all an amount of Rs.2,55,181/- were lying in those accounts. The court has returned amount of Rs.55,181 and the remaining amount of Rs. 2 Lakhs was directed to be invested by the State and the claim of the applicant or the State to it, would be decided by the Court during the trial of this court.

3. Ld.Adv. for the applicant submits that the orders are remained to be passed in regard to Rs. 2 Lakhs which is invested according to the order of the Court by the CBI. So, the said money is of the applicant same is not connected with the crime. She requires said money for her medical treatment. So, he claimed that this Court is empowered to pass the order in view of Sec. 452 of Cr.P.C.

4. Ld. Sr. PP for CBI submits that present application is devoid of jurisdiction in view of the final disposal of the case on hand on the file of this Court vide judgment dt. 9.3.2023 and same is liable to be dismissed as infructuous.

5. The record indicates that the amount in question is seized by the CBI in relation to the charges levelled against accused No.3 S.Mahalingam who was convicted in CBI Spl. Case No.60 of 2004. At the time of final hearing of said CBI Special Case No.60/2004, this aspect is not raised either by the applicant or accused No.3. On the contrary, submission is made on behalf of accused No.3 that nothing was seized. from him (Accused No.3 includes his family members also). As issue of release of seized amount is connected with the CBI Spl. Case No. 60 of 2004 wherein this Court has pronounced final judgment on 9.3.2023. So, this Court becomes functus officio to pass orders relating to release of amount in favour of the applicant. Sec. 452 of Cr.P.C contemplates order for disposal of property at conclusion of trial which means that at the time of pronouncing final judgment. Once, final judgment is rendered regarding the points before the court in the said case, now, this court lacks any power to re-examine that decision. Thus, no grounds are exist to consider the relief claimed by the applicant as the Court who passed the order become Functus officio to consider it. In the result, I proceed to pass following order."

9. Perusal of the order would demonstrate that the trial Court was of the opinion that it has become *functus officio* to pass orders relating to release of the amount in favour of the applicant. The request was made by the appellant for release of the amount of Rs. 2 lakhs which was invested on the ground that the appellant requires the said money for her medical treatment.

10. Mr. Munde, learned SPP appearing for the CBI opposed the appeal. My attention is invited to the detailed affidavit-in-reply filed on behalf of the respondent no.1. It is submitted that huge cash deposits were made in the bank account of the appellant which is freezed. It is submitted that no application was preferred by the accused no.3 or the present appellant for appropriate orders as regards the amount of Rs.2 lakh. Shri Munde submits that it is now not open for the appellant to seek an order in respect of the said amount of Rs.2 lakhs, more so when the trial has concluded resulting in the conviction of the husband of the appellant. Shri Munde emphasized the submission made on behalf of the accused no.3 that nothing was seized from him and his family members, the consequence of which, according to him, must be dismissal of the appeal.

11. I have heard learned counsel. Perused the paper-book. 12. It is pertinent to note that M.A. No. 178 of 2004 was filed during the pendency of the trial by the appellant for return of documents and to defreeze the bank accounts on the ground that after the appellant's retirement from bank services, she is having her own independent business income and such lawful income has been deposited by her in her own account and also another joint account with her daughter- Maya which has been freezed by the bank at the instance of CBI due to alleged involvement of her husband in the crime. The trial Court by order dated 21/07/2004 which is reproduced hereinbefore permitted the applicant to withdraw and utilize the amount of Rs.55,181/- and the balance amount of Rs.2 lakhs was directed to be invested. The trial Court clarified that as regards the amount of Rs. 2 lakhs invested, the claim of the appellant or the State would be decided by the Court during the trial. However, despite the specific observation, it appears that the claim of the appellant or State was not decided by the trial Court. The amount of Rs.2 lakhs of which return is requested is admittedly seized from the bank account of the appellant. It is pertinent to mention that the accused no.3 has been acquitted of the offence under the PC Act. During the course of the investigation, the amount in the bank account of the present appellant and her daughter was freezed due to the alleged involvement of the accused no.3 in the crime of which the amounts

were allegedly a part. The trial Court had permitted the appellant to withdraw an amount of Rs.55,181/- on furnishing a bond. So far as the amount of Rs. 2 lakh is concerned, the claim of the appellant or State was to be decided during the trial. There is no finding by the trial Court upon conclusion of the trial that the amount of Rs. 2,55,181/- which was lying in the bank accounts of the appellant and her daughter is in any way concerned with the offences or for that matter with the accused no.3 who has been convicted for the offence punishable under sections 420, 468, 471, 120B of IPC. It needs to be borne in mind that the conviction is not under the PC Act. There is no finding that the amount of Rs. 2,55,181/- was deposited in the bank account of the appellant as an ill gotten wealth of the accused no.3. In such circumstances, there is nothing on record to indicate that amount lying in the bank account of the appellant which was freezed initially by CBI and later invested has anything to do with the crime in question concerning the accused no.3.

13. Learned counsel Shri Munde appearing for the CBI submitted that the accused no.3 having challenged the order of conviction in an appeal bearing Appeal No. 449 of 2023 in this Court, the present appeal be not entertained at this juncture. I find no merit in the submission of Shri Munde. In my opinion, the trial Court ought to have passed orders on the invested amount of Rs. 2 lakhs, more so when it had specifically observed on the earlier occasion that it would do so during the course of the trial. The claim of the appellant cannot be allowed to be defeated on the consideration that the trial Court has become *functus officio*. I do not propose to remand the matter to the trial Court. The amount belonging to the appellant is lying invested in the bank since 2004. The appellant is stated to be suffering from fourth stage cancer. The appellant need not be deprived of her legitimate entitlement any further. Depriving the appellant of her own money would be travesty of justice as upon conclusion of the trial, there is no finding that the amount invested concerns the offence. In my opinion, present appeal deserves to be allowed.

14. Learned counsel for the appellant submitted that the appellant is willing to execute a bond to the satisfaction of the trial Court and that the money will be brought back in the event any adverse order is passed in the pending appeal against conviction, if that is the apprehension of the respondent. The appellant may execute a bond without any security in the facts and circumstances of the present case.

15. In this view of the matter, the appeal is allowed.

16. The impugned order dated 15/04/2023 is set aside. Misc. Application No. 570 of 2023 is allowed. The amount of Rs. 2 lakhs invested by the CBI in the name of S.P.CBI. EOW, Mumbai in the State Bank of India, D.N. Road Branch, Fort, Mumbai along with accrued interest be refunded/transferred in the bank account of the appellant subject to the appellant furnishing a bond without security to the satisfaction of the trial Court. The release be expedited by the trial Court.

17. The appeal is disposed of.

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