

**IN THE COURT OF MS. SUJATA KOHLI, PRINCIPAL DISTRICT &
SESSIONS JUDGE-CUM-SPECIAL JUDGE (PC ACT) (CBI), ROUSE AVENUE
DISTRICT COURT, NEW DELHI**

Criminal Revision No. 34/2020

M/s Add Advertising Services Pvt. Ltd. Vs. CBI

28.09.2020

ORDER

1. Brief facts:

On the application of the revisionist/accused, Ld. CMM was pleased to defreeze the Bank Accounts of the revisionist company, however, subject to condition that the revisionist company would furnish surety/ security equal to the value of the amount lying in the Bank Accounts/ FDR.

2. Contentions raised on behalf of revisionist/accused:

- i. The main grievance of the revisionist is that the said condition has defeated the very purpose of seeking defreezing of the Bank Accounts and the said condition virtually condones the illegal actions of the Investigating Agency and that, it renders the order meaningless and amounts to *de-facto* continued freezing of the accounts.
- ii. Ld. Counsel for the revisionist elaborates that, if the condition is allowed to operate, the amount lying in the said Bank Accounts would continue to remain unavailable for the use of the revisionist company. Further, contended that the said condition was not required in view of the direction already issued to furnish an undertaking to the Hon'ble Court to produce the amount as and when directed.
- iii. According to the revisionist, the imposition of second condition by the Ld. CMM is neither reasonable nor pragmatic. It is contended that the imposition of condition is illegal and unjust on account of the categorical finding by the Ld. CMM in the impugned order. In as

much as once the Court had come to the conclusion that the seizure was illegal and suffered from procedural irregularity, Ld. CMM should not have imposed the condition.

- iv. Ld. CMM while allowing the application of the revisionist came to the conclusion that despite investigation being carried out for past two years, the Investigating Officer had failed to establish a link between the proceeds of crime and the funds lying in the accounts of the revisionist company. In view of the said finding, there was no just cause for Ld. CMM to have imposed the said condition.
- v. Ld. Counsel relied upon the case law enunciated by Hon'ble Supreme Court in case of imposition of onerous conditions.
- vi. Reference has also been made to the relevant provisions of law i.e. Section 457 CrPC. The words any condition used in the provision should not be regarded as conferring absolute power on a court of law to impose any condition that it may choose to impose. Any condition, referred to under Section 457 CrPC, has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstances and effective in the pragmatic sense and should not defeat the order.
- vii. As a result of erroneous imposed condition, funds would not be available for the use of the revisionist company, even though the seizure order was illegal in view of the non-compliance of mandate of Section 102 CrPC.
- viii. Ld. Counsel for the revisionist has relied upon the decision of Single Judge of Hon'ble Delhi High Court, in **Muktaben M. Mashru Vs State of NCT Of Delhi, CRL. M.C. 4206/2018 & Cri.M.A.30311/2018**, decided on 29.11.2019, in which the decision in Swaran Sabharwal V. Commissioner of Police, 1987 SCC OnLine Del 221 and also the judgment passed by the Division Bench of the Bombay High Court in

Shashikant D Karnik Vs. State of Maharashtra, 2007109 BOMLR 934, was reiterated, wherein it was held that the requirement of Section 102 CrPC is necessary to be complied with and non-compliance of the same renders the order illegal and perverse have been referred and relied upon alongwith the judgment of the Madras High Court titled as T. Subbulakshmi & Anr. Vs. The Commissioner of Police & Ors., 2013 SCC OnLine Mad 2629, which reiterates that the seizure has to be reported forthwith to a magistrate which is a necessary requirement and if the requirement is not fulfilled, then the seizure cannot be legally sustained.

- ix. Ld. Counsel for the revisionist has pointed out that in **Muktaben** (supra), the Hon'ble Delhi High Court had accepted the proposition that a seizure under Section 102 of CrPC must be immediately reported to the concerned Magistrate. It was further urged on the basis of the said judgment that the property seized under Section 102 of CrPC must also have nexus with the crime committed.

3. Contentions raised on behalf of CBI:

- i. The impugned order, as passed, is as per law and the imposition of the condition as per Section 457 CrPC based on equity.
- ii. M/s Add Advising Services Pvt Ltd. has its registered office in the same premises where office of Advantage India is situated. There is a grave suspicion that Deepak Talwar, President of M/s Advantage India also hold/control over M/s Add Advising Services Pvt Ltd. Further, when Indian Overseas Bank was asked to furnish details of bank accounts connected to Deepak Talwar and his family members, the bank provided details of 53 bank accounts including accounts in name of M/s Add Advising Services Pvt Ltd.
- iii. Seizure of aforesaid bank accounts has been reflected in the case diary on 07.12.2017 by the IO. This fact was submitted before the Court of

Ld. CMM. The impugned order has been passed by Ld. CMM, after taking into consideration of this fact and imposed the condition as per provisions of the law.

- iv. In this matter one charge-sheet has been filed only in respect of one allegation i.e. false claim of procurement/purchase of medicines. However, investigation with the other allegations and aspects is going on.
- v. Ld. CMM in his order has nowhere held the seizure to be illegal.
- vi. Ld. CMM while imposing the condition had taken liberal view and has given more than one option to the revisionist. Revisionist/applicant alongwith his bond may furnish either a surety/security or a bank guarantee equal to the value of the amount lying in the account/FDR to the satisfaction of the court before release of account/FDR. The condition imposed by the court is reasonable and cannot be said impracticable.
- vii. Investigation in this matter is still going on and evidence is being collected and at this stage it cannot be said that the funds lying in the bank accounts/FDR of the revisionist company have no link with the alleged proceeds of crime being investigated.
- viii. It has come in evidence that Sh. Deepak Talwar in conspiracy with other accused persons falsely claimed purchase of medicines for Advantage India, without making actual purchase thereof, and the amount was routed through co-accused and received back by Deepak Talwar. There is a grave suspicion that Deepak Talwar might have deposited the said defrauded amount which was routed through co-accused in the account of revisionist and others.{{{{}}

I have heard arguments addressed by Ld. Counsel for the revisionist/accused as well as Ld. Sr. PP for CBI and gone through

the record.

- i. The revisionist is aggrieved mainly on the ground that the imposition of like condition is unreasonable and defeats the very purpose of the order, and makes the impugned order meaningless. Further, it is also a main ground that the imposition of condition itself was illegal in the circumstances.
- ii. Ld. Sr. PP for CBI has opposed the revision and mainly contended that the impugned order was necessary to secure the ends of justice and to secure the amount lying in the said account so that if at any stage, it is required to be produced, there should be surety or bank guarantee to ensure the production thereof.
- iii. Contentions as raised by Ld. Counsel for the revisionist carry much weight and are reasonable, in as much as when the IO had already given finding of the money lying in the said account(s) not being connected in any way to the crime proceeds, as rightly pointed out by the Ld. Counsel for the revisionist, the conditions imposed by the Ld. Trial Court seem quite unreasonable and unjustified, apart from defeating the very purpose of the said order and making it fully meaningless. Even otherwise, in view of Section 102 CrPC and the judgment of **Muktaben M. Mashru** (supra), the said imposition cannot be sustained.
- iv. **In the result, the revision is allowed and the impugned order is hereby set aside to the extent of imposition of the condition i.e. applicant (revisionist herein) shall furnish a surety/security or a bank guarantee equal to the value of the amount lying in the account/FDR to the satisfaction of the court.**
- v. **TCR be returned to Ld. Trial Court alongwith a copy of this order for necessary compliance and action.**

- vi. A copy of this detailed order be provided to the Ld. Counsel for the parties electronically.
- vii. Revision file be consigned to the Record Room after completion of due formalities.
- viii. A copy of this order be sent to the Computer Branch to be uploaded on the official website.

**Announced through Video Conferencing
today on 28.09.2020**

(SUJATA KOHLI)
Principal District & Sessions Judge-cum-Spl. Judge
(PC Act) (CBI)
Rouse Avenue District Court, New Delhi