

IN THE HIGH COURT OF TELANGANA AT HYDERABAD**W.P. No. 13969 of 2023**

Between:

K.Hariprasad and another

... Petitioners

And

Central Bureau of Investigation and others

... Respondents

JUDGMENT PRONOUNCED ON: 16.08.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 13969 of 2023****% 16.08.2023****Between:**

K.Hariprasad and another

..... Petitioners

And

\$ Central Bureau of Investigation and others

... Respondents

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> Head Note:

! Counsel for the Petitioners : Mr Vedula Srinivas

^Standing Counsel for Respondents: Spl PP for CBI.

HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 13969 of 2023

ORDER:

Heard the learned counsel Sri Vedula Srinivas appearing on behalf of the Petitioner and the learned Special Public Prosecutor for CBI .

2. This Writ Petition is filed praying to issue a Writ of Mandamus to declare the action of the 1st Respondent in continuing the assets of the petitioner under the order of freezing even after the acquittal of the petitioners in CC.No.25/2009 by the Court of III Addl., Special Judge for CBI Cases, Hyderabad dated 04.06.2019, merely on the ground that an appeal against the same is pending in this Court in CrI.A.No. 1078/2019 as illegal, arbitrary and unauthorized and to issue a consequential direction to the 1st Respondent to forthwith withdraw the freezing of the accounts belonging to the petitioners maintained by respondents 2 to 5 in the form of S.B. Account bearing No.680 (presently No.02181001100680) and also a locker No.24 of the 1st Petitioner with the 2nd respondent, S.B. Account No.201394 (Presently No. 021810025201394) of the 2nd Petitioner with

the 2nd Respondent, Demat Account bearing No. 13040800 00003977 pertaining to the shares held by 2nd Petitioner with 3rd Respondent, Demat Account bearing No. 10550045 of the 1st Petitioner with the 4th Respondent and Demat Account bearing No.28895602 of the 2nd Petitioner with the 5th Respondent, and also release the cash of Rs 1,14,000/- seized during the search at the Petitioner's residence.

3. The case of the Petitioner in brief, is as follows:

a) The Petitioner worked as Commissioner of Income Tax and retired on 31.05.2016. While the petitioner was working at Kolkata, there was a search by the Authorities of CBI (ACB), Hyderabad, on the allegation that the petitioner is in possession of assets disproportionate to his known sources of income. Subsequently, a FIR was registered in No.RC 4(A)/2007, dated 13.02.2007 and then CC.No.25/2009 under the provisions of Prevention of Corruption Act, 1988 was registered against the Petitioner and his wife.

b) As a consequence, the Authorities of the 1st Respondent have filed an application under Regulation 4 of the Criminal Law Amendment Ordinance, 1944 seeking ad-interim

attachment of certain properties on the allegation that the quantum of the assets disproportionate to the petitioner's known sources of income is Rs.1,22,27,609/-. The Court has passed an order of attachment on 05.11.2013 in CrI.M.P.No.359/2011 and the same is continued till the disposal of the CC.No.25/2009.

c) Furthermore, the 1st Respondent has also issued proceedings directing Respondent Nos. 2 to 5, to freeze the operations of the petitioner in the respective accounts held by him with those respondents. In so far as the 2nd Respondent is concerned, the petitioner held S.B. Account bearing No.680 (presently No.02181001100680) and also locker No.24. The 2nd Petitioner also held S.B. Account No.201394 (Presently No.021810025201394) in the said bank. In so far as the 3rd Respondent is concerned the 2nd Petitioner held a Demat Account bearing No.130408000003977 pertaining to the shares held in certain companies. With respect to the 4th Respondent, the petitioner held a Demat Account bearing No. 10550045. With respect to 5th Respondent, the 2nd petitioner held a Demat Account bearing No.28895602. All these accounts have been frozen by the 1st

Respondent, while registering the FIR against the petitioners. In addition to this, the 1st Respondent has also taken cash balance of Rs. 1,14,000/- from the house of the petitioners.

e) Subsequently, the trial took place in CC.No.25/2009 and it was decided in acquittal in favour of the accused therein, vide Judgment dated 04.06.2019. Aggrieved by the same, the 1st Respondent has preferred an appeal before this Court and the same is pending as Crl.A.No. 1078/2019.

f) The assets belonging to the petitioners as mentioned above were never attached by the Court, but they were made inoperative by the 1st Respondent by addressing letters to the Respondent No. 2 to 5 herein. The 1st Respondent did not take any steps to enable the petitioners to operate the above-mentioned bank accounts, locker and Demat accounts and even till date the petitioners were not allowed by the respondents to operate the same.

g) On 03.10.2019, the petitioners filed a representation before the 1st Respondent requesting for lifting the earlier orders where under the above-mentioned assets were frozen and to permit the petitioners to operate the said accounts. On

21.10.2019, the petitioners received a reply for the same stating that, the acquittal order of the trial court is under the consideration with the Competent Authority and a decision will be taken after receiving the orders of the Competent Authority.

h) The petitioners have already approached the CBI Court in CrI.M.P.No. 1204/2019 seeking a direction to the CBI to withdraw freezing of locker No.24 maintained by the 2nd Respondent and to return the Key No.9 of the said locker. However, the same was rejected by order dated 06.03.2023 stating that, since the CrI.A.No. 1078/2019 is pending before this Court, the court cannot de- freeze the locker and the key cannot be returned to the petitioners.

i) That the bank accounts, locker and demat accounts cannot be kept frozen by the 1st Respondent without there being any orders of any court, merely under the letters issued by the 1st Respondent to the Respondent Nos.2 to 5 during the course of investigation and without any authority of law. Hence, this Writ Petition.

4. The counter affidavit filed by Respondent No. 2, in brief, is as follows:

a) The trial took place in this case as C.C No. 25/2009 in the Court of III Addl. Special Judge for CBI Cases, Hyderabad. After trial, accused was acquitted vide Judgment dated 04.06.2019. Then CBI has filed an appeal before this Court against the said judgment and it is pending as CrI.A No. 1078/2019.

b) The S.B. Account bearing No. 680 (Presently 02181001100680) is part of statement B, S. B. Account No.201394(Presently No. 021810025201394) is also part of statement B which were seized during the search from the Petitioner's residence, Demat Account bearing no. 1304080000003977, Demat account bearing No. 10550045 and Demat account bearing No. 285895602 were frozen during investigation and part of case property. Since the appeal against the acquittal order of III Add. Special Judge is pending before this court, these should not be de-frozen till final disposal of the case. Hence, the Writ Petition is without merits and is liable to be dismissed.

PERUSED THE RECORD :

5. Counter affidavit filed on behalf of Respondent**No.1, in particular Paras 4, 5 & 6, read as under:**

"4. It is submitted that this case was registered on 13.02 2007 against Sri K. Hari Prasad, Commissioner Income tax (Appeals), Hyderabad and his wife for possession of assets disproportionate to his known sources of income during the period 2000-06 After obtaining the permission from the Competent Authority, Govt. of India as required u/s 6(A)(1) of the DSPE Act, the case was registered u/s 13(2) r/w 13(1)(e) of the PC Act, 1988.

5. It is submitted that trial took place in this case as CC No. 25/2009 in the Court of III Addl Special Judge for CBI Cases, Hyderabad After trial, accused got acquitted vide Judgment dated 04.06.2019. Then CBI has filed an appeal before this Hon'ble court against the said judgement and it is pending as CrI.A No. 1078/2019.

6. It is submitted that S.B.Account bearing No. 680 (Presently 02181001100680) is part of statement B and marked as exhibit Ex.P58; S.B.Account No. 201394(Presently No. 021810025201394) is also part of statement B (marked as Ex P59, cash of Rs. 1,14,000/- seized during the search from his residence is also part of statement B. Demat Account bearing no. 1304080000003977, Demat account bearing no. 10550045 and Demat account bearing no. 285895602 were frozen during investigation and part of case

property. Since the appeal against the acquittal order of IIIrd Add. Special Judge is pending before this Hon'ble court, hence these should not be defreezed till final disposal of the case."

6. The schedule of the property, particulars and details attached in pursuance to the order dated 05.11.2013 in CrI.M.P.No.359/2011 in CC No.25/2009 pertaining to the Petitioners herein are as follows:

Listed Sl.Nos.	Immovable Properties	Document No.	Value (Rs.)	
2	Independent House at A-91, IVRCL, Complex, Gachibowli, Hyderabad in the name of the accused	2671/2006 Dt.06.2.2006	20,61,215.00	The amount is taken as per registered sale deed No.2671/06 plus stamp duty and registration charges.
3	Independent house at A-44 IVRC Complex, Gachibowli, Hyderabad in the name of the wife of the accused. Paid vide cheque No.662704 for an amount of Rs.9,37,989/- on 1.8.06 and cheque No.10417 on 21.08.04 for an amount of Rs.8,12,011/-	2670/2006 Dt 6.2.2006	18,56,215/0	The amount is taken as per amount paid to IVR Prime plus stamp duty and registration paid as per document No.2670/2006
4	Plot No.50, 51 (part), 54 (part) and 55 at Khajiguda village (800 sq. yards) in the name of K.Abbiram son of the accused.	3220/01 Dt 03.05.01	1,10,071/-	As per registered sale deed including stamp duty and registration charges.
5	Plot No.51 (part), 52, 53, 54 (part) and 55 at Khajiguda village (800 sq. yards) in the name of K.Karthik son	3221/01 Dt 03.05.01	1,10,071/-	As per registered sale deed including stamp duty and registration

	of the accused.			charges.
	MOVABLE PROPERTIES			
22	Shares in Zen Securities as on 14.02.2007 in the accounts of K.Hari Prasad, K.Hari Prasan HUF Smt K.Madhavi and K.Karthik		80,26,946/-	Purchase value of the shares during the check period
14	Balance in SB Account No.16333 in the name of K.Hari Prasad at Andhra Pradesh Bank Jubilee Hills Branch as on 14.2.2007		74,004.30	
		Total	1,22,38,522.30ps	

7. Sections 2 and 10 of the Criminal Law (Amendment) Ordinance, 1944, read as under:

2. Interpretation:-

(1) In this Ordinance, scheduled offence means an offence specified in the Schedule to this Ordinance

(2) For the purpose of this Ordinance, the date of the termination of criminal proceeding shall be deemed to be (a) where such proceedings are taken to the Supreme Court in appeal, whether on the certificate of a High Court or otherwise, the date on which the Supreme Court passes its final order in such appeal, or (b) where such proceedings are taken to the High Court and orders are passed thereon and

(i) no application for a certificate for leave to appeal to the Supreme Court is made to the High Court, the day immediately following the expiry of ninety days from the date on which the High Court passes its final order. (i) an application for a certificate for leave to appeal to the

Supreme Court has been refused by the High Court, the day immediately following the expiry of sixty days from the date of the refusal of the certificate:

(u) a certificate for leave to appeal to the Supreme Court has been granted by the High Court, but no appeal is lodged in the Supreme Court, the day immediately following the expiry of thirty days from the date of the order granting the certificate; or

(c) where such proceedings are not taken to the High Court, the day immediately following the expiry of sixty days from the date of the last judgment or order of a Criminal Court in the Proceedings.

Section 10 – Duration of attachment

An order of attachment of property under this Ordinance shall, unless it is withdrawn earlier in accordance with the provisions of this Ordinance, continue in force

(a) where no Court has taken cognizance of the alleged scheduled offence at the time when the order is applied for, [one year] from the date of the order under sub-section (1) of section 4 or sub-section (2) of section 6, as the case may be, unless cognizance of such offence is in the meantime so taken, or unless, the District Judge on application by the agent of the [State Government or, as the case may be, the Central Government] thinks it proper and just that the period should be extended and passes an order accordingly, or

(b) where a Court has taken cognizance of the alleged scheduled offence whether before or after the time when

the order was applied for until orders are passed by the District Judge in accordance with the provisions of this Ordinance after the termination of the criminal proceedings.

DISCUSSION AND CONCLUSION:

8. It is the specific case of the Petitioner that the Petitioner worked as Commissioner of Income Tax and retired on 31.05.2016. While the 1st Petitioner was working at Kolkata, there was a search by the authorities of CBI (ACB) Hyderabad in Petitioner's house on the allegation that 1st Petitioner is in possession of assets disproportionate to his known source of income, an FIR was registered in No.RC4(A)/2007, dt. 13.02.2007 and a charge sheet was filed in the Court of III Special Judge for CBI cases, Hyderabad and it was registered as CC No.25/2009 under the Provisions of Prevention of Corruption Act, 1988. The 1st Respondent had thereafter filed an application before the said Court under Regulation IV of the Criminal Law Amendment Ordinance, 1944, seeking ad-interim attachment of certain properties on the allegation that the quantum of assets disproportionate to petitioner's known sources of income is Rs.1,22,27,690/- and the properties in

respect of which the attachment was sought for were 4 immovable properties and 2 movable properties. The Court has passed an order of attachment on 05.11.2013 in CrI.M.P.No.359/2011 and the same continued till the disposal of CC No.25/2009. That trial took place in C.C.No.25/2009 and ultimately the Court of III Addl. Special Judge for CBI Cases, Hyderabad has decided it in acquittal in favour of the accused therein, vide Judgement dt. 04.06.2019 and 1st Respondent has preferred an Appeal before the Hon'ble Court against the said Judgment and it is pending as CrI.A.No.1078/2019.

9. It is further the case of the 1st Petitioner that in the course of the search conducted, several documents were seized by the Investigating Officer and the documents are in the custody of the 1st Respondent herein. The documents seized include the Passport of the Petitioners, the key of locker No.24 held at Andhra Bank, Jubilee Hills, Hyderabad, and cash of Rs.1,14,000/- which had been seized during search are all evident in the Search List.

10. The Petitioners specifically contend that in the course of investigation the Investigation Officer

attached the following accounts/items and froze their operation:

- "1. Andhra Bank, Jubilee Hills, Hyderabad.
 - a. Locker No.24
 - b. Savings Bank Account No.680 of Mr K.Hari Prasad
 - c. Savings Bank Account No.201394 of Smt K.Madhavi
2. Demat Account No.28895602 with Stock Holding Corporation of India Ltd. A.G. Towers, 6th floor, 125/1, Park Street, Kolkata – 700017, belonging to Smt K.Madhavi.
3. Demat Account No.13040800 00003977 with Andhra Prank, DP Main Branch, 6-3-355/2 & 3, Astral heights, Road No.1, Punjagutta Cross Roads, Banjara Hills, Hyderabad belonging to Smt K.Madhavi
4. Demat Account No.10550045 with Kotak Mahindra Bank, DP Operation Unit, No.69, Ramaiah Complex, Roopena Agrahara, Bommanahali, Hosur Road, Bangalore – 560068 belonging to Mr K.Hari Prasad

These accounts/items mentioned above are not attached by the Hon'ble Court in the course of the judicial proceedings. Since the case is disposed of, it is prayed that the attachment of these accounts/items be lifted and their operation be permitted. Necessary communication may be sent to the concerned offices for defreezing the accounts/items mentioned in items 1 to 4 above.

11. It is specifically contended by the Petitioners that though the aforesaid accounts/items mentioned above are not attached by the Lower Court in the Court of the Judicial proceedings, yet they were seized by the 2nd Respondent herein. Though the Petitioners herein vide their detailed representation dated 03.10.2019 addressed to the 1st Respondent requested for release of the seized documents/lock key and cash seized, the 1st Respondent herein informed the Petitioner vide letter dtd 21.10.2019 that a decision will be taken on the letter of the Petitioner dt. 03.10.2019 after receiving the orders of the competent authority, but however, no orders have been communicated to the Petitioners which compelled the Petitioner No.2 to file CrI.M.P.No.1204/ 2019 in CC No.25/2009 on the file of the Court of III Addl. Special Judge for CBI Cases, Hyderabad. The request of the 2nd Petitioner was however, rejected vide order dated 06.03.2023 holding that since CrI.A.No.1708/2019 is pending in the High Court for the State of Telangana, the Court cannot defreeze the locker in question and the key of the locker cannot be returned to the Petitioner.

12. This Court opines that the freezing of the Accounts cannot be continued after the Petitioners were acquitted by the CBI Court holding that the prosecution has failed to prove the allegations made against the Petitioner. It is only in so far as such assets which are attached under the provisions of the Criminal Law (Amendment) Ordinance 1944, that an attachment done pending the C.C. would extend even during the pendency of the Appeal in a superior Court till the criminal proceedings cum to a finality. In so far as freezing of the bank accounts, locker and demat accounts belonging to the Petitioners frozen by the 1st Respondent during the investigation and during the pendency of the C.C. the provisions of the Criminal Law (Amendment) Ordinance 1944 are inapplicable and the 1st Respondent cannot contend that the freezing of the subject accounts will continue even during the pendency of the Appeal. A bare perusal of Sec.10 dealing with duration of attachment r/w Clause 2 of Sec.2 pertaining to interpretation of the Criminal Law (Amendment) Ordinance 1944 (38 of 1944) makes it

amply clear that it is only in so far as such assets which are attached under the provisions of the Criminal Law (Amendment) Ordinance 1944, that an attachment done pending the C.C. would extend even during the pendency of the Appeal in a superior court till the criminal proceedings come to a finality.

13. A bare perusal of the schedule of property as indicated in the order dt. 05.11.2013 in Cri.M.P.No.359/2011 in CC No.25/2009 on the file of the Court of the II Addl. Special Judge for CBI Cases at Hyderabad, as borne on record clearly indicates that the bank accounts, locker and demat accounts belonging to the Petitioners frozen by the 1st Respondent during the investigation and during the pendency of the C.C. do not find place in the said schedule and therefore the 1st Respondent cannot take the stand in the counter affidavit at para 6 that since the Appeal against the acquittal order of III Addl. Special Judge is pending before this Court, hence these should not be defreezed till the final disposal of the case. This Court opines that said plea/contention put-forth by the Counsel

appearing on behalf of Respondent No.1 is untenable and the same is rejected.

14. Taking into consideration all the aforesaid facts and circumstances the Writ Petition is allowed as prayed for and the 1st Respondent is directed to reconsider the representation of the Petitioners dt. 03.10.2019 addressed to the 1st Respondent herein pertaining to the request of the Petitioners to withdraw the freezing of the accounts belonging to the Petitioners maintained by the Respondents 2 to 5 in the form of S.B. Account bearing No.680 (presently No. 021810011 00680) and also a locker No.24 of the 1st Petitioner with 2nd Respondent, S.B. Account No.201394 (presently No.02181 0025201394) of the 2nd petitioner with the 2nd Respondent, Demat Account bearing No.13040800 00003977 pertaining to the shares held by 2nd Petitioner with 3rd Respondent, Demat Account bearing No.10550045 of the 1st Petitioner with the 4th Respondent and Demat Account bearing No.28895602 of the 2nd Petitioner with the 5th Respondent and also release of cash of Rs.1,14,000/- seized during the

search at Petitioners residence in the light of the observations made by this Court in the present order and pass appropriate orders in accordance to law within a period of 2 weeks from the date of receipt of the copy of the order duly communicating the decision to the Petitioners. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 16.08.2023

Note: L.R.Copy to be marked.

b/o

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