REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2023

(@ SPECIAL LEAVE PETITION (CRL.) NO. 9134 OF 2018)

M/s. Jermyn Capital LLC Dubai … APPELLANT(S)

VERSUS

Central Bureau Of Investigation & Ors. …. RESPONDENT(S)

JUDGMENT

KRISHNA MURARI, J.

Leave Granted.

2. The present Appeal is directed against the judgment and final order dated 16.08.2018 passed by the High Court of Gujarat at Ahmedabad, (hereinafter referred to as "**High Court**") in Criminal Application No. 602 of 2013.

FACTS

3. The brief facts relevant for the purpose of the present appeal are that the appellant company is a Foreign Institutional Investor and was permitted by Securities and Exchange Board of India (for short **'SEBI'**) to buy and sell shares and securities in the Indian Stock Market. However, due to certain litigations, the appellant company had quit trading in the Indian markets in 2006. It is important to note that at this point, the appellant company had shares and money in its bank account with ICICI bank.

4. Subsequently, the appellant company was subject to two freeze orders under Section 102 of the Code of Criminal Procedure, 1973. The first freeze order was imposed against the appellant company on 20.10.2006, and the second freeze order was imposed on 17.08.2010. These abovementioned freeze orders, as has been discussed in detail below, were levied against the appellant company on grounds of necessity of investigation of an alleged crime. At this point, It must be noted that the said investigation of the alleged crime was initiated against one Dharmesh Doshi, who is in no way related to the appellant company, and he was never an employee/share holder/director or a key managerial person in the appellant company.

5. In so far as the first freeze order is concerned, vide orders dated 05.12.2008,14.05.2009,16.11.2009 and 17.08.2010, this Court allowed the

appellant company to sell the shares in its account, convert it into cash, and repatriate the funds so received with interest and without a bank guarantee, while the first freeze order was still operational. In terms of the abovementioned orders, the appellant company repatriated an amount of Rs. 42.51 crores without any bank guarantee.

6. The issue posed in front of us therefore is limited to the second freeze order. The second freeze order, which was passed by the respondent herein on 17.08.2010, had incapacitated the appellant company herein to repatriate an amount of Rs. 38.52 crores, which was realized in favour of the appellant company herein pursuant to an order passed by the Securities Appellate Tribunal dated 08.05.2006.

7. Aggrieved, the appellant company had approached this Court for relief, and vide order dated 12.10.2011, this Court gave liberty to the appellant company to approach the Trial Court for release of the said amount.

8. Subsequently, the learned Trial Court, after duly taking notice of the fact that this Court had allowed the appellant company to repatriate an amount of Rs.42.51 crores, vide order dated 02.11.2012, held that the appellant company was entitled to repatriate the amount of Rs. 38.52 crores, however, the release of such funds was subject to a bank guarantee equivalent to the amount sought to be withdrawn.

9. Aggrieved by the said imposition of the bank guarantee, the appellant company approached the High Court, however, vide impugned order dated 16.08.2018, the High Court reiterated the imposition of the Bank Guarantee. The appellant company has therefore, as against the impugned order and judgment, filed the present Appeal.

ANALYSIS

10. We have heard the learned counsel for the parties, however, it must be noted that despite notice being served the respondent no.2, ICICI Bank, they have chosen not to put in appearance.

11. It is our opinion, that a bare reading of the decisions rendered by the lower Courts, would show that the imposition of the bank guarantee and the freeze orders passed by the respondent, were solely imposed on the grounds of criminal proceedings being alive against one Dharmesh Doshi, who is alleged to be connected to the appellant company.

12. While perusing through the documents on record, it has come to our notice that the said Dharmesh Doshi, on the basis of whom the condition of bank guarantee was imposed, has now been discharged of the alleged offences by the Trial Court. It is also important to note that the said Dharmesh Doshi ,

who has been discharged of the alleged crime, was never an employee/share holder/director or a key managerial person in the appellant company.

13. Since the said Dharmesh Doshi was in no way connected to the appellant company herein, the trial faced by him, was in his individual capacity, and not vicariously on behalf of the appellant company.

14. In such a circumstance, wherein the appellant company and the accused Dharmesh Doshi are two separate entities, and the appellant company is in no way connected to the concerned Investigation, the operation of the freeze order against the appellant company, is not legally tenable.

15. Further, It must also be noted that the appellant company herein, till date, has not been named in the FIR or the chargesheet in which the abovementioned Dharmesh Doshi is an accused. It must also be noted that Mr. Shailesh Madiyal, learned counsel appearing for the respondent CBI, on the basis of Instructions, made a statement before us in open Court stating that no criminal proceedings whatsoever are pending against the appellant company pertaining to the dispute at hand.

16. In such a circumstance, even if we were to assume that the accused Dharmesh Doshi's discharge is subsequently reversed, and he is convicted, such a conviction would still have no bearing on the properties of the appellant

company herein, since the appellant company is not alleged to be a part of the crime.

17. Since the appellant company is not connected to the alleged crime, and has not found mention in the FIR or the chargesheet, the freeze order against the appellant company's properties is redundant qua the investigation, since the appellant company itself is not necessary for the conclusion of the investigation.

18. It has also come to our notice that the operation of the freeze order has been active for a period of 17 years and has caused huge losses to the appellant company. The purpose of the freeze order, and the bank guarantee in extension of the freeze order, can only be in operation to aid in the investigation against the alleged crime. Since the investigation against the appellant company, as has been discussed above, is redundant, hence, the freeze of the appellant company's assets and the bank guarantee imposed in furtherance of the freeze order also becomes redundant.

19. In the light of above mentioned facts and discussions, the condition imposed upon the appellant to furnish a bank guarantee by the Courts below, is not liable to be sustained and is therefore set aside.

20. The orders impugned herein stand modified to that extent and the appeal, accordingly, stands allowed.

21. As a consequence, the appellant shall be permitted to withdraw the aforesaid amount along with 4% simple interest, which shall be payable from 08.05.2006 till the date of actual payment.

……..……...…. ,J.
[KRISHNA MURARI]

……..……..,J.
[SANJAY KUMAR]

NEW DELHI;
09th MAY, 2023