

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF MARCH, 2021

BEFORE

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

CRL. P. NO.687 OF 2021

CONNECTED WITH

CRL.P. NO.693 OF 2021

IN CRL. P. NO.687 / 2021

BETWEEN:

WELLWORTH SOFTWARE PVT. LTD.,
A COMPANY INCORPORATED
UNDER COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT
NO.902, 9TH A CROSS,
2ND STAGE, WEST OF CHORD ROAD,
BENGALURU-560086.
REPRESENTED BY ITS
DIRECTOR
MR. AKSHAY KUMAR KARUNAM.

...PETITIONER

(BY SRI. SANDEEP S. PATIL, ADVOCATE)

AND:

CBI/ ACB, BENGALURU
REPRESENTED BY ITS
PANEL COUNSEL

...RESPONDENT

(BY SRI. PRASANNA KUMAR P., SPL. P.P.)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO ALLOW THE CRIMINAL PETITION AND DIRECT THE CBI TO RELEASE THE AMOUNT OF RS.47,98,000 SEIZED UNDER SEIZURE MEMO DATED 05.10.2020 FORTHWITH IN CRIMINAL CASE NO.RC.10(A)/2020 PENDING ON THE FILE OF THE LXXXI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND DESIGNATED SPECIAL COURT EXCLUSIVELY TO DEAL WITH CRIMINAL CASES RELATED TO ELECTED MPs/MLAs IN THE STATE OF KARNATAKA, BANGALORE(CCH-82).

IN CRL. P. NO. 693/2021

BETWEEN:

SRI. SACHIN NARAYAN,
S/O. LATE SRI. H.G. NARAYAN,
AGED ABOUT 43 YEARS,
R/A NO.902, 9TH CROSS,
2ND STAGE, WEST OF CHORD ROAD,
BENGALURU-560 086.

...PETITIONER

(BY SRI. SANDEEP S. PATIL, ADVOCATE)

AND:

CBI/ ACB
BENGALURU
REPRESENTED BY ITS
SPECIAL PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA,
BENGALURU-560 001.

...RESPONDENT

(BY SRI. PRASANNA KUMAR P., SPL. P.P.)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO DIRECT THE CBI TO RELEASE THE AMOUNT OF RS.5,48,000 (RUPEES FIVE LAKHS FORTY EIGHT THOUSAND ONLY) SEIZED UNDER SEIZURE MEMO DATED 05.10.2020 FORTHWITH IN CRIMINAL CASE NO.RC.10(A)/2020 PENDING ON THE FILE OF THE LXXXI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND DESIGNATED SPECIAL COURT EXCLUSIVELY TO DEAL WITH CRIMINAL CASES RELATED TO ELECTED MPs/MLAs IN THE STATE OF KARNATAKA, BANGALORE(CCH-82).

THESE CRIMINAL PETITIONS ARE COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

These two petitions are preferred against the orders passed by the LXXXI Addl. City Civil and Sessions Judge, Bengaluru, rejecting the applications filed by the petitioners under Sections 451 and 457 of Cr.P.C.

2. The undisputed facts are that during course of investigation into the FIR registered against one Sri. D.K. Shivakumar under Section 13(2) read with Section 13(1)(e) of PC Act, 1988, respondent-CBI police conducted a search

in the company premises of M/s. Wellworth Software Private Limited (petitioner in Crl.P.No.687/2021) and in the residence of one Sri. Sachin Narayan (petitioner in Crl.P.No.693/2021) and cash of Rs.47,98,000/- and another bundle of cash of Rs.5,48,000/- were seized and the same was produced before the learned Special Judge.

3. M/s. Wellworth Software Private Limited as well as the aforesaid Sri. Sachin Narayan moved separate applications under Sections 451 and 457 of Cr.P.C. claiming interim custody of the seized cash. The contention of M/s. Wellworth Software Private Limited was that the cash of Rs.47,98,000/- was seized from its office premises as indicated in the seizure memo and the contention of Sri. Sachin Narayan was that a sum of Rs.5,48,000/- was seized from the Almirah kept in his residential house.

4. The contention of both the petitioners is that the company has been carrying on the business of multi system operators and during the course of business, it collected cash from various local cable operators. The said amount

was to be credited to the bank and thereafter to be remitted to the broadcasters, but before it could be deposited into the bank, the same was seized by the police and therefore the petitioners being the rightful owners of the seized cash, are entitled for interim release. Further, the petitioners contended that the seized amount has no connection with the matter under investigation by the police and therefore, the retention of the said property is not necessary either for the purpose of investigation or for the purpose of eventual trial.

5. The applications were opposed by the learned Special Public Prosecutor for respondent/CBI, inter-alia contending that Sri. Sachin Narayan who has been running the aforesaid company, is a business partner of the wife of Sri. D.K. Shivakumar who is accused in Crime No.RC10(A)/2020. The investigation into the source of her funds is in progress. Under the said circumstances, the petitioners are not entitled for the release of the funds. Further, referring to the bank extracts relating the company

run by the petitioners, the learned SPP contends that in all other cases the amounts collected by the local cable operators were directly deposited into the bank account of the petitioners and therefore the explanation offered by the petitioners that the seized amount was collected from the local cable operators in cash cannot be believed.

6. I have heard Sri. Sandeep S. Patil, learned counsel for the petitioners and Sri. P. Prasanna Kumar, learned Special Public Prosecutor for respondent-CBI.

7. By drawing my attention to the voluminous documents produced by the petitioners, the learned counsel for the petitioners has pointed out that as per the business practice of the Company, the amount was regularly collected from the various cable operators and a receipt was issued in acknowledgement thereof as reflected in Annexure receipts at Pages 200 to 218 and page 36 and further referring to the bank extract, he would submit that regularly the amount was credited to the bank account of the company and thereafter the same was passed on to the

broadcasters as reflected in page 161 (bank statement) which disclose that an amount ranging from Rs.25 Lakhs, Rs.15 Lakhs and Rs.15 Lakhs have been credited during the month of August 2020 favouring Star India Limited, BBC Global, Indiacast Media Distribution, Sony Pictures etc.,

8. Through the genuineness of the documents produced by the petitioners are disputed by the learned Special Public Prosecutor, yet, at this juncture, it is relevant to note that the alleged search was conducted during the course of investigation into the FIR registered against Sri. D.K. Shivakumar under Section 13(2) read with section 13(1)(e) of the P.C. Act alleging amassing of disproportionate assets during the period 01.04.2013 to 30.04.2018. It is the case of the respondent that the applicant Sri. Sachin Narayan was one of the business partner of the wife of the accused. But there is nothing on record to show that amount seized from the company is either proceeds of the crime alleged against D.K. Shivakumar or the business dealings of the wife of Sri. D.K.

Shivakumar. On the other hand, a plausible explanation has been offered by the petitioners as to the source of the cash seized from their possession. There is no *prima facie* material to show that the cash seized from the registered office of the company or the residence of the petitioner is anyway related to the proceeds of the crime alleged against Sri. D.K. Shivakumar or his wife. The observation made by the learned special Judge in para 11 of the impugned order that the learned public prosecutor has produced the bank extract to show that the concerned LCOs have deposited into the bank account of the Company would not militate against the case of the petitioners. These observations on the other hand probablize the case of the petitioners that it has been collecting subscriptions from various cable TV operators. In the absence of any *prima facie* material to show that the seized amount has any nexus with the alleged disproportionate assets investigated by the respondent-police, in my view, the petitioners are entitled for the interim custody of the seized cash.

9. Having regard to the documents produced by the petitioners, explaining the source of the funds, seized from their possession, it has to be held that the petitioners are the rightful owners of the seized amount and are legally entitled for the interim custody of the seized cash. Even otherwise, the interim release of the seized property does not preclude the respondent from investigating into the source of the said funds of the public servant. Petitioners are not accused of abetting the offence by the public servant. In the said circumstances, there is no justification to retain the cash belonging to the petitioners. The Hon'ble Supreme Court in the case of ***Sunderbhai Ambalal Desai vs. State of Gujarat with C.M. Mudaliar vs. State of Gujarat*** reported in ***(2002) 10 Supreme Court Cases 283***, has laid down the guidelines for release of the properties seized during investigation. In this regard, the coordinate bench of this Court in identical situation in Crl. RP. No.636/2018, dated 30.08.2018, has allowed the petition.

10. Accordingly, the criminal petitions are allowed. Impugned order dated 20.11.2020 passed in Crl.Misc. No.6341/2020 and 6340/2020 by the LXXXI Addl. City Civil and Sessions Judge, Bengaluru is set aside. Applications filed by the petitioners under Sections 451 and 457 of Cr.P.C. are allowed. The seized cash of Rs.47,98,000/- is ordered to be released to the petitioner (in Crl.P.No.687/2021) M/s. Wellworth Software Private Limited and a cash of Rs.5,48,000/- is directed to be released in favour of the petitioner (in Crl.P.No.693/2021) in terms of the guidelines issued in *Sunderbhai Ambalal Desai vs. State of Gujarat* supra, subject to executing an indemnity bond for the equal amount and surety for the likesum to the satisfaction of the trial court.

**Sd/-
JUDGE**

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