

Bombay High Court

Kishor Ramesh Sohoni vs Union Of India Through Ministry Of ... on 22 February, 2022

Bench: G.S. Patel, Madhav J. Jamdar

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8017 OF 2021

Kishor Ramesh Sohoni
Versus
Union of India & Ors

...Petitioner

...Respondents

Ms Sadhna Singh, for the Petitioner.

Mr A I Patel, Addl Government Pleader with Mr K S Thorat, AGP for
the Respondent-State.

Ms Aditi Phatak, i/b Bombay Litigation & Corporate Company for
Respondent No 2.

CORAM

G.S. Patel &
Madhav J. Jamdar, JJ.

DATED:

22nd February 2022

PC:-

1. Rule.

2. The Respondents have filed their Affidavits in Reply. By consent, the Respondents having waived service of Rule, we make Rule returnable forthwith and take up the Petition for hearing and final disposal.

3. The facts of the case are not contentious. The Petitioner filed a CR No 564 of 2016 with the Dombivali police station under sections 22nd February 2022 17-ASWP-8017-2021.DOC 420, 504 and 506 of the Indian Penal Code, 1860. The Petitioner was the first informant. That case is pending trial. In that matter, the Judicial Magistrate, First Class-3, Kalyan, Thane directed the accused to

deposit Rs 1,60,000/- with the police station. The accused deposited the amount in cash. The matter rested there until 20th March 2017. On that date, the JMFC-3, Kalyan directed the Petitioner and one witness to collect the money from the police station. The Petitioner was entitled to Rs 60,000/- and the witness was entitled to Rs 1 lakh. The witness filed an Affidavit stating that the Petitioner was entitled to the entire amount.

4. Matters might have proceeded smoothly but for the Government of India Notification of 8th November 2016 which demonetised certain currency notes. The Petitioner says that he believed that since his cash was with an authority it was protected from demonetisation. Paragraph 6 of the Petition states that since the Petitioner was not then in urgent need of cash, he "considered the said money as his savings which were with the Government Authority". We note that the money was still with the police station and we resist the temptation to say anything further about this averment. Time went by. Then there was Covid-19 pandemic and lockdown after March 2020. When the Petitioner finally went back to the police station for return of his money, he was handed the old currency notes, all by then demonetised and every note, as the Petitioner puts it in the Petition, "just a piece of paper having a photo of Mahatma Gandhi."

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5. The solution that the Petitioner asks is for a direction to the RBI to replace the old currency notes since they were all along in custody of the police with valid current tender.

6. There is an excellent Affidavit in Reply by the RBI. We quote paragraphs 9 to 11 at pages 25 to 27 :

"9. I say that the RBI can accept SBNs only when the conditions specified in SBN Rules are met with and not otherwise. In terms of the provisions of the SBN Act, the answering respondent was not empowered to exchange SBNs except under certain situations mentioned in the said Act and in accordance with the SBN Rules. It is submitted that the SBN Act regulates, prescribes the power of the answering respondent to give credit for SBNs tendered to the answering respondent. It is, therefore, most humbly submitted that there is a statutory prohibition upon the RBI against accepting SBNs from and giving credit/value in respect thereof, to persons other than those specified in the SBN Rules, thus the RBI has neither the power nor authority to accept the SBNs of the Petitioner as prayed for in the petition.

10. I say that the petitioner had approached the answering respondent vide email dated October 08, 2020, had requested to exchange the confiscated SBNs. The Applicant-petitioner was advised by the Bank vide email dated October 09, 2020 to submit the application along with the supporting documents in terms of Specified Bank Notes (Deposit of Confiscated Notes) Rules, 2017. The petitioner then made an application vide email dated October 12, 2020 and hard copy of the same was 22nd February 2022 17-ASWP-8017-2021.DOC also received later. The application submitted by the petitioner was scrutinized in terms of the Specified Bank Notes (Deposit of Confiscated Notes) Rules, 2017 issued by the Government of India i"9. I say that the RBI can accept SBNs only when the conditions specified in SBN Rules are met with and not otherwise. In terms of the

provisions of the SBN Act, the answering respondent was not empowered to exchange SBNs except under certain situations mentioned in the said Act and in accordance with the SBN Rules. It is submitted that the SBN Act regulates, prescribes the power of the answering respondent to give credit for SBNs tendered to the answering respondent. It is, therefore, most humbly submitted that there is a statutory prohibition upon the RBI against accepting SBNs from and giving credit/value in respect thereof, to persons other than those speci"9. I say that the RBI can accept SBNs only when the conditions specified in SBN Rules are met with and not otherwise. In terms of the provisions of the SBN Act, the answering respondent was not empowered to exchange SBNs except under certain situations mentioned in the said Act and in accordance with the SBN Rules. It is submitted that the SBN Act regulates, prescribes the power of the answering respondent to give credit for SBNs tendered to the answering respondent. It is, therefore, most humbly submitted that there is a statutory prohibition upon the RBI against accepting SBNs from and giving credit/value in respect thereof, to persons other than those specified in the SBN Rules, thus the RBI has neither the power nor authority to accept the SBNs of the Petitioner as prayed for in the petition.

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The applicant-petitioner was advised by the Bank vide letter Mum.ID No128/01.05.140/2020-21 dated November 05, 2020 to submit the documents in support viz the direction of the court to deposit or exchange the SBNs with serial numbers of which should be mentioned in the direction of the court. Accordingly, the application was returned along with the enclosures in original with letter dated November 05, 2020. A copy of the Bank's reply dated November 05, 2020 is enclosed and marked as Exhibit-D.

11. I say that the petitioner has hereafter sent a notice through his advocate Ms Sadhna Kumar vide email dated November 26, 2020 regarding non action over the application to exchange the SBNs which were deposited with the police station before demonetization. Since the petitioner had not submitted any order issued by the court (along with other documents) in accordance with the requirements mentioned in the SBN rules, the Bank couldn't exchange/deposit the SBNs as requested by the petitioner. Accordingly, the Bank vide its letter Mum. ID.CI.No.183/01.05.140/2020-21 22nd February 2022 17-ASWP-8017-2021.DOC dated December 08, advised the said advocate Ms Sadhna Kumar, stating the inability to take any action to exchange/deposit of SBNs requested by the petitioner. A copy of the said letter dated December 08, 2020 is enclosed and marked as Exhibit-E."

7. Ms Phatak, learned Advocate for the RBI, states her case with admirable brevity. She reiterates what is stated in this Affidavit and then invites our attention to the Ministry of Finance notification of 12th May 2017 which we find at pages 45 to 47. Clause 2 of this notification reads thus :

2. Deposit of confiscated specified bank notes - Where specified bank notes have been confiscated or seized by a law enforcement agencies or produced before a court on or before the 30th day of December 2016, such specified bank notes may be tendered, at any office of the Reserve Bank specified under sub-section (1) of section 4 of the Act or a nationalised bank designated by the Reserve Bank for the said purpose, for deposit in a bank account or exchange of the value thereof with legal tender, subject to the following conditions, namely:--

(a) in case confiscated specified bank notes are returned by the court to a person who is a party in case pending before that court, then, the person shall be entitled, on production of the direction of the court, to deposit or exchange such specified bank notes, the serial numbers of which -

(i) have been noted by the law enforcement agency which 22nd February 2022 17-ASWP-8017-2021.DOC confiscated or produced them before the court and

(ii) are mentioned in the direction of the court.

(b) in case specified bank notes are forfeited in favour of the Central Government or the State Government by an order of the court, then, that Government shall be entitled, on production of the direction of the court, to deposit or exchange such specified bank notes; or

(c) in case specified bank notes are placed in custody of any other person by an order of the court on or before the 30th day of December, 2016, then, the person shall be entitled, on production of the direction of the court, to deposit or exchange such specified bank notes, the serial numbers of which -

(i) have been noted by the law enforcement agency which confiscated or produced them before the court; and

(ii) are mentioned in the direction of the court."

8. Now there is an order at page 11 Exhibit-A of the JMFC-3, Kalyan directing the return of currency notes to the Petitioner (at that time along with one witness) but that order does not contain a direction to the RBI to replace the demonetized currency with valid tender, according to Ms Phatak. We find no fault with this submission. The notification permits a replacement but provided it meets certain conditions: the serial numbers of notes are to be mentioned and so on. All of this Petitioner is willing and able to do, 22nd February 2022 17-ASWP-8017-2021.DOC but what is missing -- and the only thing that is missing -- is an order of a Court directing the RBI to make that replacement. The JMFC-3 order at Exhibit-A page 11 of 20th March 2017 does not make that direction. The notification is of 12th May 2017, a few months later.

9. We exercise our equitable discretionary jurisdiction under Article 226 of the Constitution of India to direct the RBI by this order to replace the currency tendered by the Petitioner with current valid tender, subject to the Petitioner complying with other requirements such as mentioning serial numbers etc. Those particulars are set out in 12th May 2017 notification and in paragraphs 10 and 11 in RBI's Affidavit.

10. Rule is made absolute in these terms. There will be no order as to costs.

11. Liberty to the Petitioner to apply in case of any further difficulty.

12. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)

22nd February 2022