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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.35 OF 2024

SUZIE VAZ

... Petitioner

Versus

STATE OF GOA THR ITS
CHIEF SECRETARY AND 4 ORS.

... Respondents

Mr Shane Gomes Pereira, Advocate *for the Petitioner.*

Mr Nikhil Vaze, Additional Public Prosecutor *for the State.*

**CORAM: M.S. SONAK &
VALMIKI MENEZES, JJ.**

DATED: 24th April 2024

P.C.:

1. Heard Mr Shane Gomes Pereira for the Petitioner and Mr Nikhil Vaze, learned Additional Public Prosecutor for the State.

2. The relief as worded in this petition is quite peculiar and reads as follows:-

“(a) Issue a writ, order or direction in the nature of mandamus commanding the Respondent No.2 to take action against Respondent no.3 and defreeze the assets of Petitioner.

(b) Any other relief which this Hon’ble Court deems fit and proper may kindly be passed in favour of the Petitioner and against the respondents.”

3. An order dated 20.07.2023 under Section 68F(2) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (as amended) froze the petitioner's bank account and assets. Without challenging this order, a writ of mandamus could not have been applied for to defreeze the Petitioner's assets.

4. Mr Shane Pereira, however, submits that, in substance, the Petitioner challenges the impugned order dated 20.07.2023 made by the competent authority under Section 68F(2) of the NDPS Act. He submits that even the grounds urged in the petition relate to this order, though no formal prayer may have been made to this effect in the petition.

5. Mr Vaze, learned Additional Public Prosecutor, submits that as against an order made under Section 68F of the NDPS Act, an appeal is provided under Section 68O to the Appellate Tribunal. He submits that the Appellate Tribunal, in this case, is the Tribunal constituted under the SAFEMA, 1976. He submits that such a Tribunal is functional in Delhi and would be the appropriate Appellate Authority to entertain an appeal against the order dated 20.07.2023, given the provisions of Section 68N of the NDPS Act.

6. Mr Pereira refers to the provisions of Section 68O(1). Section 68O(1) provides that an appeal must be instituted within forty-five days from the date on which the order is served on a party. The proviso to this sub-section permits the Appellate Tribunal to entertain an appeal after the said period of forty-five days but not after sixty days, where the Tribunal is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

7. Mr Pereira submits that this petition was instituted on 28.08.2023, i.e. within 45 days from the service of the order dated 20.07.2023 made under Section 68F(2) of the NDPS Act. He submits that if the Petitioner is now relegated to institute an appeal, there might be an issue of limitation. He submits that the Petitioner was bona fide pursuing the matter before this Court after instituting this petition within 45 days of the date of service of order dated 20.07.2023.

8. Considering the provisions of Section 68N and 68O of the NDPS Act, it is clear that the Petitioner has an alternate and efficacious remedy available under the NDPS Act itself to challenge the Competent Authority's order dated 20.07.2023 made under Section 68F(2) of the NDPS Act. Unless this order is challenged and set aside, there is no question of issuing any mandamus to defreeze the assets. The assets have been frozen under this order dated 20.07.2023. If and when this order is set aside, defreeze will follow.

9. Therefore, in the peculiar facts of this case, we accept Mr Pereira's contention that this petition should be regarded as one challenging the Competent Authority's order dated 20.07.2023 made under Section 68F of the NDPS Act.

10. Mr Pereira submits that the Petitioner instituted this petition based on legal advice from Advocate Rajeev Lochan, who no longer appears on behalf of the Petitioner. He submits that the Petitioner followed the legal advice and bona fide pursued this matter before this Court. Mr Pereira states that if permitted, the Petitioner would institute an appeal against the order dated 20.07.2023 within 15 days from today before the Appellate

Tribunal. He submits that in such circumstances, it should be clarified that the appeal should be heard on merits by excluding the period the Petitioner was pursuing the present petition.

11. Mr Vaze submits that if an appeal is instituted within 15 days from today without further delaying the matter, the objection based on limitation would not be pressed.

12. In the peculiar facts of this case, we accept that the Petitioner bona fide pursued this matter before this Court. The petition was instituted within 45 days of the service of the order dated 20.07.2023. The Advocate who had instituted this petition no longer appears for the Petitioner, and Mr Pereira, on instructions, states that this Petition would be withdrawn and an appeal would be instituted within 15 days from today if permitted.

13. Considering the above factors cumulatively, we think that an appeal, if instituted within 15 days from today, should be decided on merits by excluding the period of the date of institution of this petition and 15 days from today. Under the mistaken advice, the Petitioner bona fide pursued the matter before this Court. Now that a remedy is provided under the NDPS Act itself, the Petitioner should have an opportunity to availing the same.

14. Accordingly, at the request of Mr Pereira, we permit the withdrawal of this petition with liberty to the Petitioner to institute an appeal within 15 days against the Competent Authority's order dated 20.07.2023 before the Appellate Tribunal. If such an appeal is instituted within 15 days from today

without seeking any further extension, the Appellate Tribunal is directed to dispose of such appeal on its own merits by excluding the period between the date of institution of this appeal and 15 days from today.

15. We clarify that we have not examined the merits or demerits of the matter and, therefore, all contentions of the parties are expressly left open for determination by the Appellate Tribunal in accordance with law and on its own merits.

16. All concerned to act on an authenticated copy of this order.

VALMIKI MENEZES, J.

M.S. SONAK, J.

JOSE
FRANCISCO
DSOUZA

Digital signature by JOSE
FRANCISCO DSOUZA
Date: 2024-04-25 10:10:22
Signature ID: 906WPCR352024