IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

WP(C).No. 24979 of 2012 (V)

PETITIONER :

MONAVIE INDIA ENTERPRISES PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT 2/41 RESOLUTE TOWERS
MC NICHOLS ROAD, 2ND LANE CHETPET
CHENNAI – 600 031.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENT(S) :
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1. STATE OF KERALA
   THROUGH ITS CHIEF SECRETARY TO THE GOVERNMENT
   SECRETARIAT, THIRUVANANTHAPURAM, KERALA, PIN – 695 001 .

2. DIRECTOR GENERAL OF POLICE
   STATE OF KERALA, TRIVANDRUM, PIN – 695 001.

3. MR.P.A VALSAN
   SUPERINTENDENT OF POLICE
   ECONOMIC OFFICES WING - III
   CBCID, KOZHIKODE, KERALA
   PIN- 673 001.

4. MR.MADHU NAIR
   DY.SUPERINTENDENT OF POLICE
   EOW-II, CBCID, PALAGAT, KERALA
   PIN – 678 014.

R1 & R2 BY GOVT. PLEADER SRI. GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01-12-2015, THE COURT ON 18-12-2015 DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONERS' EXHIBITS :

EXT.P1(a)	TRUE COPY OF THE CERTIFICATES OF INCORPORATION.
EXT.P1(b)	TRUE COPY OF THE FIPB APPROVAL.
EXT.P1(c)	TRUE COPY OF THE IEC CERTIFICATE
EXT.P1(d)	TRUE COPY OF THE KERALA VAT REGISTRATION.
EXT.P1(e)	TRUE COPY OF THE INCOME TAX REGISTRATION (PAN CARD).
EXT.P2	TRUE COPY OF THE GUIDELINES.
EXT.P3	TRUE COPY OF THE LETTER DATED 10-08-2012.
EXT.P4	TRUE COPY OF THE PERMISSION ISSUED BY THE 1ST RESPONDENT DATED 16-08-2012.
EXT.P5	TRUE COPY OF THE CRIME REGISTERED BY THE 3RD RESPONDENT AGAINST THE PETITIONER COMPANY AND ITS DISTRIBUTOR.
EXT.P5(a)	TRUE COPY OF THE SECOND CRIME REGISTERED BY THE 4TH RESPONDENT AGAINST THE DISTRIBUTOR, KOZHIKODE BY CBCID, PALAKKAD.
EXT.P6	TRUE COPY OF THE LETTER ISSUED BY 4TH RESPONDENT FREEZING THE MAIN BANK ACCOUNT OF THE PETITIONER.
EXT.P6(a)	TRUE COPY OF THE LETTER OF HSBC BANK.
EXT.P7	TRUE COPY OF THE CERTIFICATES ISSUED BY THE GOVERNMENT.
EXT.P8	TRUE COPY OF THE SALES RECEIPT FROMAT.
EXT.P9	TRUE COPY OF THE OFFICE ORDER ISSUED BY THE GOVERNMENT OF INDIA DATED 9-4-2003.
EXT.P10	TRUE COPY OF THE TRADE MARK CERTIFICATE
EXT.P11	TRUE COPY OF THE LETTER DATED 16-09-2012
EXT.P12 IN IA NO.11241/15	COPY OF THE CONFIRMATION OF BALANCE ISSUED BY THE CHIEF MANAGER, STATE BANK OF INDIA, ANNA NAGAR BRANCH.
EXT.P12(a)	COPY OF E-MAIL DATED 10.10.2012 ALONGWITH SROCK TRANSFER DETAILS.

(Contd...)

EXT.P12(b)	COPY OF E-MAIL DATED 10.10.2012 ALONGWITH ACCOMPANYING ATTACHMENT SENT TO THE INVESTIGATION OFFICER.
EXT.P12(c)	COPY OF E-MAIL DATED 10-10-2012 ALONGWITH ACCOMPANYING ATTACHMENT SENT TO THE INVESTIGATION OFFICER.
EXT.P12(d)	COPY OF E-MAIL DATED 17.10.2012 SENT TO THE INVESTIGATION OFFICER.
EXT.P13 IN IA NO.11241/15	COPY OF COMMUNICATION ISSUED BY HSBC BANK.
EXT.P13	COPY OF LETTER DATED 25.10.2012 FROM HSBC, BANKER OF THE PETITIONER.
EXT.P14	COPY OF THE APPLICATION ALONG WITH ALL ANNEXURES.

RESPONDENTS' ANNEXURES :
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ANNEXURE R1(a)	COPY OF G.O.(MS) NO. 184/11/ID DATED 27.8.2011.
ANNEXURE R1(b)	COPY OF G.O.(MS) NO. 190/11/ID DATED 12.9.2011.
ANNEXURE R1(c)	COPY OF G.O.(MS) NO. 85/12/ID DATED 16.7.2012.
ANNEXURE R1(d)	COPY OF REQUEST LETTER DATED 10.8.2012 SIGNED BY AJITH PRASAD, CONSULTANT, MONAVIE INDIA PRIVATE LTD TO THE SECRETARY, INDUSTRIES DEPARTMENT.
ANNEXURE R1(e)	COPY OF LETTER NO. 27939/B3/11/ID.
ANNEXURE R1(f)	COPY OF THE VAT REGISTRATION CERTIFICATE DATED 10.11.2011.
ANNEXURE R1(g)	COPY OF THE LETTER NO. 33313/B3/11/ID DATED 21.12.2011.
ANNEXURE R3(a)	COPY OF THE BINARY DETAILS OF SAJEEV N. NAIR, DOWNLOADED FROM THE WEBSITE.
ANNEXURE R3(b)	COPY OF THE COMPLAINT DATED 14.2.2012 SUBMITTED BY THE CONFEDERATION OF CONSUMER VIGILANCE CENTER.
ANNEXURE R3(c)	COPY OF ORDER NO. T8/46961/2011 DTD. 20.6.2012.
ANNEXURE R4(a)	COPY OF THE COMPENSATION PLAN PUBLISHED IN THE WEBSITE OF THE PETITIONER.

(Contd...)

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ANNEXURE R4(b)	COPY OF THE COMMUNICATION DATED 16.10.2012 RECEIVED FROM HSBC.
ANNEXURE R4(c)	COPY OF 102(3) CR.PC REPORT DATED 22.10.2012.
ANNEXURE R4(d)	COPY OF THE ACCOUNT DETAILS OF THE PETITIONER DT. 8.10.2012.

//TRUE COPY//

P.S. TO JUDGE

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A.MUHAMED MUSTAQUE, J.

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W.P.(C).No.24979/2012

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Dated this the 18th Day of December, 2015

<u>J U D G M E N T</u>

This writ petition is filed by a Private Limited Company (hereinafter referred to as the Company), alleged to have been engaged in direct/indirect/multilevel marketing, challenging freezing of their banking account and also seeking for a direction not to interfere with lawful and legitimate business.

2. A crime has been registered against the petitioner on an information given by the Superintendent of Police, EOW III, CB CID, Kozhikode on 19/09/2012 alleging offences under Sections 4, 5 and 6 of Prize Chits and Money Circulation Scheme (Banning) Act, 1978 (for short, the "Act"). The Investigating Officer, in connection with the above crime, ordered freezing of the account of the Company

maintained with HSBC Bank, Ernakulam. This order appears to have been issued purportedly invoking the power under Section 102 of Criminal Procedure Code.

3. Though, there is no direct challenge regarding registration of FIR against the Company, the learned counsel for the petitioner, Shri George Poonthottam addressed extensively to point out that no offence is made out against the Company. Therefore, it is argued that the freezing of the account is liable to be interfered by this Court and to permit the Company to operate the account. The learned counsel explained the nature of the business of the Company and submits that a lawful business cannot be interfered by registration of the crime under Sections 4,5 and 6 of the Act. The learned counsel also referred to the Government Order dated 12/09/2011 issuing guidelines to regulate sale of goods and services known as direct selling. The essential argument is that the right to conduct business in lawful manner has been infringed by the respondents.

4. The Company highlights their business model as follows:

> "The distribution model followed by the petitioner is being followed in several countries including India, by the affiliates of the Petitioner and the same has been evolved after careful study and analysis. The business model is broadly aligned with the direct selling model (though refined and titled towards the benefit of consumers and Distributors of the Petitioner) adopted by a large number of companies in India, including Kerala. Direct Selling is an unconventional distribution model, which eliminates the need of intermediaries by delivering the Goods directly to the consumers with the assistance of independent consumers turned distributor(s). The benefits of such a model is that the multi-layered intermediaries are eliminated and the consumers get the Goods, marketed by the Petitioner, through a single intermediary. Consequently, the consumer gets quality Goods, at their door step."

5. The petitioner also relied upon the following judgments in support of their arguments:

State of West Bengal and others vs. Swapan Kumar Guha and others [(1982) 1 SCC 561], Smt.Lathifa Abubakkar v. The State of Karnataka and others [2012 CRI.L.J.3487] .

6. Per contra, the learned Government Pleader, Shri Gikku Jacob submitted that there is no challenge against registration of the crime. The learned counsel further pointed out that in the guise of direct/indirect/multilevel marketing, the Company is engaged in the money circulation business. It is submitted that the distributors will have to enroll members, who will be placed on either side i.e. left and right side of the distributors and they will receive money without purchase of any goods. It is further submitted that the products are sold on a high price, having no nexus with the market value of these products and transactions are having overtone of money circulation. According to the learned Government Pleader activities of money circulation is ostensible. It is further submitted that this Court passed a detailed interim order on 20/11/2012 relegating the

petitioner to approach the criminal court to work out their remedy. The learned counsel also relied on the powers of the investigating officer to freeze the accounts. He relied on the following judgments: **Babu Varghese v. Dy.Supdt. Of Police [1999 (1) KLT 364], State of Maharashtra v. Tapas D.Neogy [(1999) 7 SCC 685], Kuriachan Chacko v. State of Kerala [2007 (3) KLT 843], Vinoskumar Ramachandran Valluvar & Another v. The State of Maharashtra & Another [CDJ 2011 BHC 283]**and **Abdul Arshad and Others v. State of Kerala and Another [2011 (3) KHC 519].**

7. The question in this writ petition is whether freezing of the bank account is warranted or not? In the absence of any challenge against registration of the crime, the only question to be answered is whether the freezing of the bank account has some nexus with the crime registered by the police.

8. There cannot be any dispute with regard to the power of a police officer to seize the property in terms of Section 102(1) of the Criminal Procedure Code. In the **Tapas D.Neogy's** case **[(1999) 7 SCC 685],** it was held that the word “property” referred under Section 102(1) also includes bank account of the accused.

9. In **Babu Varghese** case **[1999 (1) KLT 364]** it was held that Section 102 of the Criminal Procedure Code empowers a police officer to direct the Bank not to allow the accused to withdraw the money from the Bank.

10. The sustainability of the crime is not under challenge before this Court. Though, it is not under challenge, the Court can examine whether the freezing of the account has any nexus with the crime. The registration of the crime against the petitioner is under the Act. Under Section 7 of the Act, the police officer has power to seize all things used or intended to be used or suspected to have been used in connection with any prize chit or money circulation scheme.

The First Information Report registered against the petitioner, cannot be said untenable. It appears that the investigation is complete and final report is yet to be filed before this Court. The Court can order release of the amount only if the Court finds that the FIR prima facie do not makes a case. Though, the petitioner has not chosen to challenge the FIR, the Court can consider it, for the limited purpose of examining the release of the amount lying in Bank. If the Court allows the withdrawal of the amount without examining the maintainability of the crime, it would amount to quashing of the entire proceedings against the Company holding that activities are legal.

11. This Court is of the view that for the limited purpose of considering the relief, the allegation that the FIR can be examined to find out whether those allegations taken together do constitute any cognizable offence against the petitioner or not. The Hon'ble Supreme Court in the **State of Haryana vs. Bhajan Lal [1992**

Supp 1 SCC 335] gave illustrative examples for interfering FIR either under Section 482 of the Criminal Procedure Code or by invoking power under Articles 226 and 136 of the Constitution of India, which are as follows:

> "1. Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety to do not prima facie constitute any offence or make out a case against the accused.
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> 2. Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of section 155 (2) of the Code.
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> 3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

7. Where, a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on

the accused and with a view to spite him due to private and personal grudge."

12. The judgment relied on by the learned counsel for the petitioner in **Swapan Kumar Guha's** case **[(1982) 1 SCC 561]** also laid down the principles in quashing FIR when investigation do not disclose prima facie commission of cognizable offence.

13. The **Swapan Kumar Guha's** case was, in fact, in the context of Prize Chits and Money Circulation Scheme (Banning) Act, 1978. The ratio in **Swapan Kumar Guha's** case was with regard to the allegation in the FIR alleging that the firm is offering fabulous interest to the depositors. Therefore, it was held that mere exorbitant charging of interest will not bring such activities within the ambit of the 'money circulation' defined under the Act. The learned counsel for the petitioner made an analogy of the above dictum with reference to the allegations in the FIR in this case. The learned counsel argued that the allegation against the Company is similar to **Swapan**

Kumar Guha's case by illustrating that the F.I.R only discloses the allegation that Company sells their products at an exorbitant rate. Therefore, those allegations do not constitute an offence, even if it remains unrebutted.

14. The FIR was registered at Kozhikode City Kasaba Police Station on the basis of the information provided by the Superintendent of Police, EOW-III, CBCID, Kozhikode. It is specifically alleged in the complaint that discrete enquiry shows that prices of the products are exorbitantly high, which is one of the characteristics of money chain activities. It is further alleged that the mode of operation of the Company is fulfilled by enrolment of the members for getting incentives and easy money from the business volume achieved by the members enrolled by them down the line.

15. The information clearly spells that ostensibly, money chain activities are being done through networking by pegging products at a high price under the cover of sale of products.

Therefore, an investigation has to be conducted to find out whether under the guise of sale of products or in the camouflage of business, any money chain activities take place. The investigation is also required to inquire about the predominant activity of the Company through the network. The active money circulation is shrouded in the business model or not, requires investigation. If the predominant activity is a money chain and the sale of product is only a camouflage, certainly, the offence will be made out against the petitioner. This can be only unravelled through an investigation and by collecting evidence. The difference of ratio in **Swapan Kumar Guha's** case and the case on hand is that; in **Swapan Kumar Guha's** case there was no activity to be unearthed by conducting an investigation, as the only allegation was offering exorbitant interest to the depositors. Here, in this case, whether ostensible transaction takes place under the chain among different links in the chain without there being an actual sale of product will have to be found out. Whether it is a networking business or a networking money transaction can be found out only through the investigation and collecting evidence. Therefore, this Court is of the view that at this stage this Court cannot grant relief to the petitioner as the accounts have been freezed in connection with the crime and; in terms of Section 7 of the Act, the Police have every power to seize such accounts in connection with the crime.

16. However, it is made clear that, if after the final investigation, the collected evidence do not constitute an offence, certainly, the Company is at liberty to seek discharge before the court below or to approach this Court to challenge the entire proceedings. The Company is also at liberty to move competent jurisdictional court for interim release of the amount lying in the account. Therefore, with the above liberty, the writ petition is dismissed. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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