IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.09.2014
DELIVERED ON : 27.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE C.T. SELVAM

Crl.O.P.Nos.8288, 11232 and 11233 of 2014
and
M.P.Nos.1 & 2 of 2014 in Crl.O.P.No.8288 of 2014
and
M.P.Nos.1 & 1 of 2014 in Crl.O.P.Nos.11232 & 11233 of 2014

Crl.O.P.No.8288 of 2014

Archana Institute of Technology,
represented by its Principal In-charge,
P.M.Babu,
NH-7, Salem Main Road,
Thimmapuram, Krishnagiri District.
Tamil Nadu - 635 112. ... Petitioner

vs.

1. The Deputy Superintendent of Police,
District Crime Branch,
Krishnagiri, Krishnagiri District.

2. The Inspector of Police,
District Crime Branch,
Krishnagiri, Krishnagiri District.

3. The Union Bank of India,
Krishnagiri Branch,
39/23, Byrappa Building,
Bangalore Road,
Krishnagiri - 635 001. ... Respondents

Criminal Original Petition filed under section 482 of the Code of Criminal Procedure to direct the first respondent to forthwith defreeze the petitioner's bank account bearing No.558702010007894 maintained with the third respondent bank.

Crl.O.P.No.11232 and 11233 of 2014:

J.Archana Kumari ... Petitioner in Crl.O.P.No.11232/14
(Accused No.2)

D.Jayapal ... Petitioner in Crl.O.P.No.11233/14 (Accused No.1)

vs.

State represented by
Inspector of Police,
District Crime Branch,
Krishnagiri.
[Crime No.6 of 2014] ... Respondent in both Crl.O.Ps. (Complainant)

Criminal Original Petitions filed under section 482 of the Code of Criminal Procedure to set aside the onerous conditions imposed by learned Judicial Magistrate I, Krishnagiri, in his order dated 21.04.2014 and 25.04.2014 passed in Crl.M.P.Nos.1700 of 2014 and 1824 of 2014 respectively.

Appearance:

For Petitioners: Mr.Arun Anbumani for M/s.Arulselvam Associates

For Respondents: Mr.M.Mohamed Riyaz, Government Advocate [Crl.side]
[Respondents 1 & 2 in Crl.O.P.No.8288 of 2014 &
Respondent in Crl.O.P.No.11232 and 11233 of 2014]

C O M M O N O R D E R

Petitioner in Crl.O.P.No.8288 of 2014 is the Archana Institute of Technology. The relief claimed is of defreezing of petitioner's bank account No. 558702010007894, such account having been frozen at the instance of first respondent and pursuant to registration of case in Crime No.6 of 2014 on the file of second respondent for offences u/s.406, 420 and 506(ii) IPC. By way of interim orders dated 02.04.2014, this Court has permitted partial operation of the account towards enabling the petitioner to effect payment of monies to Anna University and towards enabling students to take up examinations.

2. Petitioners in Crl.O.P.Nos.11232 and 11233 of 2014, are wife and husband and trustees of Archana Educational Charitable Trust, one of whose institutions is Archana Institute of Technology, the petitioner in Crl.O.P.No.8288 of 2014. Informing that, while granting bail, onerous conditions have been imposed upon them by learned Judicial Magistrate I, Krishnagiri, under orders in Crl.M.P.Nos.1700 and 1824 of 2014 dated 21.04.2014 and 25.04.2014, petitioners/wife and husband, have filed the present petitions seeking setting aside of conditions requiring them to appear before respondent police daily at 10.00 a.m. until further orders.

3. Contentions of petitioner raised in Crl.O.P.No.8288 of 2014 are matters of concern and have direct bearing on the contentions of petitioners in Crl.O.P.Nos.11232 and 11233 of 2014. They inform that the respondent police inimically are disposed towards them and that they fear foisting of false cases against them and for their life, if they are required to appear before respondent police daily.

4. Mr.Arul Anbumani, learned counsel for petitioners submitted as follows:

(i) Case in Crime No.6 of 2014 on the file of Inspector of Police, District Crime Branch, Krishnagiri, Krishnagiri District, for offences u/s.406, 420 and 506(ii) IPC, came to be registered upon the complaint of one Senthil Mohan. Complainant had informed that petitioners had received sums of Rs.1,75,90,000/- from the complainant's father, Rs.11,06,000/- from his mother and Rs.9,90,600/- from him on various dates on promise of making his sister and him trustees of Archana Institute of Technology. Upon petitioners' not doing so, the de facto complainant had gone over to the Institute and asked petitioner/husband that they be appointed as trustees or in the alternate that their monies be returned. While petitioner/husband informed of having defrauded several persons of crores of rupees, that he would not part with anything and if the complainant did not vacate the place forthwith he would be done away with, the petitioner/wife, in like manner, informed the complainant that nothing could be done to them. Upon such complaint, the case in Crime No.6 of 2014 was registered against petitioners.

(ii) Taking this Court through the typed set of papers, learned counsel submitted that a complaint to similar effect had been preferred by de facto complainant before the Superintendent of Police, Krishnagiri, on 16.12.2013. The same had been forwarded to Deputy Superintendent of Police, Krishnagiri District, for investigation vide C.No.2727/H2-DPO/SP KGI/2013 dated 17.12.2013. Summons were issued for appearance of petitioners/wife and husband before Deputy Superintendent of Police, Krishnagiri District, on 02.03.2014. Petitioners/wife and husband, not being in India, they having left the country on 10.11.2013, their representative had appeared before Deputy Superintendent of Police, Krishnagiri District and explained that the complaint dated 16.12.2013 patently was false inasmuch as petitioners/wife and husband, were not even in India on the alleged date of occurrence i.e.,13.12.2013. Thereafter, such complaint was closed.

(iii) The second complaint of de facto complainant though informed of being of date 25.02.2014 could not be of such date since according to first respondent in Crl.O.P.No.8288 of 2014 he had obtained the opinion of Assistant Director of Prosecution, Krishnagiri, there regards on 28.02.2014 and if so, there would have been no occasion to issue summons on a subsequent date i.e., 01.03.2014 requiring the presence of petitioners/wife and husband for enquiry upon the first complaint dated 16.12.2013. Deliberately having obtained the second complaint after 01.03.2014, first respondent had registered Crime No.6 of 2014 for offences u/s. 406, 420 and 506(ii) IPC on 08.03.2014. A news article had been published in "THE HINDU" dated 12.03.2014 informing registration of such case and further that the first respondent had stated that many cases were pending against petitioners/husband and wife and hence those who had complaints can lodge them. The article also informed that a man hunt was on for the College Chairman and his wife, i.e., petitioners/husband and wife.

(iv) Father of de facto complainant in Crime No.6 of 2014, one P.Manickam, had preferred a complaint on 15.11.2013 before Royakottai Police Station, alleging offences of rioting, extortion and criminal intimidation against petitioners/wife and husband on such date. He moved Crl.O.P.No.31051 of 2013 before this Court. This Court, under orders dated 19.12.2013, while disposing of such petition as also several other similar cases, in keeping with the decision of the Apex Court in Lalita Kumari vs. Govt. of U.P. & others [2013 (4) Crimes 243 (SC)] directed the respondent police to register a case on the complaints if a reading of the same disclosed commission of cognizable offence. Pursuant to such direction, a case in Crime No.72 of 2014 on the file of Royakottai Police Station for offences u/s.147, 294(b), 386 and 506(ii) IPC was registered on 03.02.2014. Such false case, again informing serious misconduct by petitioners/wife and husband, on a date when they were not in India, submits learned counsel for petitioners, came to be preferred at the instance of first respondent/Deputy Superintendent of Police, District Crime Branch, Krishnagiri District.

(v) A complaint had been preferred on 17.03.2014 by one of the Directors of Archana Institute of Technology to the Superintendent of Police, Krishnagiri, informing improper conduct of first respondent. Angered thereby, first respondent had issued instructions to the Union Bank of India, Krishnagiri, on 22.03.2014, not only for freezing of accounts of petitioners/wife and husband but also the account of Archana Institute of Technology. It only was upon return of cheque presented by the Institute unpaid and upon an enquiry there regards that the fact of freezing of accounts at the instance of first respondent came to be known. Despite first respondent being informed under communication dated 31.03.2014, that the freezing of the account of the Institution would result in problems also to the students who were to undergo University examinations, he had failed to respond. It was only upon moving Crl.O.P.No.8288 of 2014 and pursuant to interim directions therein passed on 02.04.2014 that the Institute was able to operate the account to the tune of Rs.19,00,000/-. Despite there being no reason to inform their non-cooperation with the investigation or that they were absconding, petitioners/wife and husband having left the country on 10.11.2013 and having caused representation before the Deputy Superintendent of Police on 02.03.2014, Look Out Circulars had been issued on 06.04.2014 by Superintendent of Police. Pursuant thereto, petitioners/wife and husband were arrested at Mumbai International Airport on 08.04.2014. Petitioner/wife had been enlarged on bail under orders of learned Judicial Magistrate I, Krishnagiri, passed in Crl.M.P.No.1700 of 2014 on 21.04.2014 with direction to report before respondent police daily at 10.00 a.m. She sought modification of such condition stating that first respondent inimically was disposed against herself and her husband and that he was foisting false cases against them. Such petition had been returned by learned Judicial Magistrate on 22.04.2014. Petitioner/wife's father died in a road accident at Portblair on 23.04.2014. She rushed to Portblair for her father's funeral on 24.04.2014.

(vi) Petitioner/husband was enlarged on bail under orders of learned Judicial Magistrate I, Krishnagiri, passed in Crl.M.P.No.1824 of 2014 on 25.04.2014. Taking note of the death of petitioner/wife's father, learned Judicial Magistrate I, Krishnagiri, directed petitioner/husband to report before respondent daily at 10.00 a.m. from 30.04.2014. Despite being aware of the position, first respondent sought cancellation of bail of petitioner/wife under Crl.M.P.No.1844 of 2014 on the very same day. Petitioners/wife and husband preferred Crl.O.P.Nos.11232 and 11233 of 2014 seeking setting aside of onerous conditions imposed while granting bail by learned Judicial Magistrate I, Krishnagiri.

(vii) Crl.O.P.No.8288 of 2014 as also Crl.O.P.Nos.11232 and 11233 of 2014 were directed to be listed on 30.04.2014. On such date, first respondent personally was present before this Court. This Court has passed interim orders in Crl.O.P.Nos.11232 and 11233 of 2014 to the effect that petitioners/wife and husband need not appear before the respondent for the purpose of enquiry pending further orders. Despite his presence and knowledge of the said position, first respondent had, on 02.05.2014, sought cancellation of bail of petitioner/husband in Crl.M.P.No.2002 of 2014 before learned Judicial Magistrate I, Krishnagiri. Fortunately for petitioners/wife and husband, learned counsel was able to impress upon learned Judicial Magistrate I, Krishnagiri, the factual position and thereupon Crl.M.P.Nos.1844 and 2002 of 2014 had been dismissed by such Magistrate on 08.05.2014. In doing so, such Magistrate had observed that the application seeking cancellation had been moved suppressing facts.

5. Heard learned Government Advocate [Crl.side] on the above submissions. Perused counters dated 07.04.2014, 17.06.2014 and 03.09.2014 filed by first respondent. Despite orders of this Court dated 28.10.2014 requiring production of case diary, the same has not reached this Court till 15.12.2014 and has been placed before

this Court only upon questioning learned Government Advocate [Crl.side] on 15.12.2014.

6. Counters filed by first respondent do no more than plead his innocence, inform that he is not behind registration of case in Crime No.72 of 2014 on the file of Royakottai Police Station for offences u/s.147, 294(b), 386 and 506(i) IPC and that petitioners/wife and husband are involved in very many offences. They do not meet the contention of petitioners/wife and husband that an earlier complaint dated 16.12.2013 had been closed after enquiry. Neither his knowledge nor lack thereof is informed. The first respondent brazenly and audaciously submitted that he is not aware of the order of this Court to the effect that petitioners/husband and wife need not appear before him, passed in his very presence on 30.04.2014. He informs that he was present before Court in connection with Crl.O.P.No.8288 of 2014 and that "this Court was pleased to discuss the matter only relating to de-freezing of the bank accounts of the accused persons". This, he dares to do despite all petitions being listed on such date.

7. Despite bail being granted to petitioner/husband, taking note of the passing away of his father-in-law, on 25.04.2014, first respondent, on the very date filed a petition for cancellation of bail of petitioner/wife/daughter of the deceased. He had caused publication to the detriment of petitioners/wife and husband in "THE HINDU". Such publication dated 12.03.2014 informed his requiring members of the public to prefer complaint against petitioners/wife and husband and telephone numbers have also been informed. He has gone further and stepping totally out of his block, addressed a communication to the Anna University on 10.05.2014 calling for action against Archana Institute of Technology. Such brazen conduct should not go unpunished. As against both complaints dated 16.12.2013 and 25.02.2014 informing that the de facto complainant called at the College where he was threatened by petitioners/wife and husband, the remand report dated 16.04.2014 speaks of such threat having been made over phone. Apparently on realisation that petitioners were out of the country on the alleged date, such story had been carried forward, first in the counter of first respondent dated 07.04.2014 informing that the threat was made over 'security's' phone and in the further counter dated 17.06.2014 informing that the same was done over cellphone.

8. Under orders dated 16.04.2014, this Court, taking note of the affidavit filed by the petitioner in Crl.O.P.No.8288 of 2014, being satisfied that the funds lying in the account No.558702010007894 cannot be considered to be ill-gotten funds, directed the third respondent to permit the petitioner in Crl.O.P.No.8288 of 2014 to operate the said account. Further reason why the direction of first respondent calling for freezing of such account by third respondent is to be set aside is that in requiring

the account to be frozen, first respondent has neither put the petitioner on notice nor intimated the jurisdictional Magistrate there regards. Such requirement repeatedly has been held mandatory.

9. This Court, under orders dated 16.04.2014, ordered thus:

> "4. On consideration of the above submissions, this Court found that it would be proper to have the first respondent present before this Court. As learned counsel for petitioner had submitted that the monies lying in the account No.558702010007894 were all obtained from the Tamil Nadu Adi Dravidar and Tribal Welfare Department, District Backward Class Welfare Officer and District Treasury Officer, Krishnagiri, and hence, by any stretch of imagination, the same cannot be considered to be ill-gotten funds which would be liable to attachment/freezing, this Court has required the petitioner to file an affidavit before this Court. The affidavit of the petitioner dated 16.04.2014 inter alia informs that a sum of about Rs.53,75,691/- lying in the account No.558702010007894 has been obtained through the following sources:
>
> a. A sum of Rs.52,82,500/- was received on 28.03.2014 from the Tamil Nadu Adi Dravidar and Tribal Welfare Department;
> b. A sum of Rs.42,925/- was received on 29.03.2014 from the District Backward Class Welfare Officer; and
> c. A sum of Rs.39,360/- was received on 29.03.2014 from the District Treasury Officer, Krishnagiri.
>
> 5. In the light of the above, there shall be a direction to the third respondent to permit the petitioner to operate the account No.558702010007894."

Affirming the same, this Court records that Crl.O.P.No.8288 of 2014 stands allowed. Consequently, connected miscellaneous petitions are closed.

10. It further is directed that investigation in the case in Crime No.6 of 2014 shall stand transferred to the file of Superintendent of Police, Krishnagiri. Petitioners in Crl.O.P.Nos.11232 and 11233 of 2014 shall appear before such investigating officer as and when required. Crl.O.P.Nos.11232 and 11233 of 2014 are disposed of with the above direction. Consequently, connected miscellaneous petitions are closed.

A copy of this order shall be forwarded to Director General of Police for appropriate action against first respondent/Deputy

Superintendent of Police, District Crime Branch, Krishnagiri, Krishnagiri District. A report of the action taken shall be forwarded to Registrar (Judicial) of this Court.

Sd/-
Asst. Registrar

/true copy/

gm Sub Asst. Registrar.

To

1. The Deputy Superintendent of Police,
   District Crime Branch,
   Krishnagiri, Krishnagiri District.

2. The Inspector of Police,
   District Crime Branch,
   Krishnagiri, Krishnagiri District.

3. The Manager,
   Union Bank of India, Krishnagiri Branch,
   39/23, Byrappa Branch,
   Bangalore Road, Krishnagiri.

4. The Public Prosecutor,
   High Court, Madras.

Copy To:

1. The Director General of Police,
   Chennai.

2. The Registrar(Judl),
   High Court, Madras(for Watching Report)

3. The Superintendent of Police,
   Krishnagiri.

Crl.O.P.Nos.8288, 11232
and 11233 of 2014

KU(CO)
CA(11/03/2015)