

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.No.14606 of 2015
and M.P.No.1 of 2015

M.Chithiraivadivu

... Petitioner

Vs.

1. The Central Bureau of Investigation,
rep.by its Superintendent,
Shastri Bhavan, 2nd Floor,
No.26, Haddows Road,
Chennai - 600 006,
 2. State Bank of India,
rep.by its Manager,
P.B.B.T.Nagar Branch,
No.9, Bazullah Road,
T.Nagar, Chennai - 600 017,
 3. ICICI Bank,
rep.by its Manager,
T.Nagar Branch,
No.7, Bazullah Road,
T.Nagar, Chennai - 600 017.
- .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus to direct the 1st respondent to defreeze the petitioner's Savings Bank Accounts bearing S.B.Account Nos.10912085792 and 602601198021 which have been in 2nd and 3rd respondent Banks respectively and enable the petitioner to operate her those Savings Bank Accounts on her own.

For Petitioner : Mr.N.Vijayanarayanan, Sr.Counsel
for Mr.P.Kamarasu

For Respondents : Mr.K.Srinivasan, Spl.Public
for R1 Prosecutor,

R2 : Mr.P.D.Audikesavalu

ORDER

The issue involved in this writ petition is no longer res integra. The petitioner is the wife of Dr.M.Manuneethi Cholan and her accounts have been frozen in pursuant to a case registered against

her husband. Similar was the case with that of his son and daughter in W.P.No.22754 of 2014. Considering the identical issue, both on law and facts, this Court in W.P.No.33754 of 2014, by order dated 12.03.2015, was pleased to allow the writ petition after making reliance upon the judgment of the Apex Court. The following are the relevant paragraphs of the said judgment:

"8. The decision in the case of R.Chandrasekar vs. Inspector of Police, Salem [cited supra] was subsequently followed by this Court in the case of Padmini vs. The Inspector of Police, District Crime Branch, Tirunelveli reported in 2008(3) CTC 657 after referring to yet another decision in the case of B.Ranganathan vs. State reported in 2003 Cri.L.J.2779 and held as follows:

"5. The learned counsel relies on a judgment of this Court in R. Chandrasekar vs. Inspector of Police, Salem and another, 2002(5) CTC 598: 2003 Cri.L.J.294, and another judgment of this Court in B.Ranganathan v. State and others, 2003 Cri.L.J.2779.

6. In the former judgment, a learned Judge of this Court in paragraph 11 has held as follows:

"The respondents/police has also not followed the mandatory requirements of Section 102 of the Code of Criminal Procedure. The Police Officer shall forthwith report the same to the Magistrate and also give notice to the petitioner and allow him to operate the Bank Account subject to executing a bond undertaking to produce the amount in Court, as and when required as contemplated in Clause 3 of Section 102, but not given any such notice. Even the copy of prohibitory order was not served to the petitioner."

7. In the latter judgment, a learned Judge in paragraph 21 has held as follows:

"Yet another legal aspect pointed out on the part of the petitioner by his counsel is the procedure that is to be adopted on seizure of Bank Account. In case of seizure of a Bank Account, the Police Officer should do two things; he should inform the concerned Magistrate forthwith regarding the prohibitory order. He should also give notice of the seizure to the accused and allow him/her to operate the Bank Account subject to his/her executing a bond undertaking to produce the amounts in Court as and when required or to hold them subject to such orders as the Court may make regarding the disposal of the same. An order under Section 102, without doing so is liable to be set aside, as held in Ms.Swaran Sabharwal v. Commissioner of Police, 1988 Cri.L.J.241

(Delhi). This procedure that is to be followed and felt mandatory has also not been followed by the first respondent."

Further, it is seen that in the case of His Holiness Sri Kanchi Kamakoti Peetadhipathi Jagadguru Sri Sankaracharya Swamikal Srimatam Samasthanam, rep.by its Manager, No.1, Salai Street, Kancheepuram 631 502 vs State [cited supra], this Court explained the scope and power under Section 102 of the Criminal Procedure Code in the following terms:

"30. A reading of the provision clearly indicates the scope of the power under the provision and that it is an exhaustive provision. Only two categories of properties are mentioned, namely, (1) alleged or suspected to have been stolen, or (2) which may be found under circumstances which create suspicion of the commission of any offence. No other categories can be included or deemed to be included as may otherwise be possible in an expansive definition by using certain other expressions in addition such as "as the case may be", "as the authorities deem fit and necessary", etc., which may render the provision an inclusive and illustrative one and not an exhaustive one. The language of Section 102 of Cr.P.C., is very clear and it is clearly an exhaustive provision, as it should be. Otherwise, the provision would be arbitrary and unconnected to the offence and would be liable to be misused for ulterior purposes. Therefore, designedly, the Parliament has restricted the power under Section 102 of Cr.P.C., to specific and narrow limits."

9. The facts of the instant case, as set out in the preceding paragraphs, would clearly demonstrate that the order passed by the CBI freezing the operation of the savings bank accounts of the petitioners does not satisfy the parameters required to be made to attract Section 102 of the Criminal Procedure Code.

10. Thus following the aforesaid decisions, the writ petition is allowed and the impugned prohibitory order issued by the second respondent prohibiting the operation of the two savings bank accounts of the petitioners, viz., S.B.A/c Nos.4397000100674049 and 4397000100674030, which they are holding with the third respondent-Bank are set aside on account of the fact that the mandatory provisions have not been followed before freezing their accounts. Further it is made clear, that this Court does not prevent the second respondent from initiating any fresh proceedings after following the mandatory provisions. No costs.'

2. In the light of the above order, this writ petition is allowed on the same terms. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1. The Superintendent,
Central Bureau of Investigation,
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T.Nagar Branch,
No.7, Bazullah Road,
T.Nagar, Chennai - 600 017.

+2 ccs to Mr.P.Kamarasu, Advocate, sr.47000

+1 cc to Mr.P.D.Audikesavalu, Advocate, sr.46807

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W.P.No.14606 of 2015

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