IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2015

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.33754 of 2014

1. M.Adithya Cholan
2. M.Anandhi .. Petitioners

vs.

1. The Union of India
   rep.by its Secretary
   Department of Home
   Shastri Bhavan, V Floor
   New Delhi 110 001.

2. The Central Bureau of Investigation
   rep.by its Superintendent
   Shastri Bhavan, II Floor
   No.26, Haddows Road
   Chennai 600 006.

3. The Punjab National Bank
   rep.by its Manager
   Mahalingapuram Branch
   No.160, Mahalingapuram Main Road
   Chennai 600 034. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to de-freeze the petitioner's Savings Bank Accounts bearing S.B.A/c Nos.4397000100674049 and 4397000100674030 and enable the petitioners to operate their respective Savings Bank Accounts on their own.

For Petitioners : Mr.Vijay Narayan
Senior counsel for
Mr.P.Kamarasu

For Respondents : Mr.Su.Srinivasan
Assistant Solicitor General for R1
Mr.K.Srinivasan for R2
Mr.P.B.Sampath Kumar for R3

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ORDER

Heard Mr.Vijay Narayan, learned Senior counsel appearing for the petitioners, Mr.Su.Srinivasan, learned Assistant Solicitor General appearing on behalf of the first respondent, Mr.K.Srinivasan, learned counsel appearing for the second respondent-CBI and for Mr.P.B.Sampath Kumar, learned counsel appearing for the third respondent-Bank.

2. The petitioners have filed this writ petition praying for the issuance of a writ of mandamus to direct the respondents to de-freeze the petitioner's Savings Bank Accounts bearing S.B.A/c Nos.4397000100674049 and 4397000100674030 so as to enable them to operate their respective accounts, which they are holding with the third respondent-Bank.

3. The petitioners are the son and daughter of one Dr.M.Manuneethi Cholan, who was working as the Registrar of Companies, Ministry of Corporate Affairs, Shastri Bhavan, Chennai. The CBI has registered a case against the petitioners' father, in which the petitioners' father is the first accused. The case against the petitioners' father is that on 26.08.2014 at about 16.30 hours based on an information, the petitioners' father car was intercepted by a team of CBI officials when he came out of a residence of Mr.M.A.M.Ramasamy and an amount of Rs.10 lakhs in cash was recovered from him, besides a sum of Rs.40,000/- was also recovered from his person at the time of arrest. The seizure of the cash was done in a Honda City Car, in which he was travelling with red beacon light on top along with the Government of India plate; however, it was said to be a private vehicle owned by the petitioners' father close friend. The further case is that, when search was conducted at the residence and office premises of the petitioners' father, it led to recovery of unaccountable amount to the tune of Rs.24.81 lakhs and other documents. The petitioners' father was arrested on 26.08.2014 and was remanded to judicial custody. It is further stated that during the course of searches, a sum of Rs.54 lakhs was found deposited in as many as 29 bank accounts maintained in the name of the petitioners' father and in the names of the petitioners and the petitioners were having a balance in their aforesaid Savings Bank Accounts to the tune of Rs.9.14 lakhs and Rs.5.07 lakhs respectively as on the said date. Therefore, the CBI have strong reasons to believe that the obviously the aforesaid considerable amounts are part of the ill-gotten money obtained by the petitioners' father. In this regard, the provisions under Section 102 of the Criminal Procedure Code was invoked and the savings bank accounts of the petitioners have been freezed. Challenging the same, the petitioners are before this Court.

4. Learned Senior Counsel appearing for the petitioners, after reiterating the facts, contended that the order freezing the

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petitioners' bank accounts were not furnished and no notice was issued to the petitioners, before the order came to be passed. Further it is submitted that Section 102(3) of the Criminal Procedure Code provides sufficient safe guards in the matter and therefore, the petitioners should be permitted to operate the bank accounts. In support of his contentions, the learned Senior Counsel placed reliance on the following decisions of this Court:

(i) 2002 (5) CTC 598 [R.Chandrasekar vs. Inspector of Police, Fair Land Police Station, Salem and another]

(ii) 2005(1) CTC 657 [His Holiness Sri Kanchi Kamakoti Peetadhipathi Jagadguru Sri Sankaracharya Swamingal Srimatam Samasthanam, rep.by its Manager, No.1, Salai Street, Kancheepuram 631 502 vs. The State of Tamil Nadu, rep.by the Secretary to Government, Home Department, Fort St.George, Chennai-9 and others]

(iii) 2008(3) CTC 657 [Padmini vs. The Inspector of Police, District Crime Branch, Tirunelveli, and others].

5. Learned Special Counsel appearing for the CBI cases submitted that in all cases where investigation is being conducted, direction is given to the respective Banks to freeze the accounts of the concerned parties, so as to prevent the funds being siphoned off. Therefore, orders were issued in the case of the petitioners to freeze their bank accounts as investigation is under progress and charge sheet is yet to be filed.

6. Learned Counsel appearing for the third respondent-Bank submitted that they have complied with the direction issued by the CBI and freezed the savings bank account of the petitioners.

7. The legal issue involved in this case is, with regard to the procedure that should be adopted in such cases were bank accounts are freezed. Admittedly, both the petitioners herein are not accused and only their father Manuneethi Cholan is the first accused in the case filed by the CBI. In the two decisions referred by the learned Senior Counsel for the petitioners reported in 2002 (5) CTC 598 and 2005(1) CTC 657 [cited supra], the petitioners in both the cases were accused in the criminal case. This Court, in the judgment reported in 2002 (5) CTC 598 [cited supra] after taking into consideration Section 102 of the Criminal Procedure Code pointed out that it is not a case where the discovery of property that has created suspicion that an offence has been committed and that there are no circumstances attendant upon the bank account or its operation that have led the police to suspect that some offence has been committed somewhere and the allegation itself is that the bank account in the said case is a sequel to the discovery of the commission of the offence and that this is not sufficient to attract Section 102 of the Criminal Procedure Code as it cannot be, since

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that the bank account has been traced or discovered in circumstance, which have made the police aware of the commission of an offence. Therefore, this Court held that there was no justification in passing a prohibitory order from operating the bank account and it also held that the respondents-police have not followed the mandatory requirements of Section 102 of the Criminal Procedure Code. The operative portion of the said order reads as follows:

> "7. No doubt, under Section 102 of Cr.P.C., a police officer in the course of investigation can prohibit the operation of the bank account, as the bank account is property provided it is found under circumstances creating suspicion that an offence has been committed. Section 102 of Cr.P.C.runs as follows:
>
> 102. Power of police officer to seize certain property -
>
> 1. Any police office may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commisison of any offence.
>
> 2. Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.
>
> 3. Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.
>
> 8. Section 102 empowers a police office to seize any property, which may be alleged or suspected to have been stolen or which can be found under circumstance which create suspicion of commission of any offence. In other words, when a property not found under circumstance creating suspicion of an offence having been committed under Section 102 of Cr.P.C., does not apply.
>
> 9. In the case on hand, the position is different. Here it is not the discovery of property that has created suspicion that an offence has been committed. There are no circumstances attendant upon the bank account or its operation that have led the police to suspect that some offence has been committed somewhere. The allegation of the prosecution is that the bank account in the said case is a

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sequel to the discovery of the commission of the offence. This is not sufficient to attract Section 102 of Cr.P.C as it cannot be, since that the bank account has been traced or discovered in circumstance, which have made the police aware of the commission of an offence.

10. I do not find any justification in passing prohibitory order by the respondents/police from operating the bank account. The respondents at toppled to establish that some funds are suspected to be transferred by the petitioner's father to the petitioner's bank account, which is not sufficient to attract Section 102 of Cr.P.C. However, this averment can be verified at any time by a comparison between the accounts as the entries in the accounts are always available as such no purpose seems to be served by restricting the operation of the bank account. Indeed, the statements of account produced by the petitioner justify prima facie that are covered by cheques and drafts, besides meagre amounts are available in the accounts. No whispering about the petitioner in the confession statement by Prabhakaran to the police.

11. The respondents/police has also not followed the mandatory requirements of Section 102 of Cr.P.C. 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 Section102, but not given any such notice. Even the copy of prohibitory order was not served to the petitioner.

For the reasons mentioned above, I revoke the prohibitory order issued by the 2nd respondent preventing the petitioner from operating the bank account in question. The petition, is therefore, allowed as prayed for. No costs."

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.

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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 Section102, 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 Swamingal 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:

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"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.

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To

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2. The Superintendent
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3. The Manager
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