IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 22.12.2015

Date of Verdict: 18.02.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Crl.O.P.Nos.10260 to 10262 of 2014
and
Cont.Petn.Nos.571 to 573 of 2014

Tmt.T.Subbulakhsmi .. Petitioner in CrlOP Nos.10260 & 10261 of 2014 and C.P.Nos.571 & 573 of 2014/ Accused

T.Yamini .. Petitioner in CrlOP No.10262 of 2014 and C.P.No.572 of 2014

Vs

1. The Commissioner of Police,
Egmore, Chennai-08. ..Respondent No.I in all Crl.O.Ps

2. State rep. By
Inspector of Police,
Central Crime Branch,
Team-XVI,
Egmore,
Chennai-600 008. ..Respondent No.2 in Crl.O.P.10262/14

3. The Manager,
Indian Bank,
Thiruvanmiyur Branch,
Chennai. ..Respondent No.3 in Crl.O.P.10261/14 & Crl.O.P.10262/14.

State Rep.by the Inspector of Police,
Central Crime Branch,
Central Crime Branch
Team XV, Egmore, Chennai 8, ..Respondent No.2 in Crl.O.P.260/14, & 10261/14)

The Manager
Indian Overseas Bank,
Valmiki Nagar Branch,
Chennai 41. .. Respondent No.3 in Crl.O.P.10260/14.

Mr. Ravi
Inspector of Police,
Central Crimi Branch
Team XV, Egmore, Chennai 8...Respondent No.I in Contempt petition No.571 & 573 of 2014.

Mr. Ravi
Inspector of Police,
Central Crimi Branch
Team XVI, Egmore, Chennai 8.
(Cr.No.315 of 2012) ....Respondent No.I in Contempt petition No.572 of 2014.

Mr.K.mani
Chief Manager, Indian Bank
Thiruvanmiyur Branch,
Chennai .. Respondent 2 in Contempt Petition No.573 of 2014.

Prayer in Crl.O.P.Nos.10260 to 10263 of 2014: Criminal Original Petitions are filed under Section 482 Cr.P.C., praying to issue a direction to the respondents 1 to 3 to defreeze the petitioners' bank account maintained with the 3rd respondent.
Prayer in Cont.P.Nos.571 to 573 of 2014: Petitions are filed under Section 11 of the Contempt of Courts Act, to punish the respondents for having committed contempt of Court for disobeying the orders dated 30.08.2013 in Crl.O.P.Nos.13103 to 13105 of 2013.

For Petitioners : Mr.R.Shanmuga Sundaram, SC
Mr.P.Venkata Subramaniam and
Mr.A.Gopinath in all Crl.OPs and Contempt Petition.

For Respondents : Mr.S.Shamugavelayuthan,
Public Prosecutor for R1 & R2 in all Crl.OPs and R1 in all Cont.Petn.
Mr.D.Sai Kumar for R2 in Cont.P.No.573 of 2014

COMMON ORDER

Since the issue involved in all these Criminal Original Petitions as well as Contempt Petitions relates to the same subject matter, all these petitions are taken up together for final disposal by way of this common order.

2. Brief facts, which are necessary for disposal, can be stated as under:

2.1. One Tmt.T.Subbulakshmi is the petitioner in Crl.O.P.Nos.10260 & 10261 of 2014 and Cont.P.Nos.571 & 573 of 2014 and her daughter Tmt.T.Yamini is the petitioner in Crl.O.P.No.10262 of 2014 and Cont.P.No.572 of 2014.

2.2. The Inspector of Police, Central Crime Branch, has registered cases against the petitioners in Crime Nos.154, 233 and 315 of 2012 for the alleged offences punishable under Sections 420, 465, 467, 468 and 471 r/w 120-B IPC.

2.3. The prosecution case is that a property situated at Old No.189, New No.51, Sholinganallur village, 'The Sea Shore Town', Tambaram taluk, Kancheepuram District, S.No.12/1 and 12/2 as per Patta S.No.12/356, Plot NO.297 measuring an extent of 12,000 sq.ft. originally belonged to one Chokkalinga Mudaliar. From the said Chokkalinga Mudaliar, the said property was purchased by one Mr.Mahendra Kumar N.Kampani and his wife Mrs.Malini Mahendra Kumar N.Kamapani vide sale deed dated 25.02.1967 registered as Document No.881/1967. The said Mrs.Malini Mahendra Kumar N.Kampani died on 07.02.1980 and Mr.Mahendra Kumar N.Kampani died on 26.08.1997. After their demise,one Dhanalakshmi, relative of the petitioners herein, created a forged power of attorney dated 12.04.2007 along with eleven other persons and executed a sale deed in favour of the petitioner Subbulakshmi on 17.05.2007 and the petitioner Subbulakshmi executed a settlement deed dated 22.04.2008 in favour of one Mrs.Yuba T.Reichard, who in turn executed a Power of Attorney in favour of T.Yamini, the petitioner in Crl.O.P.No.10262 of 2014. Thus, the petitioners involved in the land grabbing and had been depositing the income that they were deriving from the said property in the bank accounts.

2.4. Pursuant to the registration of the FIR against the petitioners, Tmt.Subbulakshmi was arrested on 25.10.2012 and remanded to judicial custody and subsequently, she was released on bail. Tmt.Yamini, the petitioner in Crl.O.P.No.10262 of 2014 in Crime No.315 of 2012, obtained anticipatory bail from this Court. The petitioner, Tmt.Subbulakshmi is maintaining a savings account with Indian Bank, Thiruvanmiyur Branch, Chennai vide S.B.A/c.No. 443503512 and she is also maintaining a savings bank account with the Indian Overseas Bank, Valmiki Nagar Branch, Chennai, vide S.B.A/c.No.14720100002821. The petitioner T.Yamini is maintaining savings bank account with the Indian Bank, Thiruvanmiyur Branch, Chennai vide Savings Bank Account No.443519920. The Inspector of Police, Central Crime Branch, Egmore, Chennai sent a written request to the above said banks dated 27.10.2012, to freeze the accounts of the petitioners since they had been depositing the income derived from the property, which, according to the prosecution was acquired by the petitioners pursuant to the commission of offence. Thereafter, pursuant to the said written request, respective banks freezed the respective bank accounts of the petitioners.

3. Challenging the same, earlier, the petitioners have filed Crl.O.P.Nos.13103, 13104 and 13105 of 2013 on the ground that the seizure of the property is not in accordance with the provisions under Section 102 of Cr.P.C. and that every Police Officer acting under Sub Section (1) to Section 102, shall forthwith report the seizure to the Magistrate having jurisdiction where the property was seized. On the other hand, it was argued on behalf of the prosecution that as per Section 102(3) of Cr.P.C. only such of those properties seized from the accused, if it cannot be conveniently transported to the Court or if there is difficulty in securing the proper accommodation for the custody of such property or the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, only then the report of the seizure should be sent to the concerned Magistrate and not in all the cases. It was also argued that the freezing of the bank accounts does not deprive any person of his liberty or his property as prohibition is temporary in nature, till merits of the case is decided and therefore, non reporting of freezing of the accounts to the Magistrate will not vitiate the entire freezing proceedings.

4. On hearing both sides, by an elaborate order, this Court has allowed the above said earlier Criminal Original Petitions filed by the petitioners and the proceedings of the Investigating Officer, dated 27.09.2012 in freezing the bank accounts of the petitioners, were quashed. However, considering the fact that the order of quashing the proceedings is only on technical ground, this Court gave liberty to the Investigating Officer to initiate fresh proceedings after following the procedures as indicated under Section 102(3) Cr.P.C.

5. The above said order was passed by this Court on 30.08.2013 and it was communicated to the respective banks by the learned counsel for the petitioners on 6.9.2013 and the same

was also acknowledged by the banks. Thereafter, the petitioners themselves went in person to the respective banks and asked for the reason for not allowing them to operate their savings accounts, for which, the banks replied that the Investigating Officer had intimated them by official letter, not to allow the petitioners to operate and maintain their savings accounts. Therefore, according to the petitioners, it is a clear violation of the order passed by this Court. Hence, they came forward with the present Contempt Petitions.

6. Further, according to the petitioners, the Investigating Officer, namely, the Inspector of Police, Central Crime Branch, in gross violation of the order passed by this Court, did not give any information or letter about the seizure of the bank accounts to the jurisdictional Magistrate which is mandatory as per Section 102 Cr.P.C.

7. Thereafter, the petitioners filed a copy application before the learned Judicial Magistrate, Alandur on 14.9.2013 for issuance of letter or report about freezing of their accounts in order to challenge it before this Court. But it was returned on 26.9.2013, i.e. after 12 days stating that no such report or letter was filed with the jurisdictional Magistrate. Hence, three contempt petitions are filed by the petitioners, praying to punish the Manager of the bank and also the Investigating Officer.

8. The present Criminal Original Petitions are filed by the petitioners with the prayer to issue a direction to the respondents 1 to 3 to defreeze the petitioners' bank accounts maintained with the 3rd respondent, on the ground that the Investigating Officer has failed to comply with the provisions of Section 102 Cr.P.C.

9. The respondents filed a common counter, wherein, while denying all the allegations made by the petitioners, it is stated that after the disposal of the earlier Criminal Original Petitions, viz., 13103 to 13105 of 2013, a letter dated 6.9.2013 was sent to the Manager of the respective banks to freeze the accounts of the petitioners. It was acknowledged by the Manager of the Banks on 7.9.2013 and the intimation was sent to the Magistrate on 18.09.2013. The time taken to send the intimation was neither due to willful conduct or deliberate intention on the part of the Investigating Officer. The time taken to send the intimation to the Magistrate is that the day following freezing of bank accounts was a Sunday i.e. 8.9.2013, which was a holiday. The next day was 09.09.2013 was a government holiday on account of Vinayagar Chaturthi. For one week following Vinayagar Chaturthi till 15.09.2013, the Investigating Officer

was engaged with Law and Order duty on account of celebrations of the said festival State wide and the immersion of the idols of Lord Ganesh which were taken in procession one after the other. The said festival is a cause of concern for the entire State Police on account of friction between the persons who celebrate the festival by installing the idols at public places which are to be taken for immersion. Therefore, as the Investigating Officer was engaged to lookafter maintenance of law and order during those days, he could not send the intimation promptly. The intimation was made ready immediately thereafter and sent to the Court on 18.9.2013. Hence, the Investigating Officer sought for dismissal of the petitions.

10. When these matters are taken up for consideration, since it was stated in the counter, the intimation was sent to the learned Judicial Magistrate, the learned senior counsel focused his arguments with regard to the time taken by the Investigating Officer in sending the intimation to the learned Magistrate. It is the main submission of the learned senior counsel for the petitioners that as per Section 102(3) Cr.P.C., after the accounts were frozen, it is the mandatory on the part of the Investigating Officer, to report the same to the Judicial Magistrate having jurisdiction forthwith. He pointed out that in the instant case, even according to the prosecution, they have sent letters to the banks to freeze the accounts on 6.9.2013 and the same was acknowledged by the Manager of the bank on 7.9.2013, but when the petitioners filed a copy application before the learned Magistrate on 14.9.2013, seeking information about the intimation said to have been sent by the Investigating Officer to the Judicial Magistrate, it was evident from the endorsement made by the learned Judicial Magistrate, Alandur on the said copy application to the effect that on the date of filing the application, i.e. 14.9.2013, 'no such intimation was received and hence returned.' Thereafter, only after 16.9.2013, intimation was sent to the Judicial Magistrate by the Investigating Officer with regard to the seizure of the bank accounts of the petitioners. Therefore, the learned senior counsel pointed out that there is delay of 12 days in between the freezing of the accounts and sending the intimation to the Magistrate. Since the the intimation was not sent forthwith as stated in Section 102(3) Cr.P.C., freezure of the bank accounts of the petitioners is totally vitiated. Hence, the learned senior counsel sought for quashing of the order.

11. In support of his submissions, the learned senior counsel relied upon the judgment reported in "1994 Supp (2) SCC 372 (Arjun Marik and others versus State of Bihar)", wherein, the Hon'ble Supreme Court dealt with a word 'forthwith' occurring in Section 157 Cr.P.C., and held that 'forthwith'

means 'without any undue delay' and 'immediately'. The relevant portion in para 24 reads as under:

> "24. The matter does not stop here. There is yet another serious infirmity which further deepens the suspicion and casts cloud on the credibility of the entire prosecution story and which has also been lost sight of by the trial court as well as the High Court and it is with regard to the sending of occurrence report (FIR) to the Magistrate concerned on 22-7-1985 i.e. on the 3rd day of the occurrence. Section 157 of the Code of Criminal Procedure mandates that if, from information received or otherwise, an officer in charge of police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to the Magistrate empowered to take cognizance of such offence upon a police report. Section 157, CrPC thus in other words directs the sending of the report forthwith i.e. without any delay and immediately. Further, Section 159 Cr.P.C envisages that on receiving such report, the Magistrate may direct an investigation or, if he thinks fit, to proceed at once or depute any other Magistrate subordinate to him to proceed to hold a preliminary inquiry into the case in the manner provided in the Code of Criminal Procedure. The forwarding of the occurrence report is indispensable and absolute and it has to be forwarded with earliest despatch which intention is implicit with the use of the word "forthwith" occurring in Section 157, which means promptly and without any undue delay. The purpose and object is so obvious which is spelt out from the combined reading of Sections 157 and 159 CrPC. It has the dual purpose, firstly to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation and secondly to enable the Magistrate concerned to have a watch on the progress of the investigation."

12. For the same proposition, the learned senior counsel also relied upon the judgment reported in 1975(1) SCC 653 (SK.Salim versus The State of West Bengal)", wherein, in para 7, it has been held as under:

> "7. The dictionary meaning of 'forthwith' is : "Immediately, at once, without delay or interval". A typical instance of the use of the word cited in the dictionary is : "When a defendant is ordered to plead forthwith, he must plead within twenty-four hours"

(See Shorter Oxford English Dictionary, Third Edition, Vol. I, p.740). This shows that the mandate that the report should be made forthwith does not require for its compliance a follow-up action at the split-second when the order of detention is made. There ought to be no laxity and laxity cannot be condoned in face of the command that the report shall be made forthwith. The legislative mandate, however, cannot be measured mathematically in terms of seconds, minutes and hours in order to find whether the report was made forthwith. Administrative exigencies may on occasions render a post-haste compliance impossible and therefore a reasonable allowance has to be made for unavoidable delays. This approach does not offend against the rule formulated in Kishori Mohan Bera v. State of West Bengal , and followed in Bhut Nath Mete v. The State of West Bengal , that a law depriving a subject of personal liberty must be construed strictly. The rule of strict construction is no justification for holding that the act to be performed 'forthwith' must be performed the very instant afterwards without any intervening interval of time or that it should be performed simultaneously with the other act. Citing Sameen v. Abeyewickrema [1963] A.C. 597, Maxwell says that where something is to be done forthwith, a Court will not require instantaneous compliance with the statutory requirements ("The Interpretation of Statutes" 12th Ed., pp. 101-102)."

13. The learned senior counsel also relied a judgment of the learned single Judge of this Court, dated 16.6.2015 in Crl.A.Nos.244 of 2006 and 419 of 2007, wherein, the learned Judge has followed the dictum of the Hon'ble Supreme Court in "Arjun Marik and others versus State of Bihar reported in 1994 Supp (2) SCC 372" as regards the delay by taking note of the meaning 'forthwith'. Therefore, the learned senior counsel would submit that the delay of 12 days in sending the intimation to the learned Magistrate would vitiate the entire proceedings.

14. The next fold submission of the learned senior counsel is that the freezing of the accounts should be curtailed when it becomes imperative and it should be only for small duration during the investigation. He pointed out that in the instant case, even after 3 ½ years from the date of registration of the complaint, investigation has not been completed and therefore, for such a long period, bank accounts cannot be frozen. In support of his submission, the learned senior counsel relied upon the decision of the Hon'ble Supreme Court reported in

"(2011) 1 SCC 694 (Siddharam Stalingappa Mhetre versus State of Maharashtra and others)" , wherein, the Hon'ble Supreme Court, while emphasizing the personal liberty guaranteed by the Constitution, which is a very precious fundamental right, should be curtailed only when it becomes imperative, gave suggestions to the States for consideration, which read as under in para 117:

> "117. In case, the State consider the following suggestions in proper perspective then perhaps it may not be necessary to curtail the personal liberty of the accused in a routine manner. These suggestions are only illustrative and not exhaustive.
>
> 1) Direct the accused to join investigation and only when the accused does not cooperate with the investigating agency, then only the accused be arrested.
>
> 2) Seize either the passport or such other related documents, such as, the title deeds of properties or the Fixed Deposit Receipts/Share Certificates of the accused.
>
> 3) Direct the accused to execute bonds;
>
> 4) The accused may be directed to furnish sureties of number of persons which according to the prosecution are necessary in view of the facts of the particular case.
>
> 5) The accused be directed to furnish undertaking that he would not visit the place where the witnesses reside so that the possibility of tampering of evidence or otherwise influencing the course of justice can be avoided.
>
> 6) Bank accounts be frozen for small duration during investigation."

15. The learned senior counsel also made a detailed argument with regard to the factual aspect of each case and also by inviting the attention of this Court to the civil suits filed by the petitioner Tmt.Subbulakshmi, pending before the District Munsif Court, Alandur and submitted that since the matter is of purely civil in nature, absolutely there is no necessary to freeze the bank accounts of the petitioners. The main allegation of the prosecution is that by using forged documents, the petitioners had purchased the property and the prosecution can establish the said allegation its case by way of documentary evidence. Since the amount lying in the bank is only a rental income derived from the said property, the petitioners are entirely depending upon the said income as it is their

livelihood. He pointed out that it is not a case of corruption, so that the freezing of accounts is warranted.

16. Per contra, learned Public Prosecutor would submit that while passing the order on earlier occasion in Crl.O.P.No.13103 to 13105 of 2013, this Court has not fixed any time limit for the prosecution to initiate fresh proceedings and hence no time limit was there to initiate the proceedings. He submitted that the requisition to freeze the accounts of the petitioners was given on 6.9.2013 and the same was acknowledged by the Manager of the bank on 7.9.2013 and the intimation was sent to the Magistrate on 18.9.2013 and there was neither willful conduct nor deliberate intention on the part of the Investigating Officer. Therefore, he sought for dismissal of the contempt petitions. He would also submit that after demise of original owners of the disputed property, one Dhanalakshmi, a relative of the petitioners created a forged power of attorney dated 12.4.2007 and executed a sale deed in favour of the petitioners and thus, after grabbing the property, they used to deposit the rental income derived from the said property and since the amount lying with the bank which was earned pursuant to the commission of offence, the same amount is liable to be attached till the merits of the case is decided.

17. As regards the time taken in sending the intimation to the learned Magistrate, the learned Public Prosecutor would submit that even if there is slight delay in sending the communication, the same would not definitely vitiate the entire proceedings and at the most, it can be said only as an irregularity. In this regard, he relied upon a decision reported in "2000 (1) MWN (Cr) 49 (C.Aranganayagam versus State by Directorate of Vigilance and Anti Corruption, Erode and another)" wherein, it has been held as under:

> "12. No doubt under Section 102(3), Criminal Procedure Code, every police officer acting under Sec.102(1) shall forthwith report the seizure to the Magistrate having jurisdiction. Now in the present case, immediately it has not been complied with by the first respondent. Simply because the 1st respondent failed to comply with Sec.102(3) Criminal Procedure Code, it cannot be concluded that the entire freezing of the account is vitiated. At best, it can be said that it is only irregular and the 1st respondent has failed to comply with the procedure. Further more, the bank itself has communicated to the petitioner within a period of 59 days from the date of freezing of account, but, however, the petitioner has come forward with an application under Sec.451 Crl.P.C. Only after a period of one year from the

date of freezing of account."

18. Further, the learned Public Prosecutor relied upon the judgment reported in "AIR 1975 SC 1807 (Gopal Mondal versus State of West Bengal)" and submitted that even there is a delay which can be reasonably explained, then there is no violation of the mandatory requirement of the law. Para 3 is relevant and it is extracted as under:

> "3. The word 'forthwith' has been interpreted to mean "as soon as possible; without any delay." If there is some delay which is reasonably explained, then there is no violation of the mandatory requirement of the law. In the counter it has been explained that as many as seven detention Orders were made by the District Magistrate on 23rd August, 1973. Reports had to be typed in all those cases and they were typed on 24th and 25th August. 26th August was a Sunday and therefore the report could not be sent earlier than 27th. We are satisfied that, on the facts stated in the counter, the report was sent forthwith, as the apparent delay of three days has been satisfactorily explained."

19. The learned Public Prosecutor also relied upon the decision reported in "2007 (1) CTC 39 (K.Mahendra versus State, rep. By the Sub Inspector of Police, CCB, Chennai)" and submitted that if this Court comes to the conclusion that the proceedings are liable to be quashed, then the Manager of the Banks may be directed to keep the amount in fixed deposit while allowing the petitioners to operate their accounts. Para 7 is relevant and it is extracted as under:

> "7. Under such circumstances, the procedure prescribed is violated. The order dated 23.6.2006 becomes non-est and further direction is necessary. Accordingly, the order dated 23.6.2006 issued by the State Bank of India under instructions by the respondent police is set aside. The Manager of the State Bank of India, Saligramam branch No.49, Arcot Road, Saligramam, Chennai 600 093 is directed to keep the amount in deposit under Fixed Deposit and is further directed that the petitioner should not be allowed to withdraw the same. However, the Manager may allow the petitioner to operate his account. In the mean time, the petitioner is at liberty to move the learned Magistrate for further appropriate relief, if so advised, in this regard. With this observation, the petition is closed."

20. As regards to the judgment relied upon by the learned senior counsel for the petitioner for interpretation of the word 'forthwith', the learned Public Prosecutor would submit that all those cases dealt with Section 157 Cr.P.C. which mandates the Police Officer to send the police report immediately without any delay in order to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation as well as to enable the Magistrate concerned to have a watch on the progress of the investigation and if any delay takes place in sending the police report, entire proceedings would get vitiated on that ground. Therefore, the learned Public Prosecutor would submit that the ratio decided in the above said decisions relied upon by the learned senior counsel for the petitioners cannot be made applicable to the facts of the present case, which relates to the subject matter of sending the intimation to the learned Magistrate having jurisdiction about freezing of the bank accounts of the petitioners.

21. In reply, the learned senior counsel would submit that the reliance can be considered in the context of taking literal meaning of the word 'forthwith' which has been specifically interpreted by the Hon'ble Supreme Court and the said meaning of the word cannot differ provision to provision. He pointed out that even after lapse of 3 ½ years, the investigation has not been completed and the freezing of the bank accounts for such a long period cannot be sustained and it would show that only due to political motive, the petitioners were put under harassment.

22. I have given my anxious consideration to the arguments advanced by the learned senior counsel appearing for the petitioners and the learned Public Prosecutor and the perused the entire materials available on record.

23. The main question that falls for consideration is whether the frozen order in respect of the bank accounts of the petitioners is liable to be vitiated on the ground of delay of 12 days in sending the intimation by the Investigating Officer to the learned Judicial Magistrate?

24. The learned senior counsel appearing for the petitioners projected his argument with regard to the delay of 12 days in sending the intimation about the freezing the bank accounts by the Investigating Officer to the learned Magistrate by relying upon the word 'forthwith' envisaged in Section 102 Cr.P.C. Therefore, it would be appropriate to extract Section 102 Cr.P.C., which reads as under:

"102.Power of Police Officer to seize certain

Property:- (1) Any Police Officer 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 commission 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 or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, 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.

Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of Sections 457, and 458, shall, as nearly as may be practicable, apply to the net proceeds of such sale."

25. The learned senior counsel placed number of judgments (cited supra) in support of his contention that the word 'forthwith' means 'without delay' or 'within reasonable time'. But according to the learned Public Prosecutor, those judgments cannot be relied upon as they deal with Section 157 Cr.P.C. in the matter of sending a police report to the Magistrate as if there is delay in sending the police report, an adverse inference can be drawn against the prosecution. However, as rightly contended by the learned senior counsel, the meaning of the word 'forthwith' cannot denote different meaning from section to section. Section 102 Cr.P.C. mandates to report the seizure to the Magistrate forthwith, means, without delay or interval. However, the learned Public Prosecutor would submit that merely because there is delay in sending the seizure report to the Magistrate if satisfactorily explained, entire freezing of the accounts cannot be vitiated. He pointed out that at best the said delay can be termed as 'irregular'. He relied upon the

decision reported in "C.Aranganayagam case" (cited supra), wherein, though there was delay of 59 days in sending the report, this Court considered it as 'irregular' and held that based on the said delay, it cannot be concluded that the entire freezing of the account is vitiated. It is to be noted that the said decision, viz., "C.Aranganayagam case" relates with the matter pertaining to the Prevention of Corruption Act and the bank account of the petitioner therein came to be frozen since the account represents the disproportionate money acquired by him. However, in the case on hand, the bank accounts of the petitioner do not represent any misappropriated or disproportionate amount, but the amount pertains to the rental income derived from the properties in dispute. Therefore, as rightly submitted by the learned senior counsel, the above said judgment cannot be made applicable to the case on hand.

26. The factual aspect of the case on hand is that the Investigating Officer has sent requisition to freeze the accounts of the petitioners on 06.09.2013 and the same was acknowledged by the Manager of the Bank on 7.9.2013. It is to be noted that thereafter, the Investigating Officer has not chosen to send the communication required under Section 102 (3) Cr.P.C. to the learned Magistrate. But only on 18.9.2013, the Investigating Officer has reported the freezing of the accounts to the learned Magistrate and in between admittedly, there was a delay of 12 days.

27. As regards this delay, the only explanation given by the Investigating Officer as could be seen from the counter filed by him, stating that the day following freezing of bank accounts was a Sunday i.e. 8.9.2013, which was a holiday. The next day was 09.09.2013 was a government holiday on account of Vinayagar Chaturthi. For one week following Vinayagar Chaturthi till 15.09.2013, the Investigating Officer was engaged with Law and Order duty on account of celebrations of the said festival State wide and the immersion of the idols of Lord Ganesh which were taken in procession one after the other. Therefore, as the Investigating Officer was engaged to lookafter maintenance of law and order during those days, he could not send the intimation promptly. The intimation was made ready immediately thereafter and sent to the Court on 18.9.2013.

28. The learned Public Prosecutor invited the attention of this Court to PSO 110 of the Tamil Nadu Police Standing Orders which states as under:

> "The primary duty of the police is to prevent crime and disorder and the police must recognize that the test of their efficiency is the absence of both and not the visible evidence of police action in

dealing with them.”

29. Therefore, since the Investigating Officer was entrusted with primary duty of preventing crime during the festival of Vinayagar Chaturthi and he was involved to lookafter law and order during immersion of Lord Ganesh idols, he was unable to send the report of seizure of the accounts to the Magistrate forthwith. The explanation given for the delay in sending the report, in my opinion, is not satisfactory. Section 102 Cr.P.C. specifically mandates the Police Officer to report the seizure to the Magistrate forthwith. The dictionary meaning of word 'forthwith' is 'without delay' or 'within reasonable time'. Hence in my opinion, if any other meaning is given to the word 'forthwith' that will make the provision meaningless. When such being the situation, the Investigating Officer ought to have taken all efforts to send the report forthwith to the Magistrate. 'Forthwith' means, as already discussed above, 'immediately at once without delay or interval”. Admittedly, to freeze the bank accounts of the petitioners, the Investigating Officer has made the requisition ready on 06.09.2013 and sent the same to the Manager of the Bank. The obligation to send the report on the Investigating Officers starts immediately on and from 06.09.2013 and in fact, he could very well make the report ready on 06.09.2013 itself. From the explanation, it appears that the Investigating Officer was held up with the duty of maintaining law and order on account of Vinayagar Chaturti from 9.9.2013 onwards. It is to be noted that sending the report to the Magistrate is a matter of taking very less time and in compliance of the mandatory provision 102 (3) Cr.P.C., the Investigating Officer ought to have paid the attention well and see that the intimation reached forthwith to the learned Magistrate. Of-course, as per standing orders, it is his primary duty to maintain law and order, but it is to be noted that he has taken time for nearly 12 days in sending the report. The Section 102(3) Cr.P.C. clearly says that the police officer shall forthwith report the seizure to the Magistrate. While so, if there is any delay in sending the intimation regarding the freezing of the accounts to the Magistrate, there should be a proper explanation to the effect that in spite of best efforts taken to send the intimation to the Magistrate, he could not do so due to unavoidable circumstances. But in the case on hand, no such explanation is available. In such circumstances, this Court is of the view that the explanation given by the Investigating Officer is not reasonable and acceptable. Further, no affidavit was filed by the Investigating Officer explaining his involvement in duty of each and every day. Therefore, I am of the considered view that the order to freeze the bank account is liable to be vitiated on the ground of delay.

30. No doubt it is true that the freezing of the bank accounts does not deprive any person of his liberty or his property if prohibition is temporary or atleast till merits of the case is decided. However, in the present case, it is pertinent to note that even after a lapse of 3 ½ years, there was no considerable progress in the investigation and still it is pending. Therefore, as rightly submitted by the learned senior counsel, freezing of the bank accounts for a long period cannot be sustained, that too, it is the specific case of the petitioners that their livelihood is dependent upon the income derived from the rentals, which is being deposited in their bank accounts.

31. Though the learned senior counsel would submit that this is not a corruption case and no misappropriate or disproportionate amount was lying in the accounts of the petitioners, taking note of the fact that the petitioners were alleged to have grabbed the property by forging the documents and the income being derived from such property being deposited in their bank accounts, I am of the view that while quashing the order freezing the bank account and permitting the petitioners to operate their bank accounts, it would be appropriate to direct the amount lying in the bank accounts of the petitioners as on date to be deposited in a fixed deposit till the merits of the case is decided.

32. As regards the contempt petitions, it is the specific plea of the Investigating Officer/1st respondent in the contempt petitions that this Court passed the order, dated 27.09.2012 by allowing the Criminal Original Petition Nos.13103 to 13105 quashing the proceedings of freezing of the bank accounts of the petitioner only on the technical ground and extended a liberty to initiate fresh proceedings after following the procedure and hence, the Investigating Officer has once again passed the present proceedings dated 06.09.2013 freezing the bank accounts of the petitioners and thereby, he has no willful intention to disobey the orders of this Court. Likewise, the plea of the Bank Manager/2nd respondent is that the petitioners approached the bank on 06.09.2013, seeking for compliance of the order of this Court, at 4.30 p.m., i.e. after business hours of the bank and on the very next day, i.e. 7.9.2013 by 9.30 a.m., they received the requisition made by the Investigating Officer to freeze the accounts of petitioners. Hence, there is no willful disobedience of the order of this Court. Hence, both the respondents sought for dismissal of the contempt petitions.

33. Considering the submissions made by the respondents 1 and 2 in the contempt petitions, I am of the view that no contempt would lie against them in the facts and circumstances

stated supra.

34. For the foregoing discussion, the proceedings of the Investigating Officer, dated 6.9.2013 in freezing the bank accounts of the petitioners, are hereby quashed. However, the Bank Manager, Indian Overseas Bank/3rd respondent in the Criminal Original Petitions, is hereby directed to keep the amount lying as on date in the accounts of the petitioners, in a fixed deposit (under re-investment plan) until further orders and allow the petitioners to operate their bank accounts from the date of receipt of a copy of this order.

With the above observation, the Criminal Original Petitions are disposed of. Consequently, Contempt Petitions are closed.

These petition having been posted on Thursday, The Eighteenth day of February 2016 appeared for further hearing in the presence of the aforesaid Advocate and the court made the following dorder:

After pronouncing the judgment, the learned senior counsel appearing for the petitioners would urge that even after lapse of 3 1/2 years, the investigation has not been completed and still it is pending and the amount lying in the accounts of the petitioners are relating only to a rental income derived from the property and since the petitioners are totally depending upon the said rental income as it is their livelihood, it would be appropriate to permit the petitioners to withdraw atleast the interest amount.

Considering the submission now made by the learned counsel for the petitioners, this Court gives a liberty to the petitioners to approach this Court to seek permission to withdraw the interest amount in case the investigation is not completed within a period of three months from today.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Suk

To

1. The Commissioner of Police,
Egmore, Chennai 8.

2. State rep. By
Inspector of Police,
Central Crime Branch,
Team-XVI,
Egmore,
Chennai-600 008.

3. The Manager,
Indian Bank,
Thiruvanmiyur Branch,
Chennai.

4. State Rep.by the Inspector of Police,
Central Crime Branch,
Central Crime Branch
Team XV, Egmore, Chennai 8,

4. The Sub Assistant Registrar,
Original Side, High Court, Madras.

5. The Public Prosecutor,
High Court, Madras.

6. The Inspector of Police,
Central Crimi Branch,
Team XV,
Egmore, Chennai 8.

7. The Manager
Indian Overseas Bank,
Valmiki Nagar Branch,
Chennai 41.

8. The Section Officer,
Criminal Section,
High Court Madras.

3 ccs to M/s.A.Gopinath, Advocate, sr.10731 to 10733
1 cc to The Public Prosecutor, sr.10671

Crl.O.P.Nos.10260 to 20262
of 2014 &
Cont.Petn.Nos.571 to 573
of 2014

ug co
kra 23.03.2016