IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.01.2016

Date of verdict : 19.1.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Crl.O.P.No.23117 of 2015

A.Esakiammal ... Petitioner

Vs

1.State rep. by
The Inspector of Police (Crime),
C.2 Elephant Gate Police Station,
Chennai.

2.The Deputy Commissioner of Police,
Central Crime Branch,
Vepery, Chennai-7.

3.The Branch Manager,
ICICI Bank, Sowcarpet Branch,
N.S.C. Bose Road,
Sowcarpet, Chennai-1. ... Respondents 1 to 3

4. E. Tarun Jain
S/o. Eshwar Jain
21 Krishnappa Agraharam Street
Kondithope
Chennai-79 ...Intervenor/
Defacto Complainant

Intervened as 4th respondent as
per the order of this Court
dated 5.10.2015 made in M.P.No.1/15
in Crl.O.P.NO.23117/15

Criminal Original Petition filed under Section 482 Cr.P.C. to direct the first respondent the Inspector of Police, C.2 Elephant Gate Police Station, Chennai to de-freeze the petitioner's Savings Account No.603101514745 with ICICI Bank, Sowcarpet Branch, N.S.C. Bose Road, Chennai.

For Petitioner : Mr.G.Babu

For respondents : Mr.C.Emalias,
Addl. Public Prosecutor
for R.1 and R.2
Mr.K.Moorthy, for R.3
Mr.T.G.Ravichandran,
for Intervenor.

ORDER

The present criminal original petition has been filed seeking a direction to the first respondent police to de-freeze the petitioner's Savings Account No.603101514745 with ICICI Bank, Sowcarpet Branch, N.S.C. Bose Road, Chennai.

2. It is the case of the petitioner that she is the proprietor of M/s.R.S.Traders, which is carrying on sale service, retail service including consultancy and the same was registered under the Department of Industries and Commerce. She served in a concern viz., M/s.Exim Consultancy at Chennai and the said Consultancy paid a sum of Rs.16,00,000/- as service charge by way of transferring the payment through RTGS to the petitioner's account in Standard Chartered Bank viz., M/s.R.S.Traders on 23.7.2015. She being the sole proprietorship of M/s.R.S.Traders, for the utility and for the development, the petitioner has transferred the amount from her company to her savings account No.603101514745 with ICICI Bank, Sowcarpet Branch via., RTGS No.INF: 0014068801, 0014068993, 0014069552, 0014068660 dated 23.7.2015 and the same was also confirmed by the third respondent through the SMS of the said Bank. After verifying the said transfer, she issued several cheques to her creditors. But, the cheques issued to the creditors were not allowed to transact stating that her savings account has been frozen as per the direction of the first respondent police. When the petitioner approached the third respondent bank to know the reason for dishonouring the cheques, the third respondent failed to reply. Hence, she has issued a legal notice dated 28.7.2015 to the third respondent bank and the third respondent bank replied on 12.8.2015 stating that the account has been frozen based on the direction of the first respondent police on the ground that a criminal case has been registered on the allegation of cheating committed by her with M/s.Exim Consultancy, Chennai to the tune of Rs.25,00,000/-. But, the petitioner never received any intimation from the third respondent bank for freezing the account and the action of the third respondent bank is against the law and the act of the respondents 1 to 3 tarnished the image and reputation of the petitioner in the society. The petitioner is a female entrepreneur and competitor to other consultancies in the market. No complaint is pending against the petitioner before the respondents 1 and 2. If the first respondent gives an order of the Court for freezing her account, then the third respondent can freeze the account. The act of the third respondent bank in freezing the account of the

petitioner is illegal in the eye of law. Hence, the petitioner has come forward with the present petition seeking a direction to the first respondent to de-freeze the petitioner's Savings Account No.603101514745 with ICICI Bank, Sowcarpet Branch, N.S.C. Bose Road, Chennai.

3. Learned counsel appearing for the petitioner submitted that without any valid reason and without the knowledge of the petitioner, the petitioner's bank account has been frozen by the third respondent bank only based on the instructions given by the first respondent police, which is illegal in the eye of law. Thus, he sought to de-freeze the petitioner's savings account. In support of his contention, learned counsel appearing for the petitioner relied on the decision of this Court reported in 2008 (3) CTC 657 - Padmini vs. The Inspector of Police, District Crime Branch, Tirunelveli and others.

4. Learned Additional Public Prosecutor by filing the status report, submitted that M/s.Exim Consultants, Sowcarpet, Chennai-79 is dealing with sales and purchase of duty free import and export licenses on commission basis as agent. Two other concerns viz., M/s.Tiwari Trading Enterprises and M/s.R.S.Traders are also functioning in the same premises. The petitioner is working as an accountant in M/s.Exim Consultants and she is also one of the partners in M/s.Tiwari Trading Enterprises and sole proprietor of M/s.R.S. Traders. While so, M/s.Exim Consultants purchased the export license from M/s.Abishek Enterprises and M/s.RIBS India for various amounts and sold it to M/s.Chambal Fertilizers and Chemicals for a sum of Rs.89,89,719/-. The said M/s.Chambal Fertilizers and Chemicals has also deposited the said amount in the account of M/s.Exim Consultants at Standard Bank in Account No.42705555611. The petitioner with criminal intention to cheat M/s.Exim Consultants and to obtain unlawful gain for herself, has stealthily managed to acquire the banking transaction password of the company and transferred the company's fund of Rs.89,91,021/- to M/s.Tiwari Trading Enterprises, in which she is one of the partners. Out of the said amount, she has transferred the amount of Rs.89,90,200/- to Sri Mutharamman Koil Nirvaga Kuzhu into account No.030100050306941 of Tamil Nadu Mercantile Bank, Thisayanvilai Branch through RTGS. The said amount was to be settled to M/s.Abishek Enterprises and M/s.RIBS India by M/s.Exim Consultants. Similarly, the said M/s.Exim Consultants purchased license from M/s.Vishnu Enterprises for a sum of Rs.15,95,000/- and sold it to M/s.Snam Abrasives Private Limited for Rs.15,97,498/-. To this effect, on 23.7.2015, M/s.Snam Abrasives deposited the same amount to the bank account of M/s.Exim Consultants in Standard Chartered Bank (A/C.No.42705555611). Similarly, the petitioner transferred the amount of Rs.15,95,000/- to M/s.R.S.Traders, which is owned by her through RTGS. Thereafter, she has transferred the said amount to her savings account in ICICI Bank, Sowcarpet Branch. This amount was to be settled to M/s.Vishnu Enterprises by the

petitioner's company. Thus, she has cheated the said M/s.Exim Consultants to the tune of Rs.1,05,86,021/-. Hence, a complaint was lodged by one E.Tarun Jain, the Manager of M/s.Exim Consultants before the first respondent police and the same was assigned CSR number as CSR No.336 of 2015 and after completion of enquiry, the said CSR was closed by the first respondent police. Thereafter, the said E.Tarun Jain lodged a fresh complaint before the Commissioner of Police, Chennai City and the same was forwarded to the first respondent. As per the direction of the Commissioner of Police, Chennai City, a case was registered in Chennai Central Crime Branch Cr.No.352 of 2015 under Sections 406, 408 and 420 I.P.C. on 12.9.2015 and it was taken up for investigation by the first respondent. On 14.9.2015, the first respondent sent requisition letters to the Branch Manager, ICICI Bank, Sowcarpet Branch, Chennai and the Branch Manager, Tamil Nadu Mercantile Bank, Thisayanvilai Branch, Tirunelveli District to freeze the accounts of the petitioner and the same were executed by them and the matter was also informed to the learned III Metropolitan Magistrate, George Town, Chennai on 18.9.2015. Since the investigation in the said case is in progress, there is no necessity to de-freeze the petitioner's account. Thus, the learned Additional Public Prosecutor sought for the dismissal of the petition.

5. I have also heard the learned counsel appearing for the intervenor / de facto complainant, who has vehemently opposed to de-freeze the account of the petitioner.

6. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record.

7. The petitioner is an accused in Crime No.352 of 2015 for the alleged offence punishable under Sections 406, 408 and 420 I.P.C. During the course of investigation, since the first respondent police suspected that the amount was deposited pursuant to the commission of offence, as per Section 102(1) Cr.P.C., he requested the third respondent bank to freeze the account of the petitioner. Further more, I find that the first respondent police has also complied with all the procedures as laid down in Section 102 Cr.P.C. Hence, the decision relied on by the learned counsel appearing for the petitioner reported in 2008 (3) CTC 657 - Padmini vs. The Inspector of Police, District Crime Branch, Tirunelveli and others, cannot be made applicable to the facts of the present case. Since in that case, the respondent police failed to comply with the procedures laid down in Section 102(1) Cr.P.C. But, it is not the state of affair in the present case. Thus, I do not find any valid ground to entertain this petition.

8. In fine, the criminal original petition is dismissed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

sbi

To

1. The Inspector of Police (Crime),
C.2 Elephant Gate Police Station,
Chennai.

2.The Deputy Commissioner of Police,
Central Crime Branch,
Vepery, Chennai-7.

3.The Public Prosecutor,
High Court, Chennai.

1 cc to MR.G. Babu, Advocate, Sr. 2905
1 cc to Mr.K. Moorthy, Advocate, Sr. 3292
1 cc to Mr.T.G. Ravichandran, Advocate, Sr. 3037

Crl.O.P.No.23117 of 2015

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