IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 07.09.2016

PRONOUNCED ON: 15.09.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.19618 of 2016 & Crl.M.P. No.9199 of 2016

1 Rakesh P. Sheth

2 Roshni R. Sheth ... Petitioners

vs.

The State
represented by the Inspector of Police
Central Crime Branch
Vepery
Chennai 600 007 ... Respondent

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to direct the respondent to de-freeze the bank accounts of the petitioner, viz., SB/01/2655, SB/01/2806, SB/01/2740, CBCA 01/342, CBCA/01/349, CBCA/01/350, CBCA/01/353 and SB/01/2518, in exercise of the inherent powers under S. 482, Cr.P.C.

For petitioners Mr. Nithyaesh Natraj
For respondent Mr. C. Emalias
Addl. Public Prosecutor

For intervener Mr. A. Ramesh, Sr. Counsel
for Mr. V. Vijayakumar

ORDER

This Criminal Original Petition is filed seeking to direct the respondent police to defreeze the bank accounts of the petitioner, viz., SB/01/2655, SB/01/2806, SB/01/2740, CBCA 01/342, CBCA/01/349, CBCA/01/350, CBCA/01/353 and SB/01/2518, in exercise of the inherent powers under S. 482, Cr.P.C.

2 For the sake of convenience, the parties are referred to by their name.

3 On the complaint lodged by one Sree Vidhya (intervener), the respondent police registered a case in Crime No.180/2016 on 13.07.2016 under Section 420 read with Section 34 IPC against one Rakesh Sheth, his wife Roshini P. Sheth and Premsai Chundur. The allegation in the FIR against them is as under:

4 Sree Vidhya is a small time entrepreneur and she got introduced to Roshni P. Sheth in the year 2005, in connection with some interior design work, which she wanted to do in her newly purchased flat. Thereafter, Sree Vidhya also got to know Roshni P. Sheth's husband Rakesh P. Sheth. It is alleged by Sree Vidhya that she wanted to purchase a property and so, she approached Rakesh P. Sheth to construct a residential house in the property to be purchased. Admittedly, Sree Vidhya and Karismaa Foundations Pvt. Ltd. in which Rakesh P. Sheth is the Managing Director, entered into a construction agreement on 10.11.2014 under which Karismaa Foundations Pvt. Ltd. agreed to construct a residential building for Sree Vidhya "for a turnkey price of Rs.4 crores". Pursuant to this agreement, Sree Vidhya transferred a sum of Rs.1.50 crores to the account of Karismaa Foundations Pvt. Ltd. in State Bank of Travancore by RTGS on 04.12.2014. It is alleged by Sree Vidhya that after receiving the sum of Rs.1.50 crores, Karismaa Foundations Pvt. Ltd. did nothing to even commence construction of the building nor did they return the money, despite persistent requests made by her. It is further alleged in the complaint that out of Rs.1.50 crores, Karismaa Foundations Pvt.Ltd. paid Rs.15 lakhs to Sree Vidhya and for the balance amount of Rs.1.35 crores, a cheque dated 30.06.2015 was given, which, when presented by Sree Vidhya, was dishonoured. There has been exchange of notices between Sree Vidhya and Karismaa Foundations Pvt. Ltd. Ultimately, on Sree Vidhya's complaint, the police have registered the present FIR.

5 After registration of the FIR, police have issued a direction under Section 102 Cr.P.C. freezing 8 bank accounts of Roshni P. Sheth, Rakesh P.Sheth, Karismaa R. Sheth, Clover Design Studio and Karismaa Foundations Pvt. Ltd. in various banks, challenging which, Rakesh P. Sheth and his wife Roshni P. Sheth are before this Court. The details of the accounts frozen by the police are as under:

1. SB/01/2655 in the name of Mrs. Roshini R.Sheth & Mr.Rakesh P. Sheth.

2. SB/01/2806 in the name of Rakesh P. Sheth, HUF

3. SB/01/2740 in the name of Karishma R. Sheth, M/G/F Rakesh P. Sheth

4. CBCA/01/342 in the name of M/s. Clover Design Studio, Proprietrix: Roshini R. Sheth

5. CBCA/01/349 in the name of M/s. Karismaa Foundations P. Ltd. ACR Sathyam Neelankarai

6. CBCA/01/350 in the name of M/s. Karismaa Foundations P Ltd. ACR Sathyam T. Nagar

7. CBCA/01/353 in the name of M/s. Karismaa Foundations Pvt. Ltd.

8. SB/01/2518 in the name of Mr. Rakesh P. Sheth and Mrs. Roshini R. Sheth

6 Heard Mr. Nithyaesh Natraj, learned counsel for Rakesh P.Sheth and Roshni P. Sheth, Mr. C. Emalias, learned Additional Public Prosecutor for the respondent State and Mr. Ramesh, Senior Counsel for Sree Vidhya.

7 It may be relevant to state here that Rakesh P. Sheth has filed Crl.O.P. No.18099 of 2016 for quashing the FIR in Crime No.180 of 2016 and this Court, by order dated 17.08.2016, has stayed the further investigation in Crime No.180 of 2016.

8 Mr. Nithayesh Natraj, learned counsel for Rakesh P. Sheth and Roshni P.Sheth submitted that they never denied the receipt of Rs.1.50 crores by RTGS from Sree Vidhya, but, on account of certain misfortune in business, they were not able to immediately repay the amount to Sree Vidhya, about which Sree Vidhya is very much aware, despite which, she has lodged the present complaint, knowing full well that the transaction is civil in nature. He further submitted that given the nature of allegation in the FIR, there is no necessity to freeze 8 bank accounts of the entire family members of Rakesh P. Sheth and that has resulted in undue prejudice to him, inasmuch as all his business transactions have come to a grinding halt. He also submitted that it is the duty of the police to inform the jurisdictional Magistrate about the factum of freezing of the accounts and also notify the factum of freezing of accounts to the account holders.

9 The respondent police have filed a counter affidavit justifying the order freezing the 8 bank accounts. But, it is averred in the counter affidavit that the factum of freezing 8

bank accounts has been communicated to the XI Metropolitan Magistrate, Saidapet, Chennai on 18.08.2016. However, the contention of Rakesh P. Sheth and Roshni P. Sheth that the account holders were not informed about the factum of freezing of bank accounts, has not been repudiated by the police in the counter affidavit.

10 The learned Additional Public Prosecutor appearing for the respondent police submitted that Section 102 Cr.P.C. does not cast a duty upon the police to inform the account holder of freezing of his bank account. In support of this contention, he has placed strong reliance on an unreported judgment of the Bombay High Court in Vinoskumar Ramachandran vs. The State of Maharashtra.

11 Mr. Ramesh, learned Senior Counsel appearing for Sree Vidhya submitted that the nature of allegations in the complaint does warrant such immediate action by the police in order to safeguard the interest of Sree Vidhya.

12 This Court gave its anxious consideration to the rival submissions.

13 The power of the police under Section 102 Cr.P.C. to freeze a bank account is no more res integra and the same has been settled beyond cavil by the judgment of the Supreme Court in State of Maharashtra vs. Tapas D. Neogi [(1999) 7 SCC 685]. But, the question that falls for consideration in the case at hand is whether the account holder should have to be informed by the police of the freezing of his account.

14 In this context, paragraph no.19 of the judgment of the Bombay High Court (supra), relied on by the learned Additional Public Prosecutor is worth extracting:

> "19 The question before us, therefore, is stark in its framing. The word before or simultaneously in the question specifically requires us to consider whether before freezing the account or at the time of freezing the account, a notice has to be issued upon the concerned person. Our answer can only be in the negative. Section 102 of the Cr.P.C. does not require issuance of notice to a person before or simultaneously with the action of attaching (his) bank account. We answer accordingly."

15 This Court has no quarrel with the above proposition, inasmuch as the account holder need not be given any intimation by the police officer either before or at the time of freezing the account for obvious reasons. The very purpose of

investigation will be defeated if such prior notice is given to the accused account holder.

16 However, after freezing the account, it is the duty of the police officer to inform the account holder about the factum of seizure, because, the account holder will have to make several alternative arrangements to meet many an exigency.

17 The Hon'ble Prime Minister of India has made public, the avowed policy of the Central Government that citizens should be encouraged to open bank account so that black money that cripples the Indian economy can be curtailed to a great extent, if transactions are done via bank channels in a transparent manner. Banks have been exhorted to open branches in remote corners of the country so as to bring within the fold of the banking system, the teeming millions who are outside the sphere.

18 It is common knowledge that salary, pension and other receivables are credited directly to the bank accounts of individuals and payments towards electricity bills, telephone bills, mobile phone bills, credit card bills, etc. are debited by Electronic Clearing System. The payments that are to be made to beneficiaries under the MGNREGA Scheme are required to be directly credited into their bank account.

19 Such being the present scenario, if the account holder is not informed by the police of the factum of his account being frozen, the payments made by him towards various heads of expenditure narrated above, will not be honoured and the consequence will be that the aforesaid amenities will either be stopped or the account holder will be required to pay penalty, thereby causing him undue prejudice as his normal activities will stand derailed.

20 In Maneka Gandhi vs. Union of India, [(1978) 1 SCC 248], the Supreme Court has, in unequivocal terms held that the principle of audi alteram partem should be read into a legal provision in order that the fundamental rights guaranteed by the Constitution of India, are safeguarded. While observing so, this Court is not, for a moment, saying that the account holder should be heard before his account is frozen. But, this Court has no hesitation in holding that post hoc, a duty is cast upon the Investigating Officer to inform the account holder of the factum of his account being frozen, in order to avert the aforesaid disastrous consequences.

21 India is not a Police State and we cannot give unbridled powers to the Police, for, that will end in negating the very ethos of a free State which India is, thanks to the Constitution.

22 Ergo, the contention of the learned Additional Public Prosecutor that Section 102, Cr.P.C. does not cast a duty upon the police to intimate the account holder, the factum of freezing his account, even after freezing, is noted to be rejected.

23 Even in paragraph no.9 of the counter affidavit filed by the respondent police, it is stated as follows:

> "9. It is submitted that so far the investigation reveals that the petitioners/accused with a criminal intention, they had misappropriated an amount of Rs.1.50 crores of the de facto complainant, instructing the complainant to transfer an amount of Rs.1.50 crores towards advance amount for the construction work to the A/c No.67259134567 of State Bank of Travancore, Taramani Branch, Chennai, in which the said account was in a overdraft stage, since the petitioners/accused already obtained loan and not settled the same to the bank. Hence, the above said bank authorities had credited the said amount of Rs.1.50 crores to the bank account and thus, the petitioners/accused cheated the complainant totally to the tune of Rs.1.50 crores. . . ."

24 From a reading of the aforesaid portion of the counter affidavit, it is seen that Sree Vidhya had transferred Rs.1.50 crores to A/c No.67259134567 of State Bank of Travancore, Taramani Branch, Chennai and for the loan availed by Karismaa Foundations Pvt. Ltd, State Bank of Travancore has appropriated the amount.

25 This Court is not deciding on the culpability or otherwise of the accused. The fact that Sree Vidhya has paid the amount can be proved by obtaining necessary statement of account from State Bank of Travancore and recording the statement of the Manager of the bank. This Court is not able to appreciate as to why the police officer decided to freeze as many as eight bank accounts of the petitioner and his family members, when admittedly, the money given by Sree Vidhya had gone into the aforesaid account and State Bank of Travancore had appropriated

that sum towards the loan availed by Karismaa Foundations Pvt. Ltd.

26 In the considered opinion of this Court, this is clearly a colourable exercise of power by the police officer warranting immediate interference by this Court.

27 In the result, this Criminal Original Petition is allowed as prayed for and the respondent police is directed to defreeze the bank accounts of the petitioner, viz., SB/01/2655, SB/01/2806, SB/01/2740, CBCA 01/342, CBCA/01/349, CBCA/01/350, CBCA/01/353 and SB/01/2518 forthwith and not later than one week from the date of receipt of a copy of this order. Connected Crl.M.P. is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

cad
To
1 The Inspector of Police
Central Crime Branch
Vepery
Chennai 600 007

2 The Public Prosecutor
Madras High Court
Chennai 600 104

+2 CC to Mr. Nithyaesh Natraj, Advocate, Sr.No.52113
+1 CC Mr. V. Vijayakumar, Advocate, Sr.NO.52202

Crl.O.P. No.19618 of 2016

MP (CO)
MD : 16/09/2016