



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON 29.07.2016  
ORDER PRONOUNCED ON 03.08.2016  
CORAM

**THE HONOURABLE MR. JUSTICE M. VENUGOPAL**

W.P(MD) No. 7206 of 2016

A. Rajan

... Petitioner

Vs

1. The Assistant General Manager (Law)  
Corporate Office,  
Legal Department,  
Avvai Shanmugam Salai,  
Royapattah,  
Chennai - 600 014.

2. The Branch Manager,  
Indian Bank,  
Thennur Branch,  
Trichy District.

3. The Inspector of Police,  
District Crime Branch,  
Nagapattinam,  
Nagapattinam District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the 2nd respondent to defreeze the petitioner's bank account maintained with the 2nd respondent bank.

For Petitioner : Mr. R. J. Karthick  
For Respondent-2 : Mr. L. S. M. MD. Kader Sahib  
For Respondent-3 : Mr. S. Chandrasekar  
Government Advocate

ORDER

Heard both sides.

2. Counter of Third Respondent is filed.

3. According to the Petitioner, while he was working as Reader in Commerce at T.B.M.L. College, Poraiyar, on 31.05.2007, he retired from service voluntarily. Later, he worked as Principal in RVS Arts and Science College, Karaikal and now he is the pensioner. Furthermore, all the Gratuity and commuted pension services provided by his retirement was deposited in 'Almighty Investment Solution', Karaikudi and 'Max-Pro Marketers Private Limited'.



4. The stand of the Petitioner is that his son's friend viz., Aramudhan requested him to help to invest his money in the same Company. Therefore, his son introduced Aramudhan to 'Max-Pro Marketers Private Limited' and 'Almighty Investment Solution' and enabled him to invest money with the aforesaid companies. Unfortunately, while the said Aramudhan invested the money, his son had no inkling that those two companies were in trouble. But, both the companies, within a short time, were closed down, after his money was invested in those companies. As a matter of fact, the 'Almighty Investment Solution' filed an application for insolvency before the Hon'ble High Court, Madras and insofar as the other Company, viz., 'Max-Pro Marketers Private Limited' is concerned, the Petitioner along with his son had lodged a complaint before the Economic Offences Wing. Even the other depositors, who had invested in the aforesaid companies had also lodged various complaints before the competent authorities.

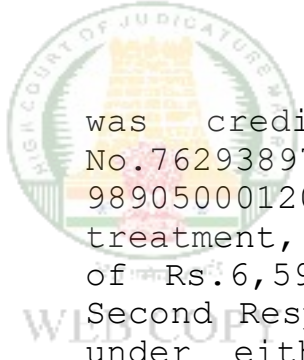
5. At this stage, the Learned Counsel for the Petitioner submits that, on the basis of the aforesaid complaints, the Government had issued G.O.304, dated 02.05.2014 and passed an order of 'Interim Attachment', attaching the movable and immovable properties of the 'Max-Pro Marketers Private Limited'. In reality, the Petitioner and his family members had lost the entire money, which was in their hands. Unfortunately, his son's friend viz., Aramudhan, without appreciating the aforesaid fact, had preferred a false complaint against the Petitioner and his family members, in Crime No.08 of 2013, on the file of the Third Respondent / Inspector of Police, District Crime Branch, Nagapattinam.

6. In this connection it is represented on behalf of the Petitioner that neither the Petitioner nor his family members never intended to deceive the depositors / complainants nor to obtain any wrongful gain after the investments made by the depositors.

7. The Learned Counsel for the Petitioner proceeds to take a stand that the Petitioner bought a 'Toyato Innova Car' during the year 2011, by securing a loan from 'Kotak Mahendra Finance Company' and in fact, the monthly instalments were deducted from his pension account and it was also over in the beginning of 2014. Also it is represented on behalf of the Petitioner that the Petitioner and his wife Mrs.Mary Rajan, were suffering from heart ailment and to meet out the medical expenses, a loan of Rs.10,00,000/- was obtained by pledging his 'Toyato Innova Car' and the 'Kotak Mahendra', Tiruchirappalli, sanctioned the loan.

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8. Continuing further, the Learned Counsel for the Petitioner brings it to the Notice of this Court that a sum of Rs.9,87,172/-

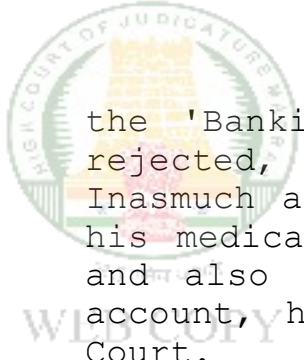


was credited into the Petitioner's Savings Bank Account No.762938971, on 31.05.2014, through their Account No.0958 FRM 98905000120. After spending some amount for initial medical treatment, the Petitioner, according to him, had deposited a sum of Rs.6,59,950/-, in three different Fixed Deposits, in the Second Respondent / Indian Bank, Thennur Branch, Trichy District, under either or survival scheme, the Fixed Deposit receipts numbers are 6275660709, 6259375529 and 6259373724.

9. The categorical stand of the Petitioner is that, while he was in need of money for urgent medical treatment for himself and his wife, he approached the Second Respondent / Indian Bank, Thennur Branch, Trichy District, on 21.10.2014, along with his wife for closure of the aforesaid Fixed Deposits. But, to his shock and surprise, the Second Respondent / Indian Bank, Thennur Branch, Trichy District, had refused to foreclose them, on the ground that the Fixed Deposits and his account were freezed, as per the instructions of the Third Respondent / Inspector of Police, District Crime Branch, Nagapattinam. Further, the Learned Counsel for the Petitioner informs this Court that, when the Petitioner required a copy of the letter addressed to the Second Respondent, the Second Respondent informed the Petitioner that the instruction was through Phone message from the Manager of Indian Bank, Tarankambadi, Nagapattinam District and later, a letter was given to the Second Respondent / Indian Bank, Thennur Branch, Trichy District, only after 23.10.2014.

10. Further, it appears that the Petitioner had requested the Second Respondent / Indian Bank, Thennur Branch, Trichy District, in person, on several occasions, to De-Freeze the account, since the procedures under Section 102 of Code of Criminal Procedure was not followed by the Third Respondent / Inspector of Police, District Crime Branch, Nagapattinam. Since the Second Respondent / Indian Bank, Thennur Branch, Trichy District, had not headed to his request, and also on 13.02.2015 his wife Mrs. Mary Rajan died on account of illness, he gave a representation, dated 02.03.2015, to the Second Respondent / Indian Bank, Thennur Branch, Trichy District, to De-Freeze his account.

11. The Learned Counsel for the Petitioner contends that the First Respondent / Assistant General Manager (Law), Corporate Office, Legal Department, Chennai-14, of the Bank had informed the Second Respondent / Bank that, unless there is any Court order prohibiting the Bank to hold on Petitioner's account, they will not return the Fixed Deposits and further he had submitted another representation on 29.08.2015 to the Second Respondent / Bank, citing the decision of Hon'ble Apex Court and this Court. Since there was no action taken on his representation, he was compelled to issue a Legal Notice, through his Advocate, on 29.09.2015. In spite of the same, the Respondents had not taken any action in the matter. Therefore, he lodged a complaint before



the 'Banking Ombudsman', on 02.11.2015. But his complaint was rejected, on the ground that it could not be entertained. Inasmuch as the Petitioner is in need of Fixed Deposit money for his medical expenses and for making payment towards housing loan and also that the Second Respondent / Bank cannot freeze his account, he has preferred the present Writ Petition before this Court.

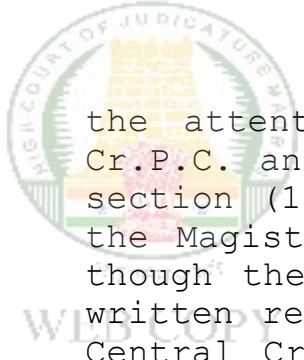
12. The Learned Counsel for the Petitioner urges before this Court that the action of the Respondents is tainted with arbitrariness, mala fideness and therefore, it is liable to be interfered with by this Court.

13. According to the Learned Counsel for the Petitioner, when the Bank account comes within the meaning of 'property', under Section 102 of Code of Criminal Procedure, then, freezing of Fixed Deposit violates Article 300(A) of the Constitution of India. Further, it is the plea of the Petitioner that the motive for freezing of his Bank Account is only to put him in great hardship and mental agony, under the guise investigating the Crime No.8 of 2003, on the file of the Third Respondent.

14. The Learned Counsel for the Petitioner takes a stand that the Respondents ought to have seen that, if the Bank account of the accused is freezed, the Police should report the same to the concerned Magistrate forthwith regarding the prohibitory order and also that the Police should give notice of the seizure to the accused and allowing him / her to operate the Bank account subject to his / her executing a bond. The Learned Counsel for the Petitioner cites the order of this Court, dated 30.08.2013 in CRL.OP.Nos.13103, 13104 and 13105 of 2013 between T.Subbulakshmi and Others Vs. The Commissioner of Police, Egmore, Chennai-8 and others, wherein at paragraphs 7 and 8, it is observed as under:-

"7. The learned senior counsel appearing for the petitioners by inviting the attention of this Court to Section 102 of Cr.P.C., which deals with the powers of the Police Officer to seize certain property, submitted that if the seizure of the property is only in accordance with the provision of Section 102 of Cr.P.C., the same can be sustainable, otherwise such a seizure is not legally sustainable.

8. In this regard, the learned senior counsel appearing for the petitioners placed reliance on the judgment reported in 1999(7) SCC 685 (State of Maharashtra Vs. Tapas D. Neogy) and submitted that as per the dictum laid down in the said judgment, the bank account will fall within the meaning of the property mentioned under Section 102 of Cr.P.C., and that therefore, unless the seizure of the bank account is in accordance with section 102 of Cr.P.C., the same cannot be legally sustainable. In this regard, the learned Senior Counsel appearing for the petitioners has drawn



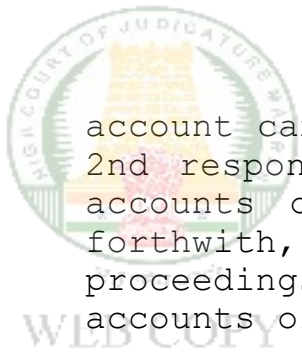
the attention of this Court to Sub-Clause 3 to Section 102 of Cr.P.C. and submitted that every Police Officer acting under Sub-section (1) to Section 102, shall forthwith report the seizure to the Magistrate having jurisdiction and that in the instant case, though the bank accounts of the petitioners were freezed on the written request dated 27.9.2012 made by the Inspector of Police, Central Crime Branch, the freezing of the bank accounts was not reported to the Magistrate having jurisdiction forthwith. The learned Senior counsel for the petitioner submitted that therefore, the freezing of the bank accounts of the petitioners is not legally sustainable and the respondents may be directed to defreeze the bank accounts of the petitioner."

15. That apart, in the aforesaid order, dated 30.08.2013 in CRL.OP.Nos.13103, 13104 and 13105 of 2013, this Court at paragraphs 18 & 19 interalia had observed as follows:-

18. .... Therefore, I am of the opinion that when it has been clearly held in the said judgment that the bank account is a property within the meaning of the Section 102(1) of Cr.P.C., and the Investigating Officer can seize the same in the course of investigation, the same has to be done only in accordance with the provisions of Section 102. As per Section 102(3) of Cr.P.C., the Police Officer shall report with regard to seizure of the property forthwith to the concerned Magistrate, but in the instant case, the freezure of the bank account was not reported forthwith to the Magistrate, which is in total violation to the provision under section 102(3) of Cr.P.C.

19. .... 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 account 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 Saharawal Vs. Commissioner of Police reported in 1988 Cri LJ 241 (Delhi) (extracted supra). This procedure that is to be followed and felt mandatory has also not been followed by the first respondent."

16. Moreover, the Learned Counsel for the Petitioner, in the aforesaid order, dated 30.08.2013 in CRL.OP.Nos.13103, 13104 and 13105 of 2013 refers to paragraphs 27 and 28, wherein, it is observed and held as under:-



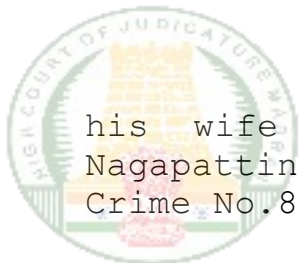
account cannot be legally sustained. Since in the case on hand the 2nd respondent-Police has not reported the freezing of the bank accounts of the petitioners herein to the concerned Magistrate forthwith, which is mandatory under Section 102(3) of Cr.P.C., the proceedings of the 2nd respondent-Police in freezing of the bank accounts of the petitioners herein are not legally sustainable.

28. For the foregoing reasons, the present criminal original petitions are allowed and the proceedings of the 2nd respondent-Police dated 27.09.2012 in freezing the bank accounts of the petitioners herein are hereby quashed.....

17. In response, the Learned Counsel for the Third Respondent / Inspector of Police, District Crime Branch, Nagapattinam, Nagapattinam District, submits that the Petitioner after his voluntary retirement from 'Tranqubar Bishop Manickam Luthern College', Poraiyar had joined in RVS Arts and Science College, as Principal, whereas, his son Fredrick Rajan (A2) was working as Lecturer and one Aramudhan was working as Guest Lecturer in RVS College. Further, it is represented on behalf of the Third Respondent that the Petitioner and his son Fredrick Rajan had developed a close acquaintance / relationship with the said Aramudhan and in fact, the Petitioner and his son had disclosed that they are doing online commodities in 'Almighty Investment Solution' and 'Max-Pro Marketers Private Limited', business and if any one invests, one Lakh of Rupees, then, Rs.8000/- will be paid, as interest, and after 13 months of investment, the principal amount will be returned back. Apart from that, the Petitioner and his son Fredrick Rajan had asked Aramudhan make his friends and relatives to join in this scheme and Aramudhan later was invited by the Petitioner, his wife and their sons Fredrick Rajan and Dominic Rajan to their house and discussed and impressed about the business.

18. At this juncture, the Learned Counsel for the Third Respondent proceeds to state before this Court that based on trust and believing the words of the Petitioner and his sons Fredrick Rajan, the said Aramudhan had handed over Rs.27,00,000/- to them for investment. Later, on the advice of Aramudhan, his friends Elaiyaraja, Murali, Sowrirajan, Saminathan, Charles, Gnanavel had invested a sum of Rs.30,00,000/-, Rs.13,00,000/-, Rs.4,50,000/-, Rs.10,00,000/-, Rs.4,50,000/- Rs.3,00,000/- and totalling in all a sum of Rs.92,00,000/-.

19. Further, it is the stand of the Third Respondent that subsequently, the Petitioner and his family members had cheated the aforesaid persons without paying any amount, as promised by them. Later, when the said Aramudhan realized that he was cheated, he lodged a criminal complaint against the Petitioner,



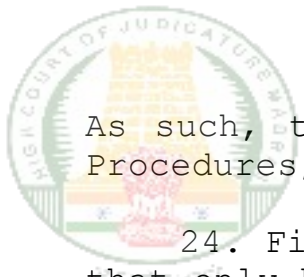
his wife and their son, before the District Crime Branch, Nagapattinam, which resulted in a case being registered in DCB Crime No.8/13, under Sections 420 and 506(ii) IPC.,

20. Added further, the Learned Counsel for the Third Respondent brings it to the notice of this Court that during investigation, Petitioner's son Fredrick Rajan(A1) and Mary Rajan (A3) ) (Petitioner's wife), were arrested. In fact, the Writ Petitioner / A1, and his son A4 / Dominic Rajan were not yet arrested. Furthermore, in order to attach the properties of the Accused, G.O.No.304, dated 25.05.2014, was issued and in the investigation it came to light that those amounts were received by the Petitioner and his family members were not properly invested in any online business and they had misused the said money for their own use with an intention to deceit the Depositors.

21. Also it is represented on behalf of the Third Respondent that even in the year 2012 itself, the Writ Petitioner along with his family members had misappropriated the amounts deposited by Aramudhan and his friends and absconded from 15.08.2013 etc. Further, he had lodged a false complaint before the Economical Offices Wing and then had approached the Bank for getting back the amount with an intention to flee from the Country.

22. The clear-cut stand of the Third Respondent / State Rep.by Inspect of Police, DCB, Nagapattinma is that the Investigation Officer, during the course of investigation in DCB Crime No.8/2013 had taken action under Section 102 of the Criminal Procedure Code and through proper procedure for freezing the Bank account No.(1) 6275660709, (2) 6259375529 and (3) 6259373724 of Fixed Deposit amounts of the Petitioner in Indian Bank, Thennur Branch, Trichy District / Second Respondent. Also that, as per the investigation, the money deposited in the Second Respondent / Indian Bank, Thennur Branch, Trichy District, is a portion of misappropriated amount of Aramudhan and his friends and therefore, the Investigation Officer made a request through his letter, dated 23.10.2014, to the Second Respondent / Indian Bank, Thennur Branch, Trichy District, to freeze the Petitioner's Saving and Loan Account.

23. The Learned Counsel for the Third Respondent contends that the Investigation Officer during their course of Investigation had submitted a petition on 15.04.2015 and on 05.10.2015, before the Learned Judicial Magistrate No.1, Nagapattinam, for freezing the Bank account of the Petitioner in Second Respondent / Indian Bank, Thennur Branch, Trichy District, under Section 102 of Cr.P.C.. In fact, the Investigation Officer had sent a letter to the Second Respondent / Indian Bank, Thennur Branch, Trichy District, to freeze the account, under Section 102 of the Criminal Procedure Code, and thereafter, it was informed to the Jurisdictional Court.



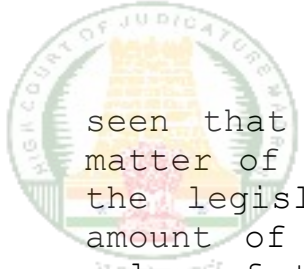
As such, the Investigation Officer has not violated any Rules or Procedures, for freezing the account.

24. Finally, it is submitted on behalf of the Third Respondent that only based on the materials and on the recorded statements of the witness and affected persons and after ascertaining the truth, the Bank accounts of the Petitioner (A2 in DCB Crime No.8/2013) was frozen.

25. It is to be borne in mind that the 'money' in an account in a Bank is 'property' within the meaning of Section 102 of the Criminal Procedure Code, which could be seized by prohibiting the holder of account from operating it, as per the decision of this Court in Bharath Overseas Bank Vs. Minu Publication reported in (1988 MLJ (Cr1.) 106). Further, when a Bank account is seized, then, the Investigation Officer should inform the jurisdictional Magistrate forthwith regarding the prohibitory order and also to issue notice to the accused, as opined by this Court.

26. At this stage, this Court worth recollects and recalls the decision of the Hon'ble Supreme Court in State of Maharashtra v. Tapas D. Neogy reported in (1999 (III) CTC 350) wherein, at special page 357, wherein at paragraph 12, it is observed and held as under:-

"12. Having considered the divergent views taken by different High Courts with regard to the power of seizure under Section 102 of the Code of Criminal Procedure, and whether the bank account can be held to be 'property' within the meaning of said Section 102(1), we see no justification to give any narrow interpretation to the provisions of the Criminal Procedure Code. It is well known that corruption in public offices has become so rampant that it has become difficult to cope up with the same. Then again the time consumed by the Courts in concluding the trials is another factor which should be borne in mind in interpreting the provisions of Section 102 of the Criminal Procedure Code and the underlying object engrafted therein, inasmuch as if there can be no order of seizure of the bank account of the accused then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdrawn by the accused and the Courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer. We are, therefore, persuaded to take the view that the bank account of the accused or any of his relation is 'property' within the meaning of Section 102 of the Criminal Procedure Code and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence. ~~the office of the police officer~~ which the police officer is investigating into. The contrary view expressed by Karnataka, Gauhati and Allahabad High Courts, does not represent the correct law. It may also be

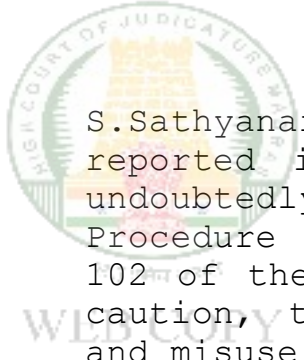


seen that under the Prevention of Corruption Act, 1988, in the matter of imposition of fine under sub-section (2) of Section 13, the legislatures have provided that the Courts in fixing the amount of fine shall take into consideration the amount or the value of the property, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section(1) of Section 13, the pecuniary resources or property for which the accused person is unable to account satisfactorily. The interpretation given by us in respect of the power of seizure under Section 102 of the Criminal Procedure Code is in accordance with the intention of the legislature engrafted in Section 16 of the Prevention of Corruption Act referred to above. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court of Bombay committed error in holding that the police officer could not have seized the bank account or could not have issued any direction to the bank officer, prohibiting the account of the accused from being operated upon. Though we have laid down the law, but so far as the present case is concerned, the order impugned has already been given effect to and the accused has been operating upon his account, and so, we do not interfere with the same."

27. One cannot ignore an important fact that a Bank account of a person having no nexus or connection with an offence under reference would not be seized / freezed, as per decision Rajamani V. Inspector of Police, Salem reported in (2003 Cr.LJ at2902) at special page 2903.

28. It is to be pointed out that Section 102 of the Criminal Procedure Code, can be pressed into service for the assets of an accused, which are the direct outcome of the crime. For an application of Section 102 of the Criminal Procedure Code, the rudimentary requirements are that the property sought to be seized or frozen must either be stolen property or they should have been found to have some nexus with the alleged offence, which is under investigation of the Police Officer concerned.

29. In fact, Section 102 of the Criminal Procedure Code, defines the power of a Police Officer to seize the property, especially, whether the allegation of commission of offence is alleged. In reality, a Police Officer may seize any property, which may be alleged or suspected to have be stolen or which may be found under the circumstances, which creates suspicion of commission of any offence. Even the cash on hand and cash at Bank, in Bank Accounts are properties, as per Section 102 (1) of the Criminal Procedure Code. However, if there is no allegation or where there is no suspicion of commission of theft or where the service must provide do not create any suspicion for the commission of offence, then, there is no occasion in such a case for a Police Officer to seize any property, as per the decision in



S.Sathyannarayana v. State by Inspector of Police, Karnataka reported in (2003 CrI.Lj)1983) at special page 1988 and 1989 undoubtedly, the ingredients of Section 102 of the Criminal Procedure Code, are mandatory. However, if power under Section 102 of the Code of Criminal Procedure is not used with care and caution, then, there is scope for arbitrariness, capriciousness and misuse of direction, in the considered opinion of this Court.

30. Further, if a person / accused is allowed to operate his Bank Account and he withdraws the 'Deposited Money', then, at the end of trial of Criminal / Sessions Case, the competent Court of Law will be toothless / powerless to secure the money, which has any direct nexus with the commission of an offence committed.

31. In fact, it is brought to the notice of this Court on behalf of the Petitioner that the Petitioner and his son were issued with a Legal Notice, dated 08.07.2016, relating to recall of loan, whereby, the Loan Agreement, dated 30.05.2014, bearing No. 10397753, for a sum of Rs.10,00,000/- was terminated and his sons were called upon to pay a sum of Rs.5,00,332.45/- (subject to realization of Cheque / ECS presented, if any) being the due amount as on 05.07.2016 or to handover the possession of the vehicle, viz., 'Toyota Innova V Diesel'.

32. As far as the present case is concerned, even though the Petitioner in the present Writ Petition has sought for passing of an order by this Court in directing the Second Respondent / Indian Bank, Thennur Branch, Trichy District, to De-Freeze his Bank account, this Court bearing in mind of the stand of the Third Respondent, to the effect that the Investigation had revealed that the amounts received by the Petitioner and his family members were not properly invested in any online business and in fact, the said money was used for their own use and also, when the materials collected and the recorded statements of the witness and affected persons point out that the involvement of the Petitioner along with his family members, who had misappropriated the amounts deposited by Aramudhan and his friends and only after finding out the truth, his bank account was frozen, at this stage, this Court comes to an irresistible conclusion that the relief sought for by the Petitioner, seeking an order from this Court in directing the Second Respondent / Indian Bank, Thennur Branch, Trichy District, to De-Freeze the his bank account, maintained by the Second Respondent / Indian Bank, Thennur Branch, Trichy District, cannot be acceded to, to secure the ends of justice. Consequently, the Writ Petition sans merits.



33. In fine, the Writ Petition is dismissed. However, there shall be no order as to costs.

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/True Copy/

Sd/-

Assistant Registrar(AE)

Sub-Assitant Registrar

To

1.The Assistant General Manager (Law)

Corporate Office,  
Legal Department,  
Avvai Shanmugam Salai,  
Royapattah,  
Chennai - 600 014.

2.The Branch Manager,

Indian Bank,  
Thennur Branch,  
Trichy District.

3.The Inspector of Police,

District Crime Branch,  
Nagapattinam,  
Nagapattinam District.

+One cc to Mr.R.J.Karthick, Advocate, SR.No.41801

+One cc to The Special Government Pleader , SR.No.41542

MPK

RL/6C/11P/DB/10/8/2016

W.P(MD)No.7206 of 2016

03.08.2016