IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Order	Date of Pronouncing the Order
27.10.2017	03.11.2017

Coram:

The Honourable Dr. Justice G. Jayachandran

Crl.R.C.No.1332 of 2017

Mr. Guruprasath,
S/o. Mr. V. S. Rathina ...Petitioner

Versus

State, represented by
Inspector of Police,
Vigilance & Anti Corruption,
Kanchipuram. ...Respondent

This Criminal Revision Petition is filed under Section 397 r/w. 401 Cr.P.C praying to set aside the order dated 18.09.2017 of the Learned Chief Judicial Magistrate and Special Judge, Chengalpattu passed in Crl.M.P.No.720 of 2017 in Crime No.2 of 2017, to defreeze the current account and the savings account maintained by the petitioner and his mother-in-law in various banks and to return the cash seized by the respondent police.

For Petitioner : Mr. A. Ramesh, Senior Counsel
for
Mr. B. A. Sujay Prasana

For Respondents : Mr. C. Iyyaparaj,
Additional Public Prosecutor

O R D E R

This Criminal Revision petition is directed against the order dated 18.09.2017 passed by the Chief Judicial Magistrate and Special Judge, Chengalpattu, in the Miscellaneous Petition filed on behalf of the petitioner under Section 451 Cr.P.C.

2. The relief sought in the aforesaid Miscellaneous Petition is as under:

"........................to order to return the cash of Rs.16,25,000/- seized from my possession by the respondent and also order may please be passed to defreeze the bank A/Cs Current A/C No.071109000123447 of City Union Bank Ltd., Kancheepuram, standing in the name of the Vintage Enterprises, my personal account No.SB A/C. 484466264 of Indian Bank, Gandhi Road Branch, Kancheepuram and SB A/C No.910010048519204 that of my mother-in-law Mrs.A.Andal Family Pension SB A/C No.10943797600, SBI, Nellukara Street Branch, Kancheepuram and SB A/C No.3428 of the Little Kancheepuram Co-operative Bank, Aladipillaiyarkoil, St.Branch, Kancheepuram."

3. The Trial Court, after considering the petition and counter affidavit, has dismissed the petition holding that the wife of the petitioner is arrayed as an accused in the case registered by the Inspector of Police, Vigilance and Anti-Corruption, Kancheepuram for offence of accumulating assets disproportion to the known source of income which is punishable under Section 13(2) r/w.13(1)(e) of the Prevention of Corruption Act.

4. The cash and the bank deposits are the subject matter of the on going investigation. As per records of prosecution, when the residence of the accused was searched, cash of Rs.16,25,000/- was recovered along with several incriminating documents and no proof was produced regarding the ownership of the seized money. Now, the husband of the accused person claims right over the cash and also seeks for defreezing the Bank Accounts which stand in his name and in the name of his firm, as well as in the name of his mother-in-law who is none other than the mother of the public servant who is the accused in this disproportionate assets case.

5. The Trial Court has dismissed the petition on the ground that the investigation has not yet been completed and it is uncertain whether the petitioner will be arrayed as accused or not and it is not certain whether any other person will be arrayed as accused.

6. The contention of the revision petitioner is that the five Bank Accounts which have been freezed by the Investigating Agency have nothing to do with the alleged accused. They are all individual accounts pertaining to his business. The money which was seized from his residence also belongs to him and used for his business purpose and even the fixed deposit receipts recovered from his house do not belong to his wife. While so,

in violation of Section 102 Cr.P.C., money has been seized and the accounts have been freezed.

7. When Section 102 Cr.P.C. is invoked, the party concerned should be informed about the freezing of his account, besides intimation to the concerned Court. Both the conditions have not been complied in this case. Preventing the petitioner, who is not an accused, from operating his Bank accounts is violative of fundamental rights of trade and business and contra to the dictum laid by the Courts regarding mandatory procedures to be followed while invoking Section 102 of Cr.P.C. The Courts have reinforced time and again that any seizure under Section 102 of Cr.P.C has to be reported to the concerned Magistrate Court and also the person concerned should be informed about the account freezing so as to enable him make alternative arrangement regarding on-going banking transaction. Since the impugned order bristles with non application of mind and totally contrary to the dictum laid down by the Courts, the same is liable to be set aside.

8. The respondent has filed a detailed counter wherein the prosecution has stated that A. Raji, the petitioner's wife, while working as Sub-Registrar Grade I, Chengalpattu, was found to be in possession of disproportionate assets to the known source of income. Therefore, a detailed enquiry was conducted and the enquiry revealed that during the check period i.e., from 01.01.2006 to 31.03.2012, the accused Raji and her family members have accumulated wealth worth more than Rs.40,00,000/- which is 73.92% more than the known source of income. Hence, a regular case has been registered against her for offences under Sections 13 (2) r/w. 13 (1)(e) of the Prevention of Corruption Act. Pursuant to that, a search warrant was obtained from the Special Court for Prevention of Corruption Act and her house was searched on 01.08.2017. During the house search, cash of Rs.16,25,000/- was seized along with several incriminating materials. Neither the petitioner herein nor the accused was able to account for the currency seized from their house. The search was conducted in the presence of the accused. The Search Warrant and the Seizure Mahazar were signed by the accused besides two independent witnesses. The cash along with the documents seized were produced before the Chief Judicial Magistrate, Chengalpattu on 02.08.2017 and thereafter being satisfied from the materials collected during the investigation, the Investigating Agency thought fit that enormous un-accounted money has been slashed on various Bank Accounts. Therefore, eight Bank Accounts in the name of the petitioner, accused and the mother of the accused were freezed on 01.08.2017. Based on the requisition made by the Investigating Officer to the respective Bank, the freezing of the account was also intimated to the petitioner on 21.10.2007. Meanwhile few accounts were defreezed after ascertaining that they are not connected with

crime. In these circumstances, there is no error or illegality in the order of freezing the account which is closely connected to the crime under investigation.

9. The learned counsel for the revision petitioner took the attention of this Court to Section 102 Cr.P.C and the judgments of this Court as well as the Supreme Court rendered in connection with freezing of account pursuant to the power exercised under Section 102 Cr.P.C. The main contention of the learned counsel appearing for the revision petitioner is that the Bank Account was freezed on 01.08.2017 whereas Police has intimated to the Court only on 21.08.2017. The proposed duration of seizure is not specified.

10. The Supreme Court, in the following judgments have indicated that while freezing account, pursuant to any pending investigation, such freezing shall be of very short duration and the period should also be specific and pending investigation, Bank accounts cannot be freezed indefinitely. In this case, the petitioner is not even arrayed as an accused, but his business accounts are being freezed without any intimation and in violation of statute and contrary to the dictum laid in the judgments of the Supreme Court. Under Section 18 of the Prevention of Corruption Act, conditions are imposed to the Investigating Agency regarding the manner in which the inspection should be conducted regarding Bank Accounts. Without the authorization of the Superintendent of Police, accounts of a person shall not be inspected by any Police Officer below the rank of Superintendent of Police. The freezing of accounts in this case has been done in violation of Section 18 of the Prevention of Corruption Act.

11. In support of the submission, the learned counsel for the revision petitioner relied upon the case of Uma Maheswari Vs. State reported in 2013 SCC Online Mad 3829 wherein, this Court has held as under:

> "44. The Investigation Officer has suspected that the moneys swindled were secreted by the accused persons in their Bank accounts. Thus, he took steps to freeze the Bank accounts.
>
> 45. We have elaborately seen that such freezing of the Bank accounts shall be reported to the jurisdiction Magistrate. When it is to be reported has been stated in Section 102(3) Cr.P.C. It is stated therein that it shall be reported "forthwith" to the jurisdiction Magistrate. The reporting of the freezing of the Bank accounts is

mandatory. Failure to do so will vitiate the freezing of the bank account. In this back drop of the matter, the word "forthwith" shall mean 'immediately', 'without delay', 'soon'.

46. In this case, the freezing of the Bank accounts were done on 30.04.2013 and on 03.05.2013. However, the Investigation Officer has reported this to the learned XI Metropolitan Magistrate, Saidapet only on 27.06.2013. This will not be reporting of the freezing of the Bank account to the Magistrate forthwith. Thus, there is breach of mandatory requirement of law. Thus, the freezing of the Bank account is vitiated."

12. Further, the learned counsel also referred to the judgment rendered in the case of Rakesh P. Sheth and Others Vs. The State reported in MANU/TN/2192/2016, wherein, this Court, after giving anxious consideration to the rival submissions regarding the duty cast upon the Police to inform the account holder relating to freezing of his Bank Account, has concluded as under:

"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 [MANU/SC/0582/1999:(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."
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> 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 account holder about the factum of seizure, because, the account holder will have to make several alternative arrangements to meet many an exigency."

13. From a reading of the provisions as well as the judgments of this Court, it is clear that the statute mandates intimation of freezing of the account to the Magistrate Court having jurisdiction forthwith, but no such mandate regarding the Account holder. However, prudence requires such intimation, since the account holder will have to make several alternative arrangements to meet exigency in connection with his banking transaction. In this case, admittedly, freezing of account was intimated to the Court on 21.08.2017, though, the account was freezed on 01.08.2017. This does not fall any where near the mandatory requirement of intimation to the court forthwith.

14. The learned Additional Public Prosecutor for the State brought to the notice of this Court that though an intimation was sent to Court regarding the freezing of account on 21.08.2017, the petitioner was aware of freezing of his account even much earlier and he has approached the Magistrate Court as early as on 07.08.2017 within a week from the date of freezing the account and sought for defreezing. The said application was dismissed by the Trial Court, which is now under challenge before this Court. Therefore, the revision petitioner cannot take a plea that freezing of his account was not intimated to him. By his own conduct of approaching the Trial Court for defreezing the account by filing a petition on 07.08.2017, the knowledge of freezing his account is explicit and no prejudice is caused to him by not intimating the same to him soon after the account being freezed.

15. This Court is of the view that the contention of the learned Additional Public Prosecutor has some force to consider.

The purpose of intimating the party as held by this Court in the case of Rakesh P. Sheth and Others Vs. The State reported in MANU/TN/2192/2016 that the account holder should know about the freezing of the account and an opportunity should be given to him to make alternative arrangement. Here, the petitioner being aware of the action taken by the Investigating Agency, has approached the Court and the matter was under adjudication and subsequently negatived. Hence, this Court does not find much force in the argument of the learned counsel for the petitioner on this ground. However, the fact remains, even after a lapse of 3 months, the prosecution is not able to arrive at a conclusion regarding the quantum of disproportionate asset which is in the frozen account of the petitioner, who is not an accused in the case.

16. The learned Additional Public Prosecutor submitted that though the First Information Report is registered for disproportionate assets to the tune of Rs.40,00,000/-, now, the investigation reveals that more than Rs.2 crores have been accumulated by the accused i.e Mrs.Raji, W/o. Guruprasath in her name and her family members name.

17. On a perusal of the statement of Bank accounts and the balance available in the said accounts, this Court finds that nearly a sum of Rs.3 crores is lying in the Bank Accounts of the accused. So, in the interest of justice and weighing the balance of convenience, it will be appropriate to direct the City Union Bank, Kancheepuram to freeze a sum of Rs.1 crore in account No.071109000123447 in the name of Vintage Enterprises and allow the account holder to operate the account with the rest of the balance money i.e., over and above Rs.1 crore. It is specifically directed to the Bank to ensure that the balance in the said account shall not go below Rs.1 crore in any event and that the sum of Rs.1 crore is subject to the outcome of the Investigation.

18. Further, in respect of all other accounts, this Court directs the Investigating Agency to instruct the respective bank to defreeze the account and allow the petitioner to operate. That apart, this Court directs that the above said direction will come into operation only after the petitioner executes a bond for Rs.1 crore with undertaking that he shall furnish security of property worth Rs.1 crore at any time as required by the Investigating Agency.

19. Insofar as return of currency seized i.e., Rs.16,25,000/- which has been seized during the course of the search of the premises of the accused, this Court is not inclined to pass any order, since neither the source nor the ownership of the money been established by the petitioner or the accused. If it is suspected to be the proceeds of the alleged

crime, same cannot be returned. However, it is open to the party concerned to approach the Trial Court to seek investment of the said money in any Nationalized Bank instead of keeping it ideal. If such petition is filed, the trial Court can entertain the same and invest the money as per the guidelines of the Supreme Court rendered in the case of Sunderbhai Ambalal Desai Vs. State of Gujarat reported in (2002) 10 SCC 283.

With the above observations, this Revision Petition is disposed of.

-sd/-
Assistant Registrar

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Sub-Assistant Registrar

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To

1. The Chief Judicial Magistrate and Special Judge,
Chengalpattu

2. Inspector of Police,
Vigilance & Anti Corruption,
Kanchipuram.

3. The Public Prosecutor,
High Court, Madras.

4 The Branch Manager,
City Union Bank,
Kancheepuram

+2 cc to B.A.SUJAY PRASANNA Advocate SR.NO. 76066

Crl.R.C.No.1332 of 2017

mg[co]
RD 21/11/2017