

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.No.45 of 2010

N. Rajeswari

... Petitioner

Vs .

State Rep. By
Inspector of Police,
Vigilance & Anti Corruption,
Kancheepuram.

...Respondent

PRAYER: Criminal Revision Case is filed under Sections 397 and 401 of Code of Criminal Procedure to call for the records in CrI.MP.No.1802/2008 on the file of the Court of the Chief Judicial Magistrate, Chengalpet, to set aside the order dated 29.10.2009, and order of defreezing of the bank accounts standing in her name and in the name of her children.

For Petitioner : Mr.T.R.Ravi
for Mr.M.Muthappan

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Case is filed under Sections 397 and 401 of Code of Criminal Procedure to call for the records in CrI.MP.No.1802/2008 on the file of the Court of the Chief Judicial Magistrate, Chengalpet, to set aside the order dated 29.10.2009, and order of defreezing of the bank accounts standing in her name and in the name of her children.

2. The case of the petitioner is that the petitioner served as a Teacher at Panchayat Union School and sought voluntary retirement on 31.08.2004. Subsequently, she started a Real Estate Business independently under the name and style of 'S.L.K.K. Promoters' at Chenglelpet and looked after all the day-to-day activities as managing partner of the firm. It is registered on 04.03.2004 and obtained certificate from the Superintendent of Central Excise for payment of service Tax.

3. The learned counsel for the petitioner would submit that the petitioner's husband-N.Ragunathan has no right or interest in the firm. But on search made by the sleuths of the Vigilance and Anti-corruption Department of Kancheepuram District, an inventory was taken for the articles found in the house and inventory Mahazar was also prepared. A case in Cr.No.25/AC/2007 was registered against N.Ragunathan by the Inspector of Police, Kancheepuram u/s.13(1) (e) r/w. 13(2) of Prevention of Corruption Act, 1988 for an accusation that he had acquired assets disproportionate to the known sources of income. Petitioner's husband Ragunathan was a public servant. During investigation, the respondent freezed not only the accounts of the petitioner but also the accounts of her husband, daughters and sons. The learned Trial Court without looking into the fact that the petitioner is not a public servant has freezed the accounts.

4. Learned counsel for the petitioner would further allege that before freezing the account, notice ought to have been given to the

petitioner and sent a report to the learned Magistrate. These mandatory procedures are not complied with while invoking Section 102 of Cr.P.C.,.

5. Learned counsel for the petitioner would further submit that this Court in an order made in CrI.OP.(MD).NO.937 of 2008 dated 16.04.2008 has cited the decisions of the Hon'ble Apex Court, pointing out that the mandatory provisions must have been complied with before freezing the accounts. During the course of investigation, Bank account of accused was freezed, without notice to petitioner, and no report was submitted before Judicial Magistrate. The petitioner/accused challenge the validity of order directing to defreeze account on the ground of violation of mandatory procedures contemplated under Section 102 of Cr.P.C., Therefore, the order passed by the learned Trial Judge is liable to be set aside.

6. Learned Government Advocate (CrI.Side) would submit that there is no quarrel with the proposition of law laid down by the Hon'ble Supreme Court or this court. The, respondent/police has got every right to freeze the accounts and there is no violation of mandatory provisions and also placed reliance on the judgment of the Hon'ble Supreme Court in the case of **State of Maharashtra Vs. Tapas D. Neogy** reported in **(1999) 7 SCC 685** and referred Sections 13 and 16 of the Prevention of Corruption Act, 1988. Therefore, Investigation Officer has every right to freeze the account either by giving notice contemplated u/s.102 of Cr.P.C., and

citation submitted by the learned counsel for the petitioner is not applicable to the present case on hand since the offence under the case referred to by the learned counsel for the petitioner are only under Indian Penal Code.

7. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the respondent and perused the available records.

8. It is an admitted fact that there is an allegation against the husband of the petitioner that he had acquired assets which is disproportionate to the known sources of income. During investigation, the respondent freezed the account of the petitioner and their sons and daughters. At that time, the petitioner filed a petition in Crl.MP.No.1802 of 2008 and the same was dismissed by the trial court, aggrieved against the said order, the present revision case has been filed by the petitioner stating that the petitioner as well as her children have independent source of income and simply because the head of the family is a public servant, the entire savings could be interpreted as that of the income of the public servant. Therefore, the order passed by the trial court is liable to be set aside.

9. On careful perusal of the order and also the allegation made against the husband of the petitioner and the nature of the offences and on

perusal of the petition filed by the petitioner before the trial court and citation referred to, grounds taken in the revision petition and also submission made by the learned counsel, all the grounds raised in the revision petition can be decided after trial and not at this stage.

10. On perusal of Section 102 of Cr.P.C., and also citation referred to by the learned counsel on either side, it is settled law that before freezing the account, notice has to be given and also report has to be submitted before the Judicial Magistrate but where as perusal of the records in this case, the offence is punishable under Section 13 of Prevention of Corruption Act. Even if necessity arises, without giving notice, the account can be frozen. Where the police officer seizing the property is subordinate officer, he should forthwith report the seizure to his superior i.e., to the officer-in-charge of the police station. Therefore, the submission made by the learned counsel for the petitioner is not acceptable and the order passed by the trial court does not warrant any interference of this Court and hence, the revision petition is liable to be dismissed.

In the result, this Criminal Revision Case is dismissed.
Consequently, miscellaneous petition is closed.

31.07.2017

Index : Yes/No
Speaking/Non-speaking Order
gv

P.VELMURUGAN.,J.

gv

To

- 1.State Rep. By
Inspector of Police,
Vigilance & Anti Corruption,
Kancheepuram.
2. The Chief Judicial Magistrate,
Chengalpet,
3. The Public Prosecutor,
High Court, Madras.
Chennai.

**CRL.R.C.No.45 of 2010****WEB COPY****31.07.2017**