IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2018

C O R A M

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.10379 of 2018

I.P.Yesudoss ...Petitioner

Vs.

1.The State of Tamil Nadu
Represented by
The Superintendent of Police
Head Quarters, EOW-2
No.C-48, Block-2
Sidco Old Corporate Office Building
Guindy, Chennai 600032.

2.The Branch Manager
M/s Bank of Baroda
Kolathur Branch
No.198, Main Road
Srinivasa Nagar
Kolathur, Chennai 600 099.

3.The Tax Recovery Officer-3
O/o Pr.CIT, Chennai-3
Office of the Principal Commissioner of Income Tax-3
4th Floor, Main Building
121, Mahatma Gandhi Road
Chennai-34. .. Respondents

Criminal Original Petition filed under Section 482 of Cr.P.C. to direct the first respondent police and the second respondent to pass an order for allowing the petitioner to operate the bank account, viz., A/c No.19680100021028 Bank of Baroda, Kolathur Branch pending on accounts of the second respondents Bank based on the petitioner's representation dated 08.04.2017.

For Petitioner : Mr.I.P.Yesudoss - Party-in-person
For R1 : Mr.C.Iyyapparaj Additional Public Prosecutor

O R D E R

This criminal original petition has been filed to direct respondents 1 and 2 to pass an order allowing the petitioner to operate the bank account, viz., A/c No.19680100021028 held with Bank of Baroda, Kolathur Branch.

2. The petitioner herein is facing prosecution in C.C.Nos.4479 of 2017 and 4984 of 2018 before the Chief Metropolitan Magistrate, Allikulam, for the offences under Sections 420 r/w 120-B, 409 and 109 IPC. The allegation against the petitioner is that he had collected money from various persons by floating certain Schemes and had cheated them. During the course of investigation, the police had frozen certain Bank accounts related to the petitioner and his concerns under the provisions of the Criminal Law Amendment Ordinance, 1944. Under such circumstances, the petitioner is before this Court with the above prayer.

3. Heard Mr.I.P.Yesudoss, party-in-person and Mr.C.Iyyapparaj, learned Additional Public Prosecutor for the first respondent-State

4. Today, Mr.Arun Gopinathan, Officer, Deposits Department, Bank of Baroda, Kolathur Branch is present.

5. The police have filed a counter affidavit, wherein, it is stated as follows:

> "3. Further I submit that all the amount which was collected from the members of WSHG has been deposited in various accounts including Aphro Trust and Aphro Financial (P) Ltd. The petitioner/accused has diverted all the defaulted money in various accounts and also purchased a lot of immovable properties i.e., house sites, Agriculture land and also constructed two house buildings in his name and Devi's name. None of the properties have been purchased in the name of Aphro Trust, it shows the intention of the petitioner/accused to dilute the money in his name, in Devi's name and his brother Selva Durai's name. While getting the G.O.Ms.No.132 dt.09.02.2016. There is no contradiction or any violation since the money which was frozen by the investigating officer wholly collected from the poor public only.
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> 4. I further submit that, after getting the G.O. Ms.No.132/2016 Home XIX Police Department

dated 09.02.2016, necessary petition along with the order of the above said G.O.Ms.No.132, was filed before the Hon'ble Chief Judge, Small Causes Court, Chennai, with a prayer to pass an order of Ad-interim attachment of the movable properties mentioned in the schedule of property u/s 3 & 4 of Criminal Law Amendment Ordinance Act-1944. Further obtained an order of Ad-Interim attachment from the said Hon'ble Chief Judge, Small Causes Court, Chennai on 14.09.2016 in Crl.M.P.No.338 of 2016 in Crl.O.P.No.1/2006, accordingly the Hon'ble Chief Judge, Small Causes Court, Chennai appreciated the matter and admitted the affidavit and pronounced the following order "I am of the opinion that there exist the prima facie grounds to believe that the respondents namely M/s Aphro Financial (P) Ltd., IPEE Enterprises, Chennai Managaratchi Reporter, I.P.Yesudoss, Aphro Trust, IPEE Real Estate, P.Amudharaj and S.Devi, have committed scheduled offence. Hence Ad-Interim attachment is ordered." The version of petitioner/accused I.P.Yesudoss does not arise, since there is no wrong facts have been submitted to get the government order for the Ad-Interim attachment of proper.

7. I further submits that I am advised to submit that an order of attachment is passed by the Hon'ble Chief Judge, Small Causes Court, Chennai under the Criminal Law Amendment Ordinance Act-1944 against which this Criminal Original Petition is not maintainable. (The Hon'ble Chief Judge, Small Causes Court, posted the next hearing on 20.07.2018 for argument).

Thus, from the above, it is clear that these bank accounts have been frozen vide G.O.Ms.No.132, Home (Police XIX) Department dated 09.02.2016.

6. Learned Additional Public Prosecutor contended that this Court, under Section 482 Cr.P.C., cannot order de-freezing of the said accounts, since the remedy available to the petitioner is before the Chief Judge, Small Causes Court, where the attachment proceedings are pending.

7. In the opinion of this Court, what have been attached are the amounts lying in the accounts and as rightly submitted by the learned Additional Public Prosecutor, this Court cannot issue any directions with regard to the disbursal of the amounts

lying in the said accounts and it is for the authority under the Ordinance to deal with the amounts lying in the said accounts and pass suitable orders. However, what the petitioner is seeking is permission to operate those accounts. In other words, he is not praying for disbursal of the amounts in those accounts to him and his prayer is for permission to operate those accounts.

8. It is submitted that the savings bank A/c No.19680100021028 stands in the name of the petitioner himself and a sum of Rs.30,15,101/- is available in the said account. It is also brought to the notice of this Court that there is a Fixed Deposit account bearing A/c No.19680300039801 for Rs.12,509/- with accrued interest, which is being automatically renewed.

9. This Court directs Bank of Baroda to create a single Fixed Deposit account by combining the amounts lying in Savings Bank A/c No. 19680100021028 and the amount in the Fixed Deposit A/c No.19680300039801 for a period of three years in the name of the Registrar, Small Causes Court, Chennai, after deducting TDS and pre-closure charges, within two weeks from the date of receipt of a copy of this order and hand over the original Fixed Deposit receipt to the Chief Judge, Small Causes Court, Chennai. The Chief Judge, Small Causes Court, Chennai shall retain the Fixed Deposit amount for the purpose of disbursal to the claimants. Thereafter, the petitioner is permitted to operate the Savings Bank Account, on submitting the Know Your Customer documents to the Manager, Bank of Baroda, Kolathur Branch.

Accordingly, this petition stands disposed of.

Sd/-
Assistant Registrar (CS-IV)

// True Copy//

Sub Assistant Registrar

To

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4th Floor, Main Building
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Chennai-34.

4.The Registrar, Small Causes Court, Chennai.

5.The Chief Judge,Small Causes Court, Chennai.

6.The Public Prosecutor, High Court, Madras.

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SMI/20.08.2018