IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2018

C O R A M

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.10381 of 2018

I.P.Yesudoss ...Petitioner/Party in Person

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 Axis Bank, Porur Branch
No.11, Ramakrishnanan Street
Porur, Chennai 600116.

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 accounts, viz., A/c Nos.912020027505504, (b) 912020027506329, (c) 912020027233937, (d) 912010032300504, (e) 912010027357780 Axis Bank, Porur Branch pending on accounts of the second respondents Bank based on the petitioner's representation dated 08.04.2017. within stipulated time may fixed by this Hon'ble Court.

For Petitioner : Mr.I.P.Yesudoss -Party-in-person

For R1 : Mr.C.Emalias
Public Prosecutor
Assisted By
Mrs.Kritika Kamal.P.
Government Advocate (Crl.Side)

For R2 : Mr.Venkata Varadhan

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 accounts, viz., A/c Nos.(1) 912020027505504, (2) 912020027506329, (3) 912020027233937,(4) 912010032300504 and (5) 912010027357780, held with Axis Bank, Porur 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, Mr.C.Emalias, learned Public Prosecutor for the first respondent-State and Mr.Venkata Varadhan, learned counsel for the second respondent.

4. Today, Ms.Ranjani, Branch Manager, Axis Bank, Porur 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.

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 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 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. Learned counsel for the second respondent submitted that out of the five accounts mentioned in the petition, the first account is a current account in the name of IPEE Enterprise; the second account is a current account in the name of IPEE Real Estate; the third account is an individual current account in the name of the petitioner; the fourth and fifth accounts are individual savings bank accounts in the name of the petitioner himself.

9. It is contended at the Bar that most of the accounts are not in his individual name, but in the name of some business entities. There appears to be much force in the above submission and therefore, this Court cannot pass a blanket order permitting I.P.Yesudoss to operate all the five accounts.

10. On instructions, learned counsel for the Bank submitted that a total amount of Rs.5,60,00,000/- is available in all the five accounts put together.

11. In such view of the matter, this Court directs the second respondent to deposit the entire amount with accrued interest as on 31.07.2018, after deducting TDS and pre-closure charges, by way of Demand Draft drawn in favour of the Registrar, Small Causes Court, Chennai within 10 days from 31.07.2018. On such deposit, the Registrar and the Chief Judge, Small Causes Court, Chennai shall re-deposit the amount in any Nationalised Bank in a Fixed Deposit account, so that the amount accrues interest and it can be disbursed in accordance with law. Thereafter, the petitioner is permitted to operate the fourth and the fifth accounts, on submitting the Know Your Customer Documents to the Manager, Axis Bank, Porur Branch.

12. As regards account nos.1, 2 and 3, liberty is given to the entities in whose name the accounts are, to move the Chief Judge, Small Causes Court, Chennai for permission to operate the accounts. On such application being made, the learned Chief Judge, Small Causes Court, Chennai, shall order notice to the concerned Bank and the Police and after hearing them, shall pass orders in accordance with law. It is made clear that freezing of the amounts in the account is different and distinct from permission to operate the account.

Accordingly, this petition stands disposed of.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gms

To

1.The Superintendent of Police
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4.The Public Prosecutor,
High Court, Madras.

5.The Registrar,
Small Causes Court, Chennai.

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

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NMI(Co)
CS/09/08/18