

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.4983 of 2017

Kandaswamy

.. Petitioner

Vs

1.State rep. by
The Inspector of Police,
Oragadam Police Station,
(Crime No.315 of 2016)

2.The Manager,
Karnataka Bank,
Thiruvallur Branch,
Thiruvallur 602 001.

.. Respondents

Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records in Crime No.315 of 2016 and de-freeze the account maintained by the petitioner in Karnataka Bank, Thiruvallur Branch in A/c.No.7832500100028201.

For Petitioner : Mr.S.Suresh
For Respondents : Ms.Kritika Kamal
Govt. Advocate [Crl. Side]

O R D E R

This Criminal Original Petition has been filed to quash the FIR in Crime No.315 of 2016.

2.On the complaint lodged by Lee Jae Young, Managing Director, M/s.Doowon Automotive Systems India Pvt. Ltd., SIPCOT Industrial Park, Oragadam, the respondent Police registered a case in Crime No.315 of 2016 on 12.10.2016 under Section 381 and 109 IPC against Kandaswamy [A1], Aravindhan [A2] and Arun Kumar [A3] and others. It is the case of the de facto complainant that the accused had stolen some raw materials from the complainant's factory to a tune of Rs.47,18,427/-. The Police arrested Kandaswamy [A1] and Aravindhan [A2] and during the course of investigation, it came to light that Kandaswamy [A1] had secreted the proceeds of the crime in his locker with Karnataka Bank, Kakkalur Branch, Tiruvallur District. Hence, the Investigating Officer sent a requisition under Section 102 of Cr.P.C. to the Branch Manager, Karnataka Bank, Kakkalur Branch, to freeze the locker

and bank account of Kandaswamy [A1]. Pursuant to which, the Branch Manager has frozen the locker and the bank account. Challenging which, Kandaswamy [A1] is before this Court.

3. Heard Mr. Suresh, learned counsel for the petitioner; the learned Government Advocate [Crl. Side] appearing for the respondents and perused the materials placed on record.

4. Mr. Suresh contended that after passing orders under Section 102 Cr.P.C., the Police have failed to inform the jurisdictional Magistrate and therefore, the order of the learned Magistrate stands vitiated, in the light of the judgment of this Court in B. Ranganathan Vs State and Others reported in 2003 Cri.L.J.2779.

5. The Investigating Officer has filed a counter dated 16.03.2017, wherein, in paragraph Nos.8 to 12, it is stated as follows :

"8. It is submitted that the respondent police has given a requisition letter to freeze the safety locker maintained by Kandasamy [A-1] and his wife Hemalatha at Karnataka Bank, Kakkalur Branch, on 17.10.2016. The confession of A-2 Aravindan it comes to light that out of selling properties, which has been thefted by the accused, A-1 emased jewels and which is kept in the safety locker of wife of A-1 at Karnataka Bank, Kakkalur Branch. Since, the investigate reveals that the jewels have been purchased out of tainted money, A-1 got by selling the thefted properties. The investigation Officer is not aware of A-1's account number. Hence, he has given a requisition to freeze the safety locker without mentioning A-1's account number.

9. It is submitted that the A-1 was absconding from 16.9.2016, he has surrendered before the Judicial Magistrate Court No.11, Tambaram on 3.12.2016 and he was released on bail on 16.12.2016.

10. It is submitted that thought the Investigation Officer has given a requisition to freeze the safety locker maintained by A-1 and his wife at Karnataka Bank, Kakkalur Branch, the Manager of the said Bank has not given intimation to the Investigation Officer that he has freezed the account and its safety locker of A-1 on 09.12.2016. The Investigation Officer was under the impression that since, the account number is not given, they may not freeze the safety locker. Only after filing of this petition, the Investigation Officer verified with the Bank, they have been informed that the locker was freezed on 9.12.2016.

11. It is submitted that even if the Court comes to a conclusion that the Investigation Officer not informed to Judicial Magistrate about the

freezing of account in time but due to the above said reason. It is also submitted that the Investigation Officer intimated the Judicial Magistrate, Sriperumbudur to take inventory of jewels available in the locker since the Learned Judicial Magistrate had not given any order to take inventory of jewels and the petition is pending.

12. It is also submitted that the accused has taken the jewels kept in the locker during his absconding from 16.9.2016 to 3.12.2016."

6. This Court gave its anxious consideration to the rival submissions. The power of the Police to freeze bank accounts is no more res integra, in view of the pronouncement of the Supreme Court in *State of Maharashtra vs. Tapas D. Neogy* reported in (1999) 7 SCC 685. However, the Investigating Officer has given an explanation that he had only given general directions to the Branch Manager, Karnataka Bank, Kakkalur Branch to freeze the account of Kandaswamy [A1]. Since there was no information from the Branch Manager, he was under the impression that accounts were not frozen and that is why he had not intimated the jurisdictional Magistrate. Now, it appears that the jurisdictional Magistrate has been informed.

7. In view of these developments, this Court cannot pass an order to defreeze the accounts. It is seen that Kandaswamy [A1] is having an account in A/c.No.7832500100028201 with Karnataka Bank, Kakkalur Branch and has been given a locker. It is necessary for the Police to open the locker and take inventory of the articles and produce the same before the jurisdictional Magistrate. Kandaswamy [A1] should also be permitted to operate his bank accounts, because undue prejudice will be caused to him, if his bank account remains frozen, inasmuch as he may not be able to pay the electricity bill, credit card bill etc.

8. To strike a fine balance, this Court directs the Branch Manager, Karnataka Bank, Kakkalur Branch, Tiruvallur District to deposit the amount standing in the credit of Kandaswamy's bank A/c.No.7832500100028201 in Crime No.315 of 2016 before the District Munsif-cum-Judicial Magistrate Court, Sriperumbudur within two weeks from the date of receipt of a copy of this order. On such deposit, the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur is directed to redeposit the amount in any nationalised bank, so that the amount accrues interest.

9. Thereafter, liberty is given to the petitioner to file an application under Section 451 Cr.P.C. before the District Munsif-cum-Judicial Magistrate, Sriperumbudur for interim custody of the amount by giving satisfactory explanation that the said amount is not connected to the proceeds of the crime. On such application being filed, the same shall be dealt with

by the learned Magistrate in accordance with law. The Investigating Officer is directed to approach the bank and take inventory of the articles in the locker, photographs of them in the presence of an official of the bank and intimate the same to the jurisdictional Magistrate. The petitioner will be entitled to operate his savings bank A/c.No.7832500100028201, after the amount standing in the account is transferred to the file of District Munsif-cum-Judicial Magistrate in Crime No.315 of 2016.

With the above direction, this petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gva

To

1.The District Munsif-cum-Judicial Magistrate,
Sriperumbudur.

2.The Inspector of Police,
Oragadam Police Station.

3.The Manager,
Karnataka Bank,
Thiruvallur Branch,
Thiruvallur 602 001.

4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Suresh, Advocate Sr.No.44869

VBA(CO)

sm:19.7.2018

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