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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2018

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THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.29298 of 2017

S.Balaji

...Petitioner

vs.

1. The Inspector of Police,
District Crime Branch,
Vellore,
Vellore District.

2. The Manager
State Bank of India,
Jolarpettai Branch,
Thirupathur,
Vellore District.

3. The Inspector of Police,
Jolarpettai Police Station,
Vellore, Vellore District.

... Respondents

(R3 impleaded as per the order
dated 13.02.2018 in Crime.No.1922/2018
in Crl.O.P.29298/2017)

Criminal Original Petition filed under Section 482 Cr.P.C.
seeking to direct the 1st respondent to unfreeze the amounts of
the petitioner in turn direct the 2nd respondent dispose of the
same to the petitioner within stipulated period.

For petitioner : Mr.M.Sathish Kumar

For R1 to R3 : Mrs.Kritika Kamal.P
Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed to direct the
1st respondent to unfreeze the amounts of the petitioner and in
turn direct the 2nd respondent to dispose of the same to the
petitioner within stipulated period.



2. It is the case of the petitioner that he holds a degree in B.E (EEC); that he was in search of a job; that he came across a job vacancy in the Internet in ABDEB company based in Canada; that he contacted one Alex & William over phone; that they conducted interview over phone and told the petitioner that he will be given a job if he deposits Rs.4,50,000/-; accordingly, he sent Rs.3,00,000/- on 03.11.2011 by account transfer to Matheswari Abrishivi in Ahamedabad Account No.11269968837, State Bank of India, Ambamata Branch from the account of his mother Manimegalai in State Bank of India, Jolarpettai Branch; that he sent Rs.1,40,000/- on 25.11.2011 from his own account in State Bank of India, Jolarpettai Branch to the account of one Harshad Jain in Bhopal, Account No.20108007744 of State Bank of India, Bhopal Branch; that later he learnt that he has been cheated; that he gave an on-line complaint on 05.12.2011 to the Superintendent of Police, Vellore which has been forwarded to the District Crime Branch, Vellore for enquiry; that based on the on-line complaint, the District Crime Branch, Vellore directed the Manager, State Bank of India, Jolarpettai branch to freeze the Bank Accounts of Matheswari Abrishivi and Harshad Jain, in State Bank of India, Ambamata Branch and State Bank of India, Bhopal Branch respectively; that accordingly the Manager, State Bank of India, Jolarapatai Branch informed the Manager, Ambamata Branch and Bhopal Branch to freeze the two accounts; that accordingly the two said accounts have been frozen; that a sum of Rs.81,969.05 is lying in Ambamata branch and Rs.1,49,410/- is lying in Bhopal Branch have been frozen; that however the police have not registered any F.I.R. on the complaint given by the petitioner; that the petitioner filed Crl. O.P.No.29325 of 2017 for a direction to the District Crime Branch, Vellore to register the F.I.R.; that this Court by order dated 09.03.2018 in Crl.O.P No.29325 of 2017 has directed the police to look into the complaint and register the F.I.R., if it discloses the commission of cognizable offence; that the petitioner has filed the present petition with the following prayer :

" Hence it is humbly prayed that this Hon'ble Court may be pleased to direct the 1st respondent to unfreeze the amounts of the petitioner in turn direct the 2nd respondent dispose of the same to the petitioner within stipulated period and thus render justice."

This Court is unable to understand the above prayer of the petitioner.

3. Mr.M.Sathish Kumar, learned counsel for the petitioner submitted that the petitioner is asking for a direction to de-freeze the two accounts, namely, the account of Matheswari and the account of Harshad Jain that has been frozen and for a direction to give the amounts lying in the said two accounts to the petitioner.



4. Today Mr.L. Suresh, Grade I Police Constable, who was present in the Court, when questioned as to why the police has not registered any F.I.R. on the complaint given by the petitioner, he produced the case diary, wherein the petitioner has given a letter to the police asking them not to register the F.I.R., though he has obtained orders in CrI.O.P.No.29325 of 2017. On instructions, Mrs.P. Kritika Kamal, learned Government Advocate (CrI. Side) submitted that the petitioner has not produced any original documents in support of his case and therefore the police were handicapped.

5. This Court gave its anxious consideration to the rival submissions. On perusal of the records it is seen that, even without registering the F.I.R., the police have frozen the Bank Accounts of Matheswari and Harshad Jain. In the case of State of Maharashtra vs. Tapas D. Neogi, reported in (1999) 7 SCC 685, the Supreme Court has given the guidelines for freezing the Bank Accounts, wherein the Supreme Court has stated that the police have the power to freeze the Bank Accounts under Section 102 Cr.P.C, in the course of investigation of an offence under Chapter XII of the Code. The investigation under Chapter XII of the Code can commence only when there is registration of F.I.R. under Section 154 Cr.P.C. Therefore, the police have acted beyond their powers and have frozen the two Bank accounts, even without registering a formal F.I.R. If a Bank account is frozen, it is the duty of the police to inform the jurisdictional Magistrate about that. All these have not been done in this case. That apart, the prayer of the petitioner is for a direction to the police to withdraw the amounts, from the accounts of Matheswari and Harshad Jain and pay the amounts to the petitioner which cannot be countenanced. Similarly, the police cannot act on the representation of the petitioner, to delay the registration of the F.I.R. especially when the petitioner had obtained orders from this Court in CrI.O.P. No.29325 of 2017. In Lalita Kumari vs. Government of Uttar Pradesh, reported in (2014) 2 SCC 1, the Supreme Court has held that if a cognizable offence is made out, it is the duty of the police to register an F.I.R.

6. The submission of the Government Advocate, (Criminal Side) that the petitioner has not submitted any credible documents in support of his contention that he had paid the amounts, merits consideration. Interest of justice will be served, if the following directions are issued. :-

- (a) One week time is granted to the petitioner, from the date of receipt of a copy of this order, to submit all the original records to the District Crime Branch, Vellore in support of his allegation;
- (b) If the petitioner fails to submit satisfactory records, it is open to the District Crime Branch, Vellore to close



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- the complaint of the petitioner;
- (c) If the petitioner submit the records, the police shall examine the same and if commission cognizable offence is made out, the police shall register an F.I.R ;
- (d) If no cognizable offence is made out, it is open to the District Crime Branch, Vellore to close the complaint and de-freeze the two accounts of Matheswari and Harshad Jain.
- (e) If an F.I.R is registered, it is open to the police to issue fresh orders for freezing the two accounts of Matheswari and Harshad Jain, by following the procedure laid down by the Supreme Court in the case of State of Maharashtra vs. Tapas D. Neogi, reported in (1999) 7 SCC 685, by informing the Jurisdictional Magistrate about the freezing of the said accounts.

7. This Criminal Original Petition is ordered accordingly.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
District Crime Branch,
Vellore, Vellore District.
2. The Manager
State Bank of India,
Jolarapatai Branch,
Thirupathur, Vellore District.
3. The Inspector of Police,
Jolarapatai Police Station,
Vellore, Vellore District.

+1cc to Mr.K.Chandrasekaran, Advocate, S.R.No.34515

+1cc to Mr.M.Sathish Kumar, Advocate, S.R.No.35730

CrI.O.P. No.29298 of 2017

CS/13/06/18