IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2018

CORAM:

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

W.P. No.1700 of 2018 & W.M.P. Nos.2105 & 2106 of 2018
&
Crl.O.P. No.1544 of 2016

Padmaja Ramachandran ... Petitioner in both W.P. & Crl.O.P.

vs.

1 The State represented by
the Deputy Superintendent of Police
EOW - II Anna Nagar
Chennai 600 040 ... Sole respondent in Crl.O.P.No.1544/2016

2 Government of Tamil Nadu
represented by its Additional Chief Secretary
Home Department
Fort St. George Town
Chennai 600 009 ... Respondents in WP No.1700 of 2018

Prayer in W.P. No.1700 of 2018:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records and quash the impugned order dated 24.08.2017 issued by the second respondent vide G.O. Ms.No.663 of 2017 Home (Police-XIX) Department as being invalid in law.

Prayer in Crl.O.P. No.1544 of 2016:
Criminal Original Petition preferred under Section 482 Cr.P.C. seeking a direction to the respondent to de-freeze the petitioner's Union Bank Savings Bank Account bearing no.395702010007700 in connection with Cr. No.5 of 2015.

For petitioner in both WP & Crl.O.P	Mr. Nithyaesh Natraj
For respondents in W.P.	Mr. T. Elumalai Addl. Govt. Pleader
For respondent in Crl.O.P.	Mrs. Kritika Kamal, P. Government Advocate (Crl. Side)

COMMON ORDER

In view of the inter-connectivity of the issue and also common array of parties, both the writ petition and the criminal original petition are being considered and decided by this common order.

2 The facts in brief leading to the filing of the writ petition are as under:

2.1 On the complaint lodged by one Dr. Ranjith Sindoori, the Inspector of Police, Economic Offences Wing-II, Chennai, registered a case in Cr. No.5 of 2015 on 01.04.2015 under Section 5 of the Tamil Nadu Protection of Interest of Depositors (in financial establishments) Act, 1997 (for short "the TNPID Act") and Section 420 IPC against Helios and Matheson Information Technology Ltd. (for short "Helios and Matheson") (A1) and 6 others.

2.2 The sum and substance of the allegation in the FIR is that Helios and Matheson (A1) had collected deposits from various persons and that the said company had failed to return the same to its depositors.

2.3 During the course of investigation, the police identified 13 bank accounts relating to Helios and Matheson (A1) and submitted a report to the State Government for attaching those accounts under Section 3 of the TNPID Act. Accordingly, the second respondent, by G.O. Ms.No.663, Home (Police-XIX) Department dated 24.08.2017, ordered attachment of the monies lying in the said 13 accounts, including the joint Current Account of Padmaja Ramachandran and her daughter Divya Ramachandran, bearing no.395702010007700 with Union Bank of India, Mylapore Branch, wherein, a sum of Rs.11,62,982.45 is available.

2.4 This writ petition has been filed by Padmaja Ramachandran challenging G.O. Ms.No.663, Home (Police-XIX) Department dated 24.08.2017 insofar as it relates to her account.

3 Heard Mr. Nithyaesh Natraj, learned counsel for the petitioner, Mr.T. Elumalai, learned Additional Government Pleader appearing for the State in the writ petition and Ms. Kritika Kamal, P., learned Government Advocate (Criminal Side) appearing for the State in the criminal original petition.

4 Mr. Nithyaesh Natraj, learned counsel for the petitioner made the following submissions:

i Neither Padmaja Ramachandran nor Divya

Ramachandran has been shown as accused in the FIR in Cr. No.5 of 2015.

ii The amount of Rs.11,62,982.45 lying in Current A/c No.395702010007700 held with Union Bank of India, Mylapore Branch, belongs absolutely to Divya Ramachandran, she having invested the same out of her own personal funds, to substantiate which, Padmaja Ramachandran has filed an affidavit dated 03.07.2018, wherein, at paragraph nos.3 and 4, it has been stated as follows:

> "3. I state that in my union Bank SB Account bearing account No. 395702010007700, an investment in Franklin Templeton Mutual Fund bearing customer folio 17318199 and Account No.1069903940250 for Rs.23,00,000 (Rupees Twenty Three lakhs only) was made on 23.07.2009 from the personal funds of Ms. Divya Ramachandran. Subsequently, on 24.06.2010, another investment in ICICI Prudential Mutual Funds bearing customer folio number 5174653 and application number 1198413 for Rs.10,00,000 (Rupees Ten lakhs only) was made in the same Union Bank account as mentioned above. These investments of Rs.33 lakhs have been made from my daughter's own personal funds and her savings. These monies after gaining interest, re-investment and maturity stands at Rs.46,72,226.44. These monies have been lying idle unable to earn any interest from 2015 onwards because of the actions of the respondent freezing the above mentioned bank account. I have also submitted a statement explaining these facts which may also be treated as part and parcel of the present affidavit.
>
> 4. I again wish to reiterate that these monies have been invested from the personal funds of Ms. Divya Ramachandran. My daughter is a single mother and every rupee is vital and most important for her. It is further pertinent to note that the investments made above were in the year 2009 and 2010 whereas the FIR itself was registered by the first respondent only on 01.04.2015 in Cr. No.5 of 2015 and therefore, there is no ground to attach the monies lying in the bank account mentioned above. I am also advised to state that the first accused company in Cr. No.5 of

2015 has already paid a total amount of Rs.16.31 crores, out of which, a sum of Rs.9.73 crores was paid before passing of the impugned order and that too, on the basis of an order passed by the Division Bench of this Hon'ble Court on 21.04.2017. Therefore, the impugned order passed on 24.08.2017 clearly reflects complete non application of mind because it proceeds on the basis that the financial establishment was not likely to return monies when the factual position is to the contrary which the respondents themselves are aware of. This, by itself, is fodder enough for the impugned order to be quashed insofar as the petitioner and her daughter's joint account is concerned.”

iii The impugned Government Order suffers from non-application of mind, inasmuch as, in the preamble portion of the impugned order, it has been stated as follows:

“AND WHEREAS, the Government are satisfied that the said financial establishment is not likely to return the deposits to the depositors and hence, the Government have to protect the interests of such depositors;

AND WHEREAS, the moveable properties specified in the Schedule to this order are alleged to have been produced by the said financial establishment from and out of the deposits collected from the depositors.”

the aforesaid averment clearly falls foul of the order dated 21.04.2017 passed by the Division Bench of this Court in O.S.A. No.19 of 2016, wherein, this Court has permitted the repayment scheme to the depositors of Helios and Matheson (A1) and has observed as under:

“Admit. Notice.

In the affidavit filedby Shri. G.K. Muralikrishna, the Managing Director of M/s. Helios and Matheson Information Technology Limited, Chennai, in para no.11, the repayment schedule proposed before the learned Single Judge has been reiterated. The first step, in that direction, was to effect payment of Rupees 2.65 crores within three months and Rupees 13.54 crores within twelve months and another sum of Rs.13.54 crores within eighteen months and the balance within next 24 months.

2. To find out the bona fides behind the Scheme, we permit the Managing Director to make the first payment of Rupees 2.65 crores and report compliance thereof, by 21st July 2017."

iv Pursuant to the aforesaid order, Helios and Matheson (A1) has, so far, deposited into this Court, a total sum of Rs.16.31 crores vide demand drafts drawn in the name of the Registrar General of this Court, as per details below:

S.No.	Date of deposit	Particulars of payment	Amount (Rs.)
1	28.10.2015	Affidavit filed in Crl.O.P. 11760 of 2015 (as per the respondent police)	88,00,000
2	06.11.2015	DD No.302529	5,00,00,000
3	06.11.2015	DD No.920827	50,00,000
4	19.11.2015	DD No.749871	25,00,000
5	19.11.2015	DD No.749872	25,00,000
6	31.10.2016	State Bank of India DD No.75143	20,00,000
7	15.06.2017	Bank of Maharashtra DD No.472461	90,00,000
8	15.06.2017	Bank of Maharashtra DD No.472462	90,00,000
9	15.06.2017	Bank of Maharashtra DD No.472463	20,00,000
10	22.06.2017	State Bank of India DD No.385572	17,00,000
11	23.06.2017	Axis Bank DD No.002656	23,00,000
12	30.06.2017	State Bank of India DD No.752353	25,00,000
13	09.10.2017	HDFC Bank DD No.011882	12,00,000
14	30.0.2017	Payment made to Registrar	12,00,000
15	05.04.2018	Payment made to Registrar, High Court	6,34,00,000
Total			16,31,00,000

therefore, when Helios and Matheson (A1) was prepared to accept the repayment scheme before the Division Bench and had agreed to make an upfront payment of Rs.2.65 crores on 21.04.2017, the observation in the impugned Government Order that Helios and Matheson (A1) is not likely to return the deposits to the depositors is indeed erroneous.

v Divya Ramachandran is a single mother with a daughter she having been deserted by her husband, on account of which, she is struggling to make her both ends meet.

5 Per contra, the police have filed a counter affidavit dated 29.06.2018 justifying the attachment of the said account of the petitioner and tracing the power to Section 3 of the TNPID Act. The counter affidavit proceeds to explain the huge amount that is due to various depositors of Helios and Matheson (A1). But, there is no answer in the counter affidavit about the contention of the petitioner that even before the attachment order was passed, Helios and Matheson (A1) had submitted to the scheme propounded by the Division Bench by agreeing to deposit Rs.2.65 crores upfront.

6 The issue to be decided is whether the petitioner has produced sufficient evidence to show that the sum of Rs.11,62,982.45 lying in Current A/c No.395702010007700 held with Union Bank of India, Mylapore Branch, belongs to her and daughter. Materials have been produced before this Court to show that Divya Ramachandran, the petitioner's daughter, had made investments in two mutual funds, viz., (1) for Rs.10 lakhs in ICICI Prudential Mutual Fund on 24.06.2010 and (2) for Rs.23 lakhs with Franklin Templeton Investments on 23.07.2009. On the maturity of the said two deposits, Rs.11,62,982.45 was transferred to Current A/c No.395702010007700 held with Union Bank of India, Mylapore Branch.

7 The learned Government Advocate (Crl. Side), submitting a statement dated 02.07.2018 purportedly issued by the Chief Manager of Bank of Maharashtra, T. Nagar Branch and relying upon an entry therein, submitted that monies have flown from the account of Helios and Matheson (A1) to the personal account of the petitioner and Divya Ramachandran and that was the reason for which the account was frozen by the police. She also contended that Helios & Matheson (A1) had siphoned off funds into Helios and Matheson Analytics Inc. (A8), from where, monies have flown into the personal account of the petitioner and Divya Ramachandran (A9).

8 Be that as it may, as regards the entry dated 25.08.2011 found in the letter dated 02.07.2018 produced by the learned Government Advocate (Crl. Side), it is to be seen that in this case, the FIR was registered on 01.04.2015 itself. Overwhelming evidence produced by the petitioner shows that from 2009 onwards, Divya Ramachandaran (A9) has been investing monies in fixed deposits with Franklin Templeton Investments and ICICI Prudential Mutual Fund. Viewed from that angle, this Court is unable to persuade itself to agree with the contention of the State that the amount lying in Current A/c No.395702010007700 held with Union Bank of India, Mylapore Branch, belongs to Helios and Matheson (A1).

9 Though there is sufficient force in the submission of the learned counsel for the petitioner that there, prima facie, appears to be infirmity in the Government Order under assail in the writ petition, as pointed above, yet, this Court does not want to give a finding on this aspect, because, that would be taken advantage of by others whose accounts have been frozen.

10 Hence, without going into the aspect as to whether the impugned Government Order is prima facie infirmed, this Court, on facts, comes to the conclusion that the amount lying in Current A/c No.395702010007700 held with Union Bank of India, Mylapore Branch, cannot be attached and accordingly, this writ petition is partly allowed and the impugned Government Order qua entry no.8 relating to Divya Ramachandran alone is hereby quashed and Union Bank of India, Mylapore Branch, Chennai, is directed to permit Padmaja Ramachandran or Divya Ramachandran to withdraw the sum of Rs.11,62,982.45 from the said account. Costs made easy. Connected W.M.Ps. are closed.

In view of the above order passed in the writ petition, the Criminal Original Petition stands allowed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

cad

To

1 The Deputy Superintendent of Police
EOW - II Anna Nagar
Chennai 600 040

2 The Additional Chief Secretary
Home Department
Fort St. George Town
Chennai 600 009

3 The Manager
Union Bank of India
Mylapore Branch
Chennai 600 004

4 The Public Prosecutor
High Court of Madras
Chennai 600 104

+2cc to Mr.NITHYAESH, Advocate, S.R.No.47945
+1cc to the Government Pleader, S.R.No. 48538

Common order in
W.P. No.1700 of 2018
and
Crl.O.P. No.1544 of 2016

NRL(CO)
TR(02/08/2018)