IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2018

CORAM:

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

Crl.O.P. No.14659 of 2018

1.P.Swaminathan
2.P.Manjula
3.P.Divya
4.Thulasidoss .. Petitioners

vs.

1.The State rep.by
The Inspector of Police
Economic Offence Wing
Coimbatore.

2.Jeyakumar

3.The Manager
Tamilnadu Mercantile Bank Ltd
Saravanampatti Branch
S.F.No.312/4, Sathy Road
Saravanampatti
Coimbatore 641 035.

4.The Manager
Federal Bank
Sathy Road
Saravanampatti
Coimbatore 641 035. .. Respondents

Criminal Original Petition filed under Section 482, Cr.P.C. to direct the 1st respondent to defreeze the accounts of the petitioners with regard to Crime No.4 of 2018.

For petitioner Ms.S.Sumathy for S.Ramesh

For R1 Mrs.Kritika Kamal, P.
Government Advocate [Crl.Side]

ORDER

This Criminal Original Petition has been filed to direct the 1st respondent to defreeze the accounts of the petitioners with regard to Crime No.4 of 2018.

2. One Jeyakumar filed a petition in Crl.M.P.No.7118 of 2017 before the Judicial Magistrate No.II, Coimbatore under Section 156(3) Cr.P.C. making certain allegations and on the directions of the learned Magistrate, the Central Crime Branch registered a case in Cr.No.103 of 2017 under Sections 120-B, 406 and 506(i) IPC against Swaminathan [A1], Divya [A2], Manjula [A3] and Tulasidas [A4]. The accused filed anticipatory bail application in Cr.No.103 of 2017 and was granted the relief by this Court on 31.03.2018. Immediately thereafter, the case in Cr.No.103 of 2017 was transferred by the Central Crime Branch, Coimbatore to the Economic Offences Wing, Coimbatore and was re-registered as Cr.No.4 of 2018 and investigation was taken up by the Economic Offences Wing Police. They also altered the FIR and have included Section 5 of the TNPID Act on 23.04.2018. Thereafter, the Economic Offences Wing have frozen 17 accounts of the accused, his family members, and all his business concerns, aggrieved by which, the accused are before this Court.

3. Heard the learned counsel for the accused and the learned Government Advocate [Crl.Side] for the State.

4. The learned counsel for the accused submitted that the accused had merely borrowed money from the de facto complainant and that they had not collected any money from the de facto complainant as deposit and a simple civil transaction has been given a criminal colour by the de facto complainant, pursuant to which, 17 bank accounts of the accused have been frozen.

5. Per contra, learned Government Advocate [Crl.Side] refuted the contentions made by the learned counsel for the accused.

6. This Court gave its anxious consideration to the rival submissions.

7. On a reading of the complaint which forms the basis of the FIR, it is seen that the de facto complainant has alleged that he was introduced to the accused by one Tulasidas [A4]; the accused lured the de facto complainant to deposit in their chit company on the premise of getting 3.25% interest; the de facto complainant gave Rs.3 lakhs on 29.01.2016; Rs.4 lakhs on 19.04.2016; Rs.5 lakhs and Rs.7.50 lakhs by RTGS in May 2017; the de facto complainant joined the group chit for Rs.1 lakh and

remitted amounts periodically; from 2017, the accused did not give interest; the accused issued a cheque for ***Rs.19,50,000/-**, but the same was dishonoured; on 11.08.2017, when the de facto complainant and his friends met the accused, they were threatened and hence, the complaint and the consequent FIR.

8. Apart from this complaint, there is another complaint by one Samudhram, on similar lines. There are no other complaints whatsoever, against the accused alleging that they had run a financial establishment within the meaning of the TNPID Act and have collected deposits and not repaid.

9. Learned counsel for the accused submitted that the accused had financial transactions with the de facto complainant and that it was a simple case of obtaining loan for interest. It is their further contention that the loan was also discharged. However, the de facto complainant was retaining the cheque and therefore, the accused had filed a suit in O.S.No.1165 of 2017 before the Sub Court, Coimbatore on 19.08.2017, much before the registration of the FIR, even praying for a mandatory injunction to the de facto complainant to return the cheque.

10. On a perusal of the case diary, this Court finds that, for the amount received by the accused, they have issued ordinary receipts in the name of Pranu Chits and Finance to the de facto complainant. These receipts do not show that the amount was collected as deposits on the premise of payment of interest. In other words, there is no iota of material to show that the accused were running a financial establishment and were carrying on the business of receiving deposits. It is common knowledge that, when a financial establishment goes on a run, depositors will start thronging and demanding repayment and ultimately, it will result in registration of a case under the TNPID Act by the Economic Offences Wing of the Police.

11. In this case, though the averment in the complaint is to the effect that the accused had collected the money as deposit, the materials so far gathered clearly show that it was a simple civil transaction. Even if it is a case of cheating, the police have the power under Section 102 Cr.P.C. to freeze the bank account of an accused as held by the Supreme Court in State of Maharashtra vs. Tapas D. Neogy [(1999) 7 SCC 685]. However, in this case, 17 bank accounts have been frozen, thereby, completely strangulating the accused economically.

12. Under normal circumstances, this Court would have relegated the accused to approach the concerned jurisdictional Court and seek defreezing. However, when this Court finds that

there are no reasonable grounds to freeze the 17 bank accounts of not only the accused, but also their family members and business concerns, this Court cannot remain a silent spectator. It is common knowledge that we are being exhorted by the Government to go cash free and have all transactions done, either through debit cards, credit cards, Paytm, etc. Even electricity bills and telephone bills are paid by ECS. If such economical strangulation is done, the accused will be put to irreparable loss. Therefore, this Court, in exercise of its extraordinary powers, hereby directs the immediate defreeze of all the 17 bank accounts.

13. It is reported that a total sum of Rs.8,60,000/- is lying in those 17 bank accounts that have been frozen by the first respondent police. The first respondent police is directed to issue a defreezing order to all the 17 banks within one week from the date of receipt of a copy of this order, with further instructions to the banks to deposit the amounts to the credit of Cr.No.4 of 2018 in the Special Court for TNPID Act Cases, Coimbatore. Pending deposit of the amounts by the Bank, the account holders should be permitted to operate the bank accounts with a rider that, they will not be entitled to withdraw any amount lying in the accounts as on the date of the order of the first respondent police. It is made clear that the police cannot take away the amounts that come into the bank accounts after the defreeze. The Special Judge for TNPID Act Cases, Coimbatore, is directed to re-deposit the amount of Rs.8,60,000/- in any Nationalised Bank, so that the amount would accrue interest and the disbursal of the same can be considered at the culmination of the prosecution against the accused.

In fine, this petition is allowed with the above directions.

Sd/-
Assistant Registrar(co)
dt.27.6.2018

*Corrected as per order of this
Court dt.2.7.2018
Sd/-
Assistant Registrar(CS V)
dt.6.7.2018

//True Copy//

Sub Assistant Registrar

gms

To

1.The Inspector of Police
Economic Offence Wing, Coimbatore.

To be substituted to the order already despatched on 28.6.2018

2.The Manager
Tamilnadu Mercantile Bank Ltd
Saravanampatti Branch
S.F.No.312/4, Sathy Road
Saravanampatti
Coimbatore 641 035.

3.The Manager
Federal Bank, Sathy Road
Saravanampatti
Coimbatore 641 035.

4.The Special Judge for TNPID Act Cases
Coimbatore.

5.The Public Prosecutor
High Court, Chennai.

6.The Subordinate Judge, Coimbatore

+1cc to M/s.S.Sugendran, Advocate Sr.No.40216

RSI(CO)
sm:27.6.2018
sm:6.7.2018

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