

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04 .04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.4429 of 2019

Shivanandhan

... Petitioner

Vs.

1.State by Inspector of Police,
Central Crime Branch,
Coimbatore

2.The Manager,
Federal Bank,
Coimbatore Main Branch,
Variety Hall Road,
Coimbatore

3.K.Manickam

...Respondents

(3rd respondent is impleaded as per the order of this Court dated 15.03.2019 made in Crl.M.P.No.3932 of 2019 in Crl.O.P.No.4429 of 2019.

PRAYER:

Criminal Original Petition filed under Section 482 Cr.P.C. praying to direct the second respondent through 1st respondent to defreeze the current account No.10920200042866, Federal Bank, Coimbatore Main Branch, pending in Crime No.52 of 2018 on the file of 1st respondent.

For Petitioner : Mr.Chandrasekar
for Mr.S.N.Arunkumar

For Respondents : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor
For R1

: Mr.A.Rajeshkanna for R3

ORDER

This petition has been filed for direction directing the second respondent through the first respondent to defreeze the current Account No.10920200042866, Federal Bank, Coimbatore Main Branch pending investigation in Crime No.52 of 2018 on the file

of the first respondent.

2. The learned counsel for the petitioner submitted that as against the petitioner, the first respondent registered a case in Crime No.52 of 2018 for the offences punishable under Sections 406, 468, 471 and 506(i) I.P.C. He further submitted that the petitioner approached this Court for anticipatory bail and he was granted anticipatory bail on condition that the petitioner shall deposit a sum of Rs.5 lakhs to the credit of Crime No.52 of 2018 on the file of the first respondent. Accordingly, he complied with the condition and other conditions imposed by this Court in CrI.O.P.No.28876 of 2018 were also duly complied with. While being so, on the request of the first respondent, the second respondent froze the current account No.10920200042866 on 05.02.2019 without issuing any notice to the petitioner. Further he submitted that even after freezing the account, the same was not intimated to the Judicial Magistrate concerned. The first respondent also violated the procedure contemplated under Section 102 Cr.P.C. and therefore prayed for allowing this petition. He further cited the following judgments:

(i) In the case of Padmini Vs. The Inspector of Police, District Crime Branch, Tirunelveli and others reported in 2008 (3) CTC 657.

(ii) In the case of State of Maharashtra Vs. Tapas D.Neogy reported in 1999 (3) CTC 350 and

(iii) In the case of R.Chandrasekar Vs. Inspector of Police, Fair Land Police Station, Salem and another reported in 2002(5) CTC 598.

3. Per contra, the learned Additional Public Prosecutor submitted that the petitioner is the accused and on the request of the first respondent dated 05.02.2019, the account of the petitioner was frozen. He further submitted that the same was duly informed to the learned Judicial Magistrate No.III, Coimbatore as contemplated under Section 102 Cr.P.C. Therefore, he sought for dismissal of this petition as devoid of merits.

4. The learned counsel for the third respondent submitted that the petitioner refused to settle the award amount and as such he lodged complaint. In the anticipatory bail, though he deposited Rs.5 lakhs, there is a payment due more than Rs.20 lakhs. Therefore, on the request of the first respondent, the second respondent rightly froze the account and duly informed to the petitioner and the jurisdictional Magistrate concerned. Therefore, he prayed for dismissal of this petition.

5. Heard, the learned counsel for the petitioner, learned Additional Public Prosecutor appearing for the first respondent and the learned counsel for the third respondent.

6. The petitioner is an advocate and he conducted land acquisition original petition cases. He conducted land acquisition case for the defacto complainant and his brother in which he received compensation. Thereafter, he returned part of the award amount to the defacto complainant. It is also seen that there is a balance amount payable by the petitioner to the defacto complainant and hence there is a complaint. While granting anticipatory bail to the petitioner, this Court imposed a condition that the petitioner shall deposit a sum of Rs.5 lakhs to the credit of Crime No.52 of 2018. Accordingly, he deposited the amount. Even then, there is a disputed due amount more than Rs.20 lakhs payable by the petitioner to the defacto complainant. For the investigation purpose, the first respondent requested the second respondent to freeze the account by his communication dated 05.02.2019. Accordingly the second respondent have frozen the current account No.10920200042866 stands in the name of the petitioner on 05.02.2019.

7. It is also seen from the communication dated 08.02.2019 by the second respondent that the freezing of account has been duly informed to the petitioner. The learned counsel for the petitioner submitted that the first respondent violated the procedure contemplated under Section 102 Cr.P.C. In this regard, he has cited the judgment in the case of Padmini Vs. The Inspector of Police, District Crime Branch, Tirunelveli and others reported in 2008 (3) CTC 657, wherein it is held as follows:

"4. The main contention of the learned counsel for the petitioner is that as required under Section 102 of the Code of Criminal Procedure, it is mandatory for the first respondent to give immediate report to the learned Judicial Magistrate having jurisdiction and also to give notice to the petitioner. Since the same has not been done in this case, according to the learned counsel, the proceedings of the first respondent, freezing the Bank Accounts of the petitioner are liable to be quashed.

5. The learned counsel relies on a judgment of this Court in R. Chandrasekar v. Inspector of Police, Salem and another, 2002 (5) CTC 598: 2003 Cri.L.J 294, and another judgment of this Court in B. Ranganathan v. State and others, 2003 Cri.L.J. 2779.

6. In the former judgment, a learned Judge of this Court in paragraph 11 has held as follows:

"The respondents/Police has also not followed the mandatory requirements of Section 102 of the Code of Criminal Procedure. The Police Officer shall forthwith report the same to the Magistrate and also give notice to the petitioner and allow him to operate

the Bank Account subject to executing a bond undertaking to produce the amount in Court, as and when required as contemplated in Clause 3 of Section 102, but not given any such notice. Even the copy of prohibitory order was not served to the petitioner."

7. In the latter judgment, a learned Judge in paragraph 21 has held as follows:

"Yet another legal aspect pointed out on the part of the petitioner by his counsel is the procedure that is to be adopted on seizure of Bank Account. In case of seizure of a Bank Account, the Police Officer should do two things; he should inform the concerned Magistrate forthwith regarding the prohibitory order. He should also give notice of the seizure to the accused and allow him/her to operate the Bank Account subject to his/her executing a bond undertaking to produce the amounts in Court as and when required or to hold them subject to such orders as the Court may make regarding the disposal of the same. An order under Section 102, without doing so is liable to be set aside, as held in Ms. Swaran Sabharwal v. Commissioner of Police, 1988 Cri.L.J. 241 (Delhi). This procedure that is to be followed and felt mandatory has also not been followed by the first respondent."

8. The learned Government Advocate (Criminal Side) would fairly concede that no such report was given to the learned Magistrate as required under Section 102 of the Code of Criminal Procedure and no notice was also issued to the petitioner. Since it has been well settled by this Court in the above two judgments that in case where such mandatory provision has not been followed, then the entire proceeding is liable to be quashed."

8. In the above case, this Court has held that the procedure contemplated under Section 102 Cr.P.C. had not been complied with. After freezing the account, such a report was not sent to the learned Judicial Magistrate-III, Coimbatore as required under Section 102 Cr.P.C. and no notice was also issued to the petitioner. In the case on hand, by the communication dated 22.02.2019, the first respondent after freezing the account of the petitioner, duly informed to the jurisdictional Magistrate namely, the learned Judicial Magistrate No.III, Coimbatore about the freezing of the account and informed that the petitioner's account has been freezed on account of the investigation in Crime No.52 of 2018. The said communication was also duly received by the learned Magistrate on 25.02.2019. It is also seen that the second respondent have freezed the

account of the petitioner on the request made by the first respondent dated 05.02.2019 and the same has been duly informed to the petitioner by communication dated 08.02.2019. Therefore, the first respondent duly followed the procedure contemplated under Section 102 Cr.P.C. Therefore the above judgement cited by the petitioner is not helpful to his case as such this Criminal Original Petition is devoid of merits.

9. Accordingly, this Criminal Original Petition is dismissed.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

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To

1. The Inspector of Police,
Central Crime Branch,
Coimbatore
2. The Additional Public Prosecutor,
High Court of Madras
3. The Judicial Magistrate III
Coimbatore
4. The Manager,
Federal Bank,
Coimbatore Main Branch,
Variety Hall Road,
Coimbatore

+1 CC to Mr.A.Rajeshkanna, Advocate sr 32832.

+1 CC to Mr.S.N.Arunkumar, Advocate sr 32901.

Cr1.O.P.No.4429 of 2019

PP(CO)
SP(05/04/2019)

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