

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2019

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.9457 of 2019

Raghul

... Petitioner

Vs.

1. State of Tamilnadu,
Rep by Inspector of Police,
C.C.B., Egmore,
Chennai.

2. HDFC Bank,
Rep. by the Branch Manager,
No.2, P.S.Sivasamy Salai,
Mylapore,
Chennai.

.... Respondents

Prayer : Criminal Original Petition filed under section 482 of Criminal Procedure Code, to direct the respondent No.2 to defreeze the Bank Account No.03231610011735 of the petitioner.

For Petitioner : Mr.L.Sriram
for M/s.Chennai Law Firm

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

O R D E R

This Criminal Original Petition has been filed to direct the 2nd respondent to defreeze the Bank Account No.03231610011735 of the petitioner.

2.The learned counsel for the petitioner would submit that the petitioner was holding a salary Account in No.03231610011735 with the 2nd respondent/HDFC Bank, which was freezed by the 1st respondent on 30.08.2018. Therefore, the petitioner was denying to access the account and to receive his salary. The petitioner is an accused in Crime No.309 of 2018, registered for the offence under Section 406 and 34 of IPC.

3. On perusal of the records, it is seen that, the 1st respondent did not comply the provisions as contemplated under Section 102 of Cr.P.C. The provisions under Section 102 of Cr.P.C is extracted here under:-

"(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the Commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be, conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same"

4. As per the said provision, admittedly, the respondents did not comply the provisions as contemplated under Section 102 of Cr.P.C. After freezing the account of the petitioner, no notice has been served to the petitioner as contemplated under the provisions of under Section 102 of Cr.P.C. Further, as per the Section 102(3) of Cr.P.C, the 1st respondent have to inform the freezing of the account to the concerned Jurisdictional Magistrate by the written communication. In the case on hand, the 1st respondent did not inform the same with the concerned Jurisdictional Magistrate and as such the entire proceedings are vitiated.

5. In this regard, the learned counsel for the petitioner also relied upon the Judgment reported in 1997(7) SCC 685 in the case of State of Maharashtra Vs. Tapas D. Neogy and another Judgment of this Court reported in 2003 CrL.L.J 2779 in the case of B. Ranganathan Vs. State and Others. The relevant portion of the Judgement is extracted here under:-

"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."

6. Accordingly, the proceedings of freezing the account of the petitioner is cannot be sustained. Therefore, the proceedings initiated by the 1st respondent is vitiated. Hence, the 2nd respondent is directed to defreeze the bank account No.03231610011735 forthwith and the petitioner is permitted to access his account.

7. However, the 1st respondent is at liberty to proceed with the enquiry in Crime No.309 of 2018. With the above said direction, this Criminal Original Petition is disposed of.

Sd/-
Assistant Registrar (AD-IV)

//True Copy//

Sub Assistant Registrar

vv2

To

1. The Inspector of Police,
C.C.B., Egmore,
Chennai.
2. The Public Prosecutor,
High Court, Madras.

+2 ccs to M/s.Chennai Law Firm, Advocate, S.R.No.43059

Cr1.O.P.No.9457 of 2019

RSI (CO)
SSM(29/05/2019).

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