IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2019

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

W.P.No.6906 of 2014

N.K.Rani .. Petitioner

Vs.

1. The Joint Director
   Central Bureau of Investigation
   Banks Securities and Fraud Cell
   36, II Floor, Bellary Road
   Ganga Nagar
   Bangalore - 560 032.
2. The Banking Ombudsman
   Reserve Bank of India
   RBI Building
   II Floor, Rajaji Road
   Chennai - 1.
3. The Branch Manager
   Canara Bank
   96, Perundurai Road
   Erode - 11. .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the 1st respondent to unfreeze the petitioner's fixed deposit account No.3028332000027 maintained in the 3rd respondent bank and direct the 3rd respondent to disburse the matured fixed deposit amount of Rs.10,00,000/- with accrued interest relating to deposit No.08/RDNI-585970 dated 31.12.2010 by considering the representation dated 28.09.2013, 07.11.2013 and 03.01.2014.

For petitioner : Mr.N.Manokaran

For 1st Respondent : Mr.K.Srinivasan
Special Public Prosecutor (CBI)

For 3rd Respondent : Mr.R.Umasuthan

ORDER

The writ petition has been filed seeking for Mandamus, directing the 1st respondent to unfreeze the petitioner's fixed deposit account No.3028332000027 maintained in the 3rd respondent bank and direct the 3rd respondent to disburse the matured fixed deposit amount of Rs.10,00,000/- with accrued interest relating to deposit No.08/RDNI-585970 dated 31.12.2010 by considering the representations dated 28.09.2013, 07.11.2013 and 03.01.2014.

2.The learned counsel for the petitioner would submit that the petitioner had deposited a sum of Rs.10 lakhs on 31.12.2010 in the 3rd respondent Bank for a period of 33 months and that the fixed deposit got matured on 01.10.2013, thereafter the petitioner had approached the 3rd respondent to get back the matured deposit amount by surrendering the original deposit receipt and that after receiving the fixed deposit receipt the 3rd respondent denied the payment of deposit amount with accrued interest and that the Bank has also refused to return back the original fixed deposit receipt. Thereafter the petitioner had made a complaint with the 2nd respondent stating that the 3rd respondent had refused to refund the matured deposit amount and the petitioner also sent reminder to the 2nd respondent.

3.In the meantime, the 2nd respondent has sent a letter dated 03.12.2013, informing that the Bank account had been freezed as per the instructions of the 1st respondent. He would further submit that later the petitioner came to understand that the 1st respondent had registered a case against her son viz., Sathish Kumar on 11.04.2011. He would also submit that the petitioner had no nexus or connection with the alleged crime stated to have been commited by her son and that the amount lying in the fixed deposit are from and out of the legal earnings of her husband late.Namasivayam, who was employed as a Manager in Erode Tex at Erode for 33 years and he retired on 30.06.2003. He would further submit that her husband received his service benefits and died on 18.05.2010 and that the petitioner's husband had handed over all his savings to the petitioner prior to his death and it was deposited in the 3rd respondent Bank on 31.12.2010, and that the petitioner had produced all relevant documents to prove the same that the amounts were acquired out of legal earnings and savings of her husband. The learned counsel would further submit that the 1st respondent did not follow the procedure contemplated under Section 102 Cr.P.C., for freezing the account and thereby, since the procedure adopted was illegal the petitioner had sent representations to the respondents to defreeze the account whereas, the 1st respondent had not taken any steps to defreeze the account. Thereby, the petitioner had approached this Court by way of this writ petition.

4.The learned counsel for the petitioner would rely on the judgments of this Court in the case of T.Subbulakshmi and another Vs. Commissioner of Police, Chennai - 8 reported in

(2013) 4 MLJ (Crl) 41 and R.Sivaraj and another Vs.State rep. By Inspector of Police, District Crime Branch, Salem, reported in (2013) 4 MLJ (Crl) 152, and would submit that the act of the Investigating Officer in not following the procedure contemplated under Section 102 (3) Cr.P.C., and not reporting the same to the Magistrate is illegal and would seek for defreezing of the accounts.

5.The 1st respondent- CBI, Bangalore had filed counter objections, wherein specific allegations have been made at para 5, 8, 9, 10 and 11, which are extracted hereunder:

> "5.It was revealed during investigation that, Shri M.N.Satish Kumar (A3) son of the petitioner and Shri K.Navaneetha Krishnan (A2) visited Canara Bank, Currency Chest, Erode, TN on 03.12.2010 and received Rs.2.50 Crores cash from Shri M.Divakaran (A1). On 04.12.2010, Shri M.N.Satish Kumar (A3) son of the petitioner visited the Canara Bank, Talavady Branch and signed on the rear side of the cheque of Rs.2.50 Crores of M/s Suncity India Developers for having received the cash.
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> 8.The averments made vide para No.4(page No.2 of the petition) is without appreciating the facts. That, the husband of the petitioner has died on 18.05.2010 and stated to be deposited the savings after the seven months after he died i.e., 31.12.2010. It is disclosed during the investigation that Shri M.N.Satish Kumar (A3) son of the petitioner collected defrauded amount of Rs.2.50 Crores from A1 and A2 on 03.12.2010.
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> 9.The accused Shri M.N.Satish Kumar (A3) had remitted the money in cash to the SB Account of his Mother-Smt N.K.Rani on 31.12.2010 and on the same day, the term deposit of Rs.10,00,000/- has been created by transfer from the SB account in the name of Smt N.K.Rani.
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> 10.The averments made vide para 5 to 10 are without appreciating the facts, Shri M.N.Satish Kumar (A3) son of the petitioner had not disclosed anything about the source of deposit of Rs.10,00,000/- to the Investigation agency which was deposited at Canara Bank, Perundurai Branch, Erode, TN. Hence, the respondent No.1 wrote a letter to the Branch Manager of the Canara Bank to freeze the deposit account till further advice. The criminal conspiracy of Shri M.N.Satish Kumar (A3) son of the petitioner is already well explained at para No.3 to 5 above. Therefore, the

plea taken by the petitioner is not correct.

11.Charges in the case were framed on 30.10.2017 including accused Shri M.N.Satish Kumar (A3) the son of the petitioner. The case is at the stage of evidence and one witness has been examined. Since, the deposits were made out of the proceeds of the crime and the case is pending trial, the request of the petitioner could not be accepted at this stage."

6.Further, the learned Special Public Prosecutor for CBI Cases would submit that on verification from records, it is found that no intimation as per Section 102 (3) Cr.P.C., has been received by the Court before freezing and after freezing the account.

7.The learned counsel appearing for the 2nd respondent would submit that they have received only communication from the Investigating Officer, CBI, Bangalore, dated 13.06.2011 to freeze the account of the petitioner. Except the communication from the Investigating Officer, they have not received any orders from the Court.

8.On perusal of the documents and statements in the counter, it is seen that no intimation has been made to the trial Court about the account of the petitioner being freezed. As an abundant caution, this Court had also called for report from the learned II Additional District Judge (CBI Cases), Coimbatore (FAC) and he has sent the report dated 01.03.2019, wherein he had stated that no petition has been filed under Section 102 Cr.P.C., in R.C.2(E)/2011 in C.C.5/2012 for freezing the account of the petitioner, bearing account number.3028332000027 in Canara Bank, Perundurai Branch, Erode.

9.Section 102 Cr.P.C., deals with the power of police officer to seize certain property and prescribes the procedure regarding seizure of property. This Hon'ble Court after relying and analysing various earlier decisions of the Hon'ble Apex Court as well as this Court, has in the Judgment reported in (2013) 4 MLJ 41, held as follows:-

"27.From the dictum laid down in the judgments relied on by the learned senior counsel for the petitioners it is clear that the bank account is a property within the meaning of Section 102 of Cr.P.C., and sub-section (3) of Section 102 requires the reporting of seizure of the property to the concerned Magistrate forthwith, which is mandatory in nature. Moreover, the freezing of bank account is an act of the investigation and therefore, the duty is cast upon the Investigating Officer under Section 102(3) of Cr.P.C., to report the same to the Magistrate, since the freezure of the bank account prevents the person from operating the bank account pursuant to an investigation by the Police in a criminal case registered against him. If there is any violation in following the procedures under Section 102 of Cr.P.C., the freezing of the bank account cannot be legally sustained. Since in the case on hand the 2nd respondent-Police has not reported the freezing of the bank accounts of the petitioners herein to the concerned Magistrate forthwith, which is mandatory under Section 102(3) of Cr.P.C., the proceedings of the 2nd respondent-Police in freezing of the bank accounts of the petitioners herein are not legally sustainable."

10.In this case on hand, though the Investigating Officer by letter No.DPBSB2019/3/2/E/2011-CC No.5/2012-TC File/1042 dated 22.02.2019 has stated that there is suspicion with regard to the deposit made, he had further stated that no other record of intimation to Court is available on records. This Court had called for a report from the trial Court viz., II Additional District Judge, (CBI Cases), Coimbatore (FAC) and by letter dated 01.03.2019, the learned trial Judge had stated that no petition under Section 102 Cr.P.C., has been filed for freezing the account of the petitioner.

11.From the above, it is clear that the freezing of the account had been done without following the procedure contemplated under Section 102 Cr.P.C., and thereby freezing of the account of the petitioner by the 3rd respondent on the instruction of the 1st respondent cannot be legally sustained.

12.In view of the same, the writ petition stands allowed and the communication of the 1st respondent in No.RC-2(E)/2011/CBI/BS&FC/BLR dated 13.06.2011 for freezing the bank account of the petitioner is hereby quashed. The petitioner is at liberty to operate the account bearing No.3028332000027 in Canara Bank, Perundurai Branch, Erode. However, it is made clear that since the present order of quashing is done of technical ground, the Investigating Officer is at liberty to initiate proceedings in accordance with law after following the procedures.

Sd/-
Assistant Registrar(CS VI)

//True Copy//
Sub Assistant Registrar

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To

1. The Joint Director
   Central Bureau of Investigation
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4. The Special Public Prosecutor
   High Court of Madras.

+1 cc to Mr.N.Manokaran, Advocate Sr.No.24364

W.P.No.6906 of 2014

UD(CO)
CSL/09.04.2019