



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P. (MD)No.15534 of 2014

and

M.P. (MD)No.2 of 2014

WEB COPY

1.A.Chandrasekaran (Died)

2.Tamizharasi

3.Amalarajam

4.Nepoleon

5.Stalin

... Petitioners

(P2 to P5 are substituted as LR's of the deceased P1 vide order dated 03.10.2019 made in W.M.P.(MD)No.17679 of 2019 in W.P.(MD)No.15534 of 2014 by G.R.S.J.,)

Vs

1.The Superintendent of Police,
Tuticorin District,
Tuticorin.

2.The Inspector of Police,
South Police Station,
Tuticorin District, Tuticorin.

3.The Branch Manager,
Tamilnad Mercantile Bank,
Alankulam Branch,
Tirunelveli District,
Tirunelveli.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari Mandamus, to call for the entire records pertaining to the communication dated 01.07.2014 sent by the 2nd respondent and quash the same and consequently direct the 3rd respondent to allow the petitioner to operate the savings bank account hold by the petitioner vide Account No.040100050041068.

For Petitioners : Mr.T.Cibi Chakraborty

For Respondents : Mr.A.Robinson

Govt. Advocate (Crl. Side) for R1 & R2

: Mr.Palaramasamy for R3



ORDER

The original petitioner namely., Thiru.A.Chandrasekarn felt aggrieved by the freezing of his bank account by the Inspector of Police, South Police Station, Tuticorin District. The original writ petitioner was having one daughter and two sons. One of the sons namely., Napoleon came to be implicated in a string of theft cases. The first case in which he was implicated is Crime No.733 of 2010 registered on 26.09.2010. Based on his confession, he was shown as accused in a number of cases that were registered in the year 2011-2012. Napoleon is said to have confessed to the investigating officer that he had passed on the fruits of crimes to his father, who had deposited the same in the form of money in the petition mentioned bank account. Thereupon, the investigating officer wrote a letter to the Branch Manager, Tamilnad Mercantile Bank, Alankulam Branch, Tirunelveli District, for freezing the same. Bank officials froze the original writ petitioner's bank account, pursuant to the communication of the investigating officer.

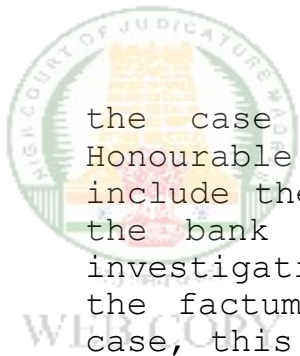
2.Thiru.A.Chandrasekarn submitted a representation dated 27.08.2012, seeking de-freezing of his bank account. Since, the investigating officer did not comply with his request, he filed W.P.(MD)No.12751 of 2012 before this Court. This Court by order dated 07.04.2014, directed the investigating officer to pass orders on his request. Pursuant to the direction given by this Court, the impugned order came to be passed by the investigating officer, declining to defreeze the bank account of the original writ petitioner in view of the pendency of investigation. The same is under challenge in this writ petition has been filed.

3.Heard the learned counsel on either side.

4.The petitioner's counsel would assail the action of the prosecution by citing two points. He would first contend that there was failure on the part of the investigating officer to report to the Jurisdictional Magistrate immediately after the action of the freezing of bank account was done. He would also on merits point out that the original writ petitioner was a retired government employee and that he had his own independent source of income and that the amount found in the petition mentioned bank account does not represent the fruits of crime but that they were his self-earned income.

5.During the pendency of this proceeding, Mr.A.Chandrasekaran passed away and his legal heirs have come on record.

6.From the materials on record, it is evident that the report to the Jurisdictional Magistrate was not submitted after the freezing action was resorted to. Section 102(3) of Cr.P.C., states that every police officer seizing a property shall forthwith report the seizure to the Jurisdictional Magistrate. It has been held in



the case of **State of Maharashtra vs. Tapas D. Neogy**, by the Honourable Supreme Court that the expression "property" would include the money in the bank account also. Therefore, freezing of the bank account is not without jurisdiction. But then, the investigating officer was statutorily obliged to report forthwith the factum of seizure to the Jurisdictional Magistrate. In this case, this statutory obligation has not been complied with.

7. The Principal Seat of this Court in **Crl.O.P.Nos.13103 to 13105 of 2013, (T.Subbulakshmi and others Vs. The Commissioner of Police, Egmore, Chennai - 8 and another)**, dated 30.08.2013, held that failure on the part of the police to report the freezing of the bank account to the concerned Magistrate forthwith would render it vulnerable. Since, in this case this mandatory obligation set out under Section set out in Section 102(3) of Cr.P.C., has not been complied with, the action of the investigating officer in freezing the account cases to be legally sustainable.

8. The petitioner has enclosed in the typed set of papers his bank pass book and the statement of accounts. It can be seen therefrom that long before the registration the First Information Reports question and arising of the of the cause of action, Chandrasekaran's bank account boasted of a sum of Rs.4,14,000/-. Therefore, the case of the prosecution that the amount found in the original petitioner's bank account represents the fruits of crime cannot be accepted. This Court can understand, if there has been a quantum leap in the bank account of the original writ petitioner. That is not the case here. Even when the freezing was done, it had only a sum of Rs.5,19,378/-. Therefore, the case of the prosecution that the bank account the original writ petitioner represents the fruits of crime does not carry any conviction or credibility. In this view of the matter, the respondents are directed to de-freeze the petition mentioned bank account and the writ petitioners, who have now come on record are at liberty to operate the same. The proceedings of the second respondent impugned in this writ petition stands quashed and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

Sub Assistant Registrar (CS)



To:

1.The Superintendent of Police,
Tuticorin District,
Tuticorin.

2.The Inspector of Police,
South Police Station,
Tuticorin District, Tuticorin.

3.The Branch Manager,
Tamilnad Mercantile Bank,
Alankulam Branch,
Tirunelveli District,
Tirunelveli.

+1 CC to M/s.T.CIBI CHAKRABORTHY, Advocate (SR-96285[F] dated
06/11/2019)

W.P. (MD) No.15534 of 2014

05.11.2019

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