IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2020

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THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.4661 of 2020

Rasu @ Ulagasami Durai ... Petitioner

Vs.

1.State Rep by its
The Inspector of Police,
District Crime Branch,
Coimbatore District.
(Crime No.27 of 2019)

2.The Branch Manager,
State Bank of India,
Samalapuram,
Coimbatore.

3.The Branch Manager,
City Union Bank,
Kodangipalayam,
Trichy Road, Karnampettai,
Tiruppur.

4.The Branch Manager,
Indian Overseas Bank,
Trichy Road,
Sulur, Coimbatore - 641 402.

5.The Branch Manager,
Canara Bank,
Karnampettai,
Thiruppur ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to direct the respondents to defreeze the account No.30528325744 at State Bank of India, Samalapuram Branch, Coimbatore, Account No.500807210002668 City Union Bank, Kodangipalayam Branch, Coimbatore and Account No.016101000015690 Indian Overseas Bank, Sulur Branch, Coimbatore , Account Nos.3453101001942, 3453201000012, Canara Bank, Karnampettai Branch, Coimbatore, relating to the Crime No.27 of 2019, on the file of the 1st respondent police.

For Petitioner : Mr.I.Abrar Mohamed Abdullah

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

ORDER

This Criminal Original Petition has been filed seeking a direction to direct the respondents to defreeze the account Nos.30528325744 at State Bank of India, Samalapuram Branch, Coimbatore, Account No.500807210002668 City Union Bank, Kodangipalayam Branch, Coimbatore and Account No.016101000015690 Indian Overseas Bank, Sulur Branch, Coimbatore , Account Nos.3453101001942, 3453201000012, Canara Bank, Karnampettai Branch, Coimbatore, relating to the Crime No.27 of 2019, on the file of the 1st respondent police.

2. On the complaint lodged by the defacto complainant a case has been registered in Crime No.27 of 2019, for the offences under Sections 406, 420 r/w 34 of IPC, in which, the petitioner is arrayed as A1. In pursuant to the registration of the FIR, the first respondent freezed the account belonging to the petitioner herein. While freezing the account, the first respondent ought to have followed the procedures contemplated under Section 102(3) of Cr.P.C. In the case on hand, admittedly, the first respondent freezed the account after registering the FIR as against the petitioner and thereafter, the report of seizure ought to have been sent to the concerned Jurisdictional Magistrate. The procedure contemplated under Section 102(3) of Cr.P.C extracted for convenience:

> "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 [or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation], 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]."

3. In the case on hand, admittedly, the first respondent did not follow the procedure contemplated under Section 102(3) Cr.P.C. The first respondent did not inform about the freezing of the account of the petitioner to the concerned Jurisdictional Magistrate. Thus, the freezing of the account of the petitioner is illegal and it requires to be defreezed .

4. In this record, it is also relevant to rely upon the judgment of this Court reported in 2013 SCC Online Mad 2826 in A.K.Ashokan Vs The State rep by the Sub Inspector of police, M.4 Police Station, Red hills, Chennai - 52, and this Court has held as follows:

> 11. In STATE OF MAHARASHTRA V. TAPAS D.NEOGY [1999 (3) CTC 350 (SC)], it was held that the bank account is the property capable of seizure thus, for the purpose of investigation, if it has some bearing on the crime reported, the investigating officer can seize it under Section 102 of Cr.P.C by serving a prohibitory order on the bank to freeze the bank account, prohibiting the (accused)/account holder from operating the account. [Also see: SWARN SABHAR WAL V. COMMISSIONER OF POLICE (1998 Cr.L.J 241), RAJAMANI V. INSPECTOR OF POLICE, SALEM, (2003 Cr.L.J., 2902) and RANGANATHAN V. STATE (2003 Cr.L.J.2779)]
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> 12. Section 102(1) describes the categories of properties to be sized. When an Officer subordinate to the SHO seized them, he must report his seizure to his superior. Section 102(3) mandates that every seizure of property under Section 102 (3) of Cr.P.C shall be reported to the Jurisdiction Magistrate.
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> 13. For the purpose of Section 102(1) of Cr.p.C cash on hand and cash at bank in bank account are properties.
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> 14. In R.CHANDRA SEKAR V. INSPECTOR OF POLICE, SALEM [2002 (5) CTC 598], it was

held that seizure of bank account by the Investigating officer must be reported to the Magistrate as it is a mandatory requirement of law.

15. In Dr.SHASHIKANT D.KARNIK V. STATE OF MAHARASHTRA [2008 CRL.L.J. 148], it was held that seizure of property under Section 102 of Cr.P.C has to be reported to the Magistrate.

16. CHANDRASEKAR (supra) was subsequently followed in PADMINI v. THE INSPECTOR OF POLICE, DCB, TIRUNELVELI [2008 (3) CTC 657].

17. In VINOSHKUMAR RAMACHANDRAN VALLALUR V. THE STATE OF MAHARASHTRA [2011 (1) MWN 9Cr) 497 (FB) (Bom.)], a Full Bench of the Bombay High Court held that the requirement of reporting of freezing of bank account to the Magistrate prescribed under Section 102(3) of Cr.P.C is mandatory in nature.

18. In pursuing their investigation under Section 102 of Cr.P.C, the Code empowered the police officers to deprive a person of his properties. In this context, the phrase, "shall" employed in Section 102 (3) of Cr.P.C is held to be mandatory in nature. Violation of it cannot be an irregularity committed by the Investigating Officer.

19. Very recently, a learned single Judge of this Court in Crl.O.P.No.13103 of 2013, etc., on 30.08.2013 [T.SUBBULAKSHMI V. THE COMMISSIONER OF POLICE, EGMORE, CHENNAI] also took similar view.

20. Thus, in this case, admittedly, the investigating officer in freezing the bank account of the petitioner, has not at all followed the mandatory requirement. He has not reported the freezing of the bank account to the jurisdiction Magistrate. It is vitiated. It is required to be annulled.

5. In the case on hand, the first respondent did not follow the procedure contemplated under Section 102(3) of Cr.P.C, and as such the above said judgment is squarely applicable to the case on hand. Thus, the first respondent is directed to defreeze the Accounts Nos.30528325744 at State Bank of India, Samalapuram Branch, Coimbatore, Account No.500807210002668 City Union Bank, Kodangipalayam Branch, Coimbatore and Account No.016101000015690 Indian Overseas Bank, Sulur Branch, Coimbatore , Account Nos.3453101001942, 3453201000012, Canara Bank, Karnampettai Branch, Coimbatore, in Crime No.27 of 2019 forthwith.

6. However, the first respondent is at liberty to investigate the crime No.27 of 2019, strictly following the procedures contemplated under Section 102(3) of Cr.P.C.

7. Accordingly, this criminal original petition is allowed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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Karnampettai,
Thiruppur.

6.The Additional Public Prosecutor,
Madras High Court.

+1cc to Mr.I.Abrar Md Abdullah, Advocate, S.R.No.21006

Crl.O.P.No.4661 of 2020

RR(CO)
maya(27/05/2020)