IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.08.2020
PRONOUNCED ON : 08.06.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.20813 of 2015

P.Velusamy ... Petitioner

Vs.

The State of Tamilnadu, rep. by.,
Inspector of Police,
District Crime Branch,
Perambalur. ... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, directing the learned Judicial Magistrate, Perambalur, to forthwith issue appropriate orders to the respondent herein to seize the frozen money of Rs.3,34,601/00 from the Axis Bank(s) (Ac No.006010200081616 - Rs.2,77,244/- and 5610101000094726 - Rs.57,357/-) and deposit the same into the Court, enabling the petitioner to withdraw the same subject to conditions for return of property.

For Petitioner : Mr.R.Selvakumar

For Respondent: Mr.K.Prabakar,
Additional Public Prosecutor

ORDER

The petitioner/defacto complainant in Crime No.2 of 2013 lodged a complaint against the accused for offence under Sections 406, 420 IPC r/w Section 67 of Information Technology Act before the respondent Police. During investigation, the petitioner filed a petition seeking return of case property attached in Crime No.2 of 2013 before the learned Judicial Magistrate, Perambalur. The learned Judicial Magistrate, Perambalur returned the petition with an endorsement dated 16.02.2015 “Neither case property was produced nor intimation of seizure was submitted to this Hon'ble Court. How the prayer is maintainable U/s 457 Cr.P.C.,” against which the present petition has been filed.

2.The gist of the case is that the petitioner is an Engineering Graduate and he was employed in Kuwait for several years. When he was in search of better prospect in carrier through Internet, on 19.07.2011 he received E-mail from ceprujem@supernet.com.bo informing that there was vacancy in Tata Consultancy Services, for which, he had to submit his Bio-data and to make some payments. Believing the same, the petitioner through his bank account made payments to various bank accounts from 19.07.2011 to 06.08.2011 as referred in the E-mail regularly, in total he made payment of Rs.9,42,722/- and the payment details are as follows:-

Sl. No.	Remitted Date	Beneficiary Name & Other Details	Amount in INR
1	19.07.2011	Name: Sampad Kumar Patro/SBI A/C No.20088146336	14,200.00
2	22.07.2011	Name: Mass Enterprises/Axis bank A/C No.006010200081616	38,950.00
3	26.07.2011	Name: Mass Enterprises/Axis bank A/C No:006010200081616	50,000.00
		Name: Emilien Gustave / Axis bank A/C No:561010100094726	49,000.00
		Name:Revarse Mega Seal.E / Axis Bank A/C No:911020016415679	50,000.00
		Name: Mukazitoni Beathe / Axis Bank A/C No.910010032593061	31,697.00
4	29.07.2011	Name: Mass Enterprises/Axis bank A/C No:006010200081616	50,000.00
		Name:Revarse Mega Seal.E / Axis Bank A/C No:911020016415679	50,000.00
		Name: Mukazitoni Beathe / Axis Bank A/C No.910010032593061	42,344.00
5	03.08.2011	Name: Pevarse Mega Seal.E / SBI A/C No:31676778049	2,17,396.00
6	06.08.2011	Name: Sunil Narayanailli.P / CITI Bank A/C No: 5659689113	3,49,135.00
Total (INR-Nine Lakhs Forty Two Thousand Seven Hundred and Twenty Two only)			9,42,722.00

3.Thereafter, the petitioner sensed foul play and when he verified in the Google website, to his shock and surprise, he found that all the transactions/communications were fraudulent one. Therefore, the petitioner lodged a complaint against the persons who used the name of TCS and British Embassy and cheated him to the tune of Rs.9,42,722/- through phising E-mail Internet fraud. The petitioner had lost his hard earned money which he had kept for his son's medical studies. After several representations, finally the complaint was registered by the respondent Police in Crime No.2 of 2013 for offence under Sections 406, 420 IPC r/w Section 67 of Information Technology Act on 01.02.2013. During investigation, on 10.08.2014, the respondent Police sent communications to the learned Judicial Magistrate, Perambalur informing that during the course of investigation, it was found that the petitioner from his Axis Bank, Perambalur in A/c No.561010100094726 had sent Rs.49,000/- on 26.07.2011 to the Axis Bank, Sahakaranagar, Bangalore in the name of Sambharam Acadamy of Management Jalahalli East MS Pallaya, Bangalore. Likewise, a sum of Rs.1,38,950/- has been paid by the petitioner from his Axis Bank, Perambalur in A/c No.006010200081616 on 22.07.2011 to the credit of MSA Mars Enterprises, No.84/74, Moore Street, 3rd Floor, Chennai maintained by one Tripathi, S/o.Ramachandran Axis Bank Account, Mylapore-14. Thus, a total sum of Rs.1,87,950/- being the part amount paid by the petitioner which are now available in the above said two bank accounts.

4.The contention of the petitioner is that a portion of the defrauded and cheated amount were frozen on the directions of the respondent Police and the details are as follows:-

(i)In the account of Axis Bank Mylapore maintaining by one Tripathi, son of Ramachandran, MSA Mars Enterprises, No.84/74, Moore Street, 3rd Street, Chennai, a sum of Rs.2,77,244.08 has been frozen on the direction of the respondent Police by communication dated 10.08.2014.

(ii)Likewise, in the account of Axis Bank, Sahakaranagar, Bangalore maintaining by Sambharam Academy of Management Jalahalli East MS Pallaya, Bangalore, a sum of Rs.57,357.15/- has been frozen as per direction of the respondent Police dated 10.08.2014.

5.The learned counsel for the petitioner submitted that the respondent Police have intimated to the learned Judicial Magistrate, Perambalur about the communications dated 10.08.2014. The learned Judicial Magistrate, Perambalur failed to consider the same, on the contrary returned the petition filed by the petitioner. The learned counsel further submitted that the petitioner had made total payments of Rs.9,42,722/- from his bank account to various bank accounts as per the instructions received through E-mail which later turned to be hoax. Hence, the petitioner had lost his hard earned money to the tune of Rs.9,42,722/-, of which now the respondent Police traced a part amount of Rs.1,87,950/- in the two said bank accounts. Thus, a portion of the cheated amount of the petitioner is available in the above said bank accounts and the same to be returned.

6.The learned Additional Public Prosecutor appearing for the respondent Police submitted that it is an Online Internet Fraud and the investigation is in progress. The details submitted by the petitioner are being investigated by the respondent. Though the petitioner has given the account details, the respondent Police could trace out only two accounts and freeze the same, prohibitory orders have been issued to the concerned banks and the same have also been intimated to the learned Judicial Magistrate, Perambalur. Since the petitioner being the defacto complainant, he may be permitted to get back his defrauded amount with conditions.

7.On considering the rival submissions and perusal of the materials, it is seen that the petitioner is the defacto complainant, who lodged the complaint in the above case. Though in his complaint he clearly mentioned about the six bank accounts and its particulars through which he was cheated to the tune of Rs.9,42,722/-, the respondent Police, as of now, were able to trace only two bank accounts and seized the amount lying in the following bank accounts:-

(i)In the account of Axis Bank Mylapore maintaining by one Tripathi, son of Ramachandran, MSA Mars Enterprises, No.84/74, Moore Street, 3rd Street, Chennai, a sum of Rs.2,77,244.08 has been frozen on the direction of the respondent Police by communication dated 10.08.2014.

(ii)Likewise, in the account of Axis Bank, Sahakaranagar, Bangalore maintaining by Sambharam Academy of Management Jalahalli East MS Pallaya, Bangalore, a sum of Rs.57,357.15/- has been frozen as per direction of the respondent Police dated 10.08.2014.

8.The learned Judicial Magistrate, Perambalur failed to consider the communications of the respondent Police dated 10.08.2014 intimating the seizure of the defrauded amount. Hence, the petitioner being the defacto complainant is entitled to withdraw the cheated amount lying in the bank accounts.

9.In view of the above, this Court directs the petitioner to execute a bond for a sum of Rs.1,87,950/- being the defrauded amount lying in the above two bank accounts before the learned Judicial Magistrate, Perambalur after commencement of normal functioning of the Court below. On execution of bond for such amount, the learned Judicial Magistrate, Perambalur to pass appropriate orders directing the respective Branch Managers of the above said two banks to credit/return the money to the petitioner to the tune of Rs.1,38,950/- and Rs.49,000/- respectively.

10.It is seen that the complaint has been lodged as early as in the year 2013 and the investigation is not being carried out as expected, despite the petitioner giving details of six bank accounts. The investigation with regard to the other bank accounts and whether any seizure has been made, is not known. Hence, the respondent Police is directed to step up the investigation to take effective steps and freeze the amount if any found in the other bank accounts which have been provided by the petitioner on coming to the knowledge of the respondent. In case of any such seizure is done, the petitioner is entitled to file appropriate petition before the learned Judicial Magistrate, Perambalur to receive the cheated amount on the similar conditions.

11.With the above directions, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate,
Perambalur.

2.The Inspector of Police,
District Crime Branch,
Perambalur.

3.The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.R.Selvakumar, Advocate, S.R.No. 27626

Crl.O.P.No.20813 of 2015

SS(CO)
GN(13/07/2021)