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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.25120 of 2019
Crl.MP.No.14892 of 2019

Muthukumarasamy
S/o.Ramu ... Petitioner

Vs.

1. The State of Tamil Nadu
   Rep by the Inspector of Police,
   CBCID - North Police Station,
   Cr.No.1 of 2019

2. Indian Overseas Bank,
   Rep by Senior Manager,
   Girivalam Road Branch,
   Thiruvannamalai.

3. Lakshmi Vilas Bank,
   Rep by its Branch Manager,
   Thiruvanamalai Branch,
   Thiruvanamalai.

4. T.M.Prakash
   (R4 impleaded as per order
   of this Court dated 16.12.2019
   in Crl.M.P.No.14890 of 2019
   in Crl.O.P.No.25120 of 2019) ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to direct the first respondent to de-freeze the account in the name of Sri Seshadri Swamigal Ashram.

For Petitioner : Mr.M.Devaraj
For Respondents
For R1 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor.
For R3 : Mr.M.Palanivel
For R4 : Mr.M.Pari

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O R D E R

This Petition has been filed for direction directing the respondent to defreeze the accounts stands in the name of Sri Seshadri Swamigal Ashram.

2. The learned counsel appearing for the petitioner submitted that on the direction issued by this Court, a case has been registered in Crime No.620 of 2016 on the file of the Inspector of Police, Town Police Station, Tiruvannamalai, alleging that the petitioner along with his relatives forged the documents and sold out the land to an extent of 56.63 acres belonging to the Ashram and enriched himself. The holy saint Seshadri Swamigal lived in Tiruvannamalai and after his death, his disciples have constructed samadhi and the followers have treated the samathi as Ashram. They also formed Ashram and Committee to administer the Ashram. The Committee has been registered under the Societies Registration Act and they conduct day to day operation.

2.1. While being so, the petitioner who was an Advocate practicing at Chennai and the Committee used to spare him and handed over the documents relating to Ashram. It is alleged that utilizing the opportunity, the petitioner sold out the land belonged to the Ashram. Further alleged that the petitioner independently functioned and prevented the Committee from interfering the administration of the Ashram. In fact, they also filed suit in O.S.No.322 of 1981 and new committed was constituted, in which the petitioner was not a member of the committee. Further alleged that the petitioner had operated the Ashram accounts and with the help of the bank officials, illegally misappropriated huge sums belonged to the Ashram. The petitioner also misappropriated gold and silver jewels and lakhs of rupees of the Ashram from the Ashram funds, in which he registered a fake trust committee and the same was registered in Pondicherry Sub Registrar Office. Thereafter the property belonging to the Ashram was converted into trust property and exemptions under Section 80(G) of income tax was also obtained. The trust has been registered with 11 members by furnishing false information to the Sub Registrar without any minutes, etc.,

2.2. He further submitted that initially the complaint registered by the Inspector of Police, Tiruvannamalai Town Police Station and conducted investigation and concluded that all the allegations are false. Therefore, the defacto complainant filed direction petition before this Court for transfer of investigation. The petitioner also filed quash petition in Crl.O.P.No.18159 of 2019 and the same was dismissed by this Court by an order dated 07.08.2019 and directed the

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Investigating Officer to file final report within the period of one month. Now in pursuant to the Crime, the accounts of the petitioner freezed for the purpose of investigation. Therefore, the petitioner is not able to meet out the expenditure incurred by the Trust as well as the Ashram. He required a sum of Rs.10 lakhs per month for payment of salary and other means expenditure of the Ashram.

2.3. Further he submitted that freezing of the account is totally violation of Section 102(2) of Cr.P.C., since after freezing the account of the petitioner, the respondent did not inform to the Judicial Magistrate as required under Section 102 (2) of Cr.P.C., about the freezing of accounts. Therefore the respondents violated the procedure contemplated under Section 102(2) of Cr.P.C., and prayed for defreezing the accounts stands in the name of Ashram.

3. Per contra, the learned Additional Public Prosecutor filed status report and submitted that after registering the FIR against the petitioner, the first respondent commenced investigation. During the investigation found that the petitioner who represented as an Advocate for the Ashram independently functioned and prevented others and forcibly taken over the control of the said Ashram. He also printed pamphlets by using the name of Ashram and collected huge money from the public to construct building. He collected gold and silver ornaments from the public to the tune of Rs.50 crores and used the same for his own purpose. He registered a trust on his own and he is the sole member of trust and also availed income tax exception under the Income Tax Act in the name of Ashram. Further alleged that the petitioner with ulterior motive to delegate the powers to administrator the Ashram to his daughter and son-in-law by creating supplementary deed. He sold out the some of the properties belonged to the Ashram and the entire sale proceeds were not accounted property.

3.1. He further submitted that during the investigation, there are 72 persons were examined and documents were also collected from the various government authorities including banks. Therefore, for investigation purpose, the accounts have been frozen and as of now a sum of Rs.13,03,74,325/- is lying in the accounts. Therefore, by the communication dated 09.09.2019 the accounts lying in the Indian Overseas Bank, by the letter dated 16.09.2019 the accounts lying in the Tamilnad Mercantile Bank, and by letter dated 05.09.2019 the accounts lying in the ICICI bank and by the letter dated 10.09.2010 the account lying in the Laksmi Vilas bank were frozen for investigation purpose. The intimation also duly sent to the concerned jurisdictional Magistrate and duly complies all the mandatory provisions under Section 102(2) of Cr.P.C. He also submitted that the petitioner

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filed quash petition in Crl.O.P.No. 24651 of 2019 and the same was dismissed by this Court by an order dated 07.09.2019. Only due to the age factor, this Court granted anticipatory bail and prayed for dismissal of the direction petition.

4. Heard Mr.M.Devaraj, learned counsel appearing for the petitioner, Mr.M.Palanivel, learned counsel appearing for the third respondent, Mr.M.Pari, learned counsel appearing for the fourth respondent, and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent police.

5. The petitioner is an accused in Crime No.1 of 2019 registered for the offences under Sections 406, 409, 477A & 420 of IPC. The only ground raised by the petitioner is that the first respondent did not comply the mandatory provisions as contemplated under Section 102(2) of Cr.P.C. The petitioner also aged about 90 years and he could not able to administer the committee and Ashram, without the minimum requirement of Rs.10 lakhs per month, since he has to pay salary, electricity bills and tax to be payable on behalf of the Committee as well as the Trust to the authorities concerned. On perusal of the counter, after freezing the accounts of the petitioner, it was duly intimated to the concerned Judicial Magistrate and complied the Mandatory under Section 102(2) of Cr.P.C.

6. The learned counsel appearing for the appellant relied upon the judgment reported in 2005 (1) CTC 657 in the case of Sri Kanchi Kamakoti Peetadhipathi vs. The State of Tamil nadu, as follows :-

> "32. The legal position for invoking Section 102 of Cr.P.C. is thus very clear, namely, that bank deposits can also be brought under the provisions, provided, the deposits represent either stolen money or should be connected with the commission of any offence. In short, there must be nexus to the crime alleged and the money to be seized. The charge in this case is not of theft, and therefore, the first alternative which is specific, is not satisfied. The second alternative, which is general in nature, has to be examined in the light of the factual background of this case."

In the case on hand, the first respondent complied the conditions as contemplate under Section 102(2) of Cr.P.C., as such, the judgment relied upon by the learned counsel appearing for the petitioner is not applicable to the case on hand. Further the investigation is still in progress and as such this

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Court is not inclined to entertain this petition, since there are very serious allegations against the petitioner and he committed grave offence against the society.

7. In view of the above discussion, this Criminal Original Petition stands dismissed. However, the first respondent is directed to complete the investigation and file final report in Crime No.1 of 2019, within period of twelve weeks from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AD-I-MDU)

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Sub Assistant Registrar

rts

To

1. The Inspector of Police,
   CBCID - North Police Station,
   Cr.No.1 of 2019

2. The Senior Manager
   The Indian Overseas Bank,
   Girivalam Road Branch,
   Thiruvannamalai.

3. The Branch Manager,
   Lakshmi Vilas Bank,
   Thiruvanamalai Branch,
   Thiruvanamalai.

4. The Public Prosecutor,
   High Court of Madras,
   Chennai.

+1cc to Mr.M.Devaraj, Advocate, S.R.No.23495

Crl.O.P.No.25120 of 2019
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KK(CO)
CS/08/07/2020

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