IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.11815 of 2011
and
M.P.Nos.1 of 2011 and 1 of 2012

M/s. Tulsiyat Tek Pvt.Ltd.
2/13, Om Heera Panna Arcade,
Oshiwara, Near Oshiwara Police Station
Andheri West, Mumbai - 400 053
Represented by its Authorised representative ... Petitioner

Vs.

1.State of Tamil Nadu
Fort St. George,
Rep by the Secretary (Home)
Chennai - 600 009.

2.State
Rep. by the Inspector,
Crime Branch, Team-1,
Egmore, Chennai - 600 008.

3.ICICI Bank Ltd,
Andheri Link Road Branch,
Opp: Infinity Mall, Morya Estate,
Anderi (West), Mumbai and
Branch office at Egmore,
Chennai. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, forbearing the respondents from interfering with the petitioners right to manage & administer its affairs/property including its Bank Accounts and consequently, pass an order to de-freeze the petitioner's Bank Account viz. 102805000271 in the ICICI Bank Ltd. Egmore Branch, Chennai in the interests of justice.

For Petitioner : Mr.Bijesh Thomas

For R1 and R2 : Mr.C.Jayaprakash
Government Advocate

For R3 : Mr.P.Elayarajkumar
for M/s. Ramalingam and Associates

ORDER

The writ on hand has been instituted to forbear the respondents from interfering with the petitioner's right to manage and administer its affairs/property including its Bank Account and consequently, pass an order to de-freeze the petitioner's Bank Account viz. 102805000271 in the ICICI Bank Ltd. Egmore Branch, Chennai.

2. The learned counsel for the petitioner strenuously contended that the petitioner is a Private company and not connected with any of the allegations. The affidavit filed by the writ petitioner in support of the present writ petition, there is no details regarding the initiation of criminal prosecution or otherwise.

3. The learned counsel for the petitioner reiterated that the Bank Account of the petitioner is frozen without any basis and without following the procedures and therefore, the writ petitioner is constrained to move the present writ petition.

4. It is contended that the mandatory provisions of Section 102 Cr.P.C. has not been followed. It is further stated that the petitioner is not arrayed as an accused in the criminal case registered by the second respondent / Inspector of Police.

5. At the outset, the petitioner pleads innocence and ignorance of any of the allegations set out in the criminal case and further, says that the account belongs to the petitioner is frozen by not following the procedures as contemplated. It is further stated that the allegations in the F.I.R is also not relatable to the business activities of the petitioner and further, even presuming the allegations are taken as it is, it cannot be construed as an offence against the petitioner. Thus, the writ petition is to be allowed.

6. The learned Government Advocate appearing on behalf of the respondents 1 and 2 objected the contentions raised by the petitioners by stating that a Criminal case was registered by the Central Crime Branch, Chennai in Crime No.186 of 2011 for the offences under Section 420 & 406 I.P.C. The investigations are going on and at this point of time, the ground raised by the petitioners cannot be considered. No doubt, the petitioner has not been arrayed as an accused in the F.I.R. However, the investigation officer will be in a position to form an opinion only after conducting a thorough investigation. The allegation

is relatable to cheat of public and many persons have aggrieved, though the complaint is given by one person in the present case. The paper advertisement collected, reveals that money from public was being collected and swindled by some persons. Thus, a thorough investigation is required to cull out the truth behind the allegations. Under these circumstances, the mere contention of the petitioner that he is innocent of the allegations, cannot be considered by this Court and all such pleadings are to be considered only after completion of investigation by the competent authority. Thus, the writ petition is to be rejected.

7. The third respondent / ICICI Bank filed a counter affidavit. The third respondent also objected the contentions raised by the writ petitioner by stating that the third respondent /Egmore Branch received a letter dated 08.04.2011 from the second respondent / Inspector of Police, Crime Branch, Team - 1, Chennai, informing the Bank that the criminal case is registered on their file in Crime No.186 of 2011 for the offence under Section 420 of IPC and that the account No.102805000271 standing in the name of the petitioner and also another account with a different number are involved in the said criminal case. Hence, for the purpose of further investigation, the second respondent requested the third respondent to freeze the said Account Numbers with immediate effect till the investigation is completed. In compliance of the request of the request of the law enforcing authority, the third respondent acted swiftly and freezed the current Account of the petitioner and immediately informed the same to the petitioner.

8. Subsequently, the second respondent / investigating officer, in vide letter dated 15.04.2011, sought for details of all the account numbers of the petitioner. On receipt of the order dated 29.04.2011 passed by the Hon'ble High Court by way of an interim direction to allow the petitioner to operate the account, the third respondent had un-freezed the current account of the petitioner, in compliance with the said interim order. The unfreezing of the account was also communicated to the petitioner on 23.05.2011 and acknowledged by the petitioner's staff with their seal.

9. It is contended that as per the criminal case registered by the second respondent on receipt of public complaint, the account of the petitioner was frozen and de-freezed subsequently pursuant to the orders granted by this Court.

10. Thereafter, the third respondent had received a letter dated 30.05.2011 from the office of the Deputy Director of Income Tax (INV), requesting the third respondent, not to allow any money to be remitted from the above said account without informing the Income Tax Department and also served upon a

summon on the official of the third respondent under Section 131 of the Income Tax Department. The Income Tax Department has stated in their letter that the Department is enquired the petitioner company, which is based in Singapore and that the money collected by the agent and franchise of the petitioner company from customers in India, have been routed from the bank account of the petitioner, with Account Number 102805000271. Pursuant to the said action and in compliance of the statutory authority namely the Income Tax Department, the third respondent had again had no other go than to mark 'debit freeze' of the account of the petitioner and the same was informed to the petitioner. The petitioner by letter dated 08.06.2011 sought for the reason for debit freeze in their account and the third respondent vide letter dated 15.06.2011 informed the petitioner about the communication from the Income Tax Department.

11. Apart from the actions initiated by the Income Tax Department, the Government of Andhra Pradesh Police Department had also sent a communication to the Vijayawada Branch of the third respondent on 12.07.2011 with a direction to freeze the Account No.102805000271 of the petitioner. Pursuant to the said letter of the Andhra Pradesh Police authorities, the third respondent had freezed the account in total.

12. In continuation of the earlier communication, the Police Department of the Andhra Pradesh Government had also sent further communication on 22.07.2011 to the Vijayawada Branch of the third respondent with the request not to lift the freezing of the Account without obtaining prior permission from the Andhra Pradesh Police authorities.

13. Citing these reasons, the third respondent has stated that they had acted strictly in accordance with law enforcing authority and the statutory authority and acted as per law in freezing the account of the petitioner. The third respondent is not aware of the fact regarding the allegations raised against the petitioner. The third respondent relied on Clause 30 and 31 of the terms and conditions of operating the current account with the third respondent Bank, which is displayed in the official website of the third respondent. Accordingly, the third respondent has got every right to terminate/close or freeze the Account under the suppression of any material facts and other circumstances. Justifying the actions taken by the third respondent in freezing the account and de-freezing pursuant to the interim order granted by this Court and thereafter, again freezing the account based on the Income Tax Department order and the Andhra Pradesh Police Department communication, the learned counsel for the third respondent reiterated that the third respondent has acted in accordance with law and they have

not committed any mistake or otherwise.

14. Considering the submissions made by the respective learned counsels appearing on behalf of the parties to the lis on hand, this Court is of the considered opinion that the allegations in the public domain during the relevant point of time were serious. Advertisements were given in the newspaper, soliciting the public for erection of cell phone tower in the private properties. In this context, attractive benefits are published in the newspapers. Believing the advertisement, many persons have deposited their money in the account numbers given by the advertisers. One such person has deposited the money based on the advertisement, given the complaint to the Central Crime Branch, who in turn, registered an F.I.R and commenced the investigation. It was understood that many number of depositors were cheated during the relevant point of time. Unfortunately, the Central Crime Branch has not made any progress in investigation for about 10 years.

15. This Court directed the files to be placed and perusal of the files would reveal that except few correspondences between the authorities, absolutely, there is no progress in investigation. If such serious allegations are not investigated properly, undoubtedly, the 'State' being the prosecutor, is failing in its duty to perform their solemn functions. Allegations are serious, affecting the public interest. It is not an offence against the individual and is against the public at large as advertisements are made in the newspapers, soliciting the public at large to deposit money. No doubt, F.I.R was registered against the agents, against whom, a complaint is given. However, large scale investigations are required to nail the real offenders, who have involved in the offence of public cheating.

16. In recent days, offences through electronic modes are in ascending mode. Large scale cheatings are noticed and traced out by the public in general through such advertisements and therefore, serious investigations regarding such offences are imminent and in the event of any lapses, such offenders will show their high-handedness and made further attempts to loot money from the innocent public. Usage of technology by the investigating agency is of paramount important and therefore, investigations are to be widened, so as to ensure that such economic offences are minimized to the extent possible.

17. Perusal of the files in the present case reveals that there is a total lapse on the part of the investigating agency in continuing the investigations. Files are kept pending for about 10 years. Probably, the complainant would have lost confidence as there is no progress in the investigation nor any

action is taken against the offenders. The petitioner pleads that they are no way connected with the offence. However, the third respondent has frozen the account based on the letter communicated by the Andhra Pradesh Police and Income Tax Department. The actions by the Income Tax Department and the Andhra Pradesh Police would reveal that there are larger actions between various persons in the matter of cheating in this manner by advertising in the newspaper. Thus, thorough investigation is highly warranted and only then, the truth will come out and the real offenders shall be prosecuted in the manner known to law.

18. M/s.Revathi, Inspector of Police, Team 3, EDF-II, CCB, Vepery, Chennai - 600 007, who is present before this Court, informed that she has taken charge only during the month of February 2021 and she will continue the investigation immediately in the manner known to law.

19. However, this Court has to consider the fact that the investigations are not conducted properly by the competent authorities from the year 2011 onwards. This aspect is to be looked into by the Commissioner of Police, Greater Chennai, Vepery, Chennai-600 007. In view of the fact that there is a prima facie case with reference to the allegations, further investigations are to be conducted and the role of the petitioner cannot be determined by this Court in the present writ petition. If at all, the petitioner pleads innocence, it is for the petitioner to establish the same before the competent authority by producing documents, evidences or otherwise.

20. Regarding the submission made by the learned counsel for the petitioner that the police authorities cannot freeze the account of the petitioner as the petitioner is not arrayed as an accused and Section 102 Cr.P.C., would not provide any such power to the authorities, this Court is of an opinion that Sub Section 1 to Section 102 is unambiguous that "Any police officer, may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.". Suspicion of the commission of any offence by any person is sufficient to initiate action by the Police authorities. In the present case, complaint is registered and investigations commenced. They have traced out that the complainant deposited his money in the particular account in the particular Bank. In such circumstances, if they are received any such information, the Police authorities are competent to issue appropriate letter to the Bank to freeze the accounts in order to avoid any further commission of offence by any person. If at all, the petitioner would able to establish his innocence, thereafter, all appropriate actions may be taken. However, in the present case, the third respondent has again frozen the

account of the petitioner pursuant to the letter sent by the Income Tax Department and the Andhra Pradesh Police authorities. This being the factum, there is no reason at this point of time to consider the relief as such sought for in the present writ petition.

21. The learned counsel for the petitioner relied on the judgment of this Court, reported in 2005 (1) CTC 657 and paragraphs 35 and 37 are relied upon to establish that Section 102 Cr.P.C. cannot be invoked in the case of the petitioner. The said paragraphs are extracted hereunder:

> "35. During the hearing itself, I had made it clear to the learned Public Prosecutor that the Special Investigation Team would be entitled to seize and retain all account books of the past period, if required for investigation relating to the charge of payment of money to the hirelings and also to call upon all the banks to furnish the necessary information regarding such past transactions. Learned Public prosecutor has not been able to point out any single reason for freezing of accounts in the context of Section 102, Cr.P.C., except for expressing apprehension that the Mutt may use the funds for gagging or tampering with the witness. Certainly Section 102, Cr.P.C. is not intended or visualised for such a contingency. Such activities can have no relevance to the "commission of any offence" which is the essential ingredient of Section 102, Cr.P.C., and in this case, the commission of offence, either murder or paying money to hirelings are all past events. Therefore, the apprehension or the possibility of an accused making use of the funds for influencing or tampering the witness in future cannot be brought under the scope of Section 102, Cr.P.C., much less can it be an excuse to stifle the activities of the Mutt. If that be so, in every prosecution under I.P.C. offences, Section 102 of Cr.P.C. can be invoked.
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> 37. In this case, another perspective which renders Section 102, Cr.P.C. inapplicable to freeze the accounts of the Mutt, is that the Mutt is not the accused. It is the Head of the Mutt who is the accused. If there is any personal or individual account of the accused, the police could very well invoke Section 102, Cr.P.C. as against the said account. The Mutt or the Trust is an independent body by itself and can have nothing to do with the commissions and omissions of the Head of the Mutt in his personal capacity. Though, strictly speaking, the Head of the Mutt cannot be equated to a Trustee or Manager, his relationship with the Mutt is only in a fiduciary capacity. The property,

assets and income of the Mutt belongs to the Mutt and does not belong to the Head of the Mutt. He has no proprietary or individual rights or interest over the property. In fact, even the "Paadha Kaanikkai" given to him in the capacity of Head of the Mutt would also belong only to the Mutt and accountable vide Section 62 of Act 22 of 1959. Therefore, for the offences alleged against the Head of the Mutt, Section 102, Cr.P.C. cannot be invoked as against the property, assets and income of the Mutt, which is a separate organisation and legal entity by itself. To hold otherwise, would lead to unreasonable and shocking situations."

22. This Court is of the considered opinion that invoking Section 102 Cr.P.C. is to be based on the facts and circumstances of the each case. The High Court in the said case (cited supra) filed by His Holiness Sri Kanchi Kamakoti Peetadhipathi Jagadguru Sri Sankaracharya Swamigal Srimatam Samasthanam, made a finding that there was no possibilities of commission of any offence, which is essential ingredient of Section 102 Cr.P.C. Thus, the specific finding in the said judgment cannot be applied in all the cases.

23. In the present case, the Police authorities formed an opinion that in the event of allowing the account for operation, there is a possibility of commission of offence. Therefore, they have issued a letter to freeze the account. Thus, the facts and circumstances of each case plays a pivotal role for taking a decision and thus, the said decision taken by the Police authorities cannot be found fault with. In view of the facts, the judgment cited is of no avail to the petitioners.

24. As far as the lapses on the part of the Central Crime Branch, Egmore, Chennai, is concerned, the Commissioner of Police, Greater Chennai, Vepery, Chennai - 600 007, is directed to look into the files regarding the lapses, negligence and dereliction of duty being committed by the investigating authorities by keeping the files pending for more than 10 years without any progress and accordingly, initiate disciplinary proceedings against the officials, who all are responsible and accountable for such lapses in conducting the investigations in the manner known to law, more specifically, in such nature of offences, where larger public interest is involved.

25. In view of the facts and circumstances, this Court has

no hesitation in forming an opinion that the petitioner has not established the case for grant of relief and consequently, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary (Home),
State of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2.The Inspector,
State of Tamil Nadu,
Crime Branch, Team-1,
Egmore, Chennai - 600 008.

3.The Commissioner of Police,
Greater Chennai, Vepery,
Chennai - 600 007.

4. The ICICI Bank Ltd,
Andheri Link Road Branch,
Opp: Infinity Mall, Morya Estate,
Anderi (West), Mumbai and
Branch office at Egmore,
Chennai.

+2ccs to Mr.Ramalingam and Associates,AdvocateSr.58258(21.12.21)
+1 cc to Mr.Bijesh Thomas , Advocate Sr.NO. 58131(21.12.2021)
+1 cc to Government Pleader Sr.NO. 58167(21.12.2021)

W.P.No.11815 of 2011

GPL(CO)
A.SK(26.11.2021)