IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2021

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.18594 of 2020

Saurabh Rathore reb by his
Power of Attorney Holder
Mr. Kapoorchand Rathore ... Petitioner

Vs.

1. The Commissioner of Police,
No.132, Commissioner office Building,
EVK Sampath Road,
Vepery, Chennai-600 007.

2. The Assistant Commissioner of Police,
Central Crime Branch, Bank Fraud,
EVK Sampath Road, Vepery,
Chennai-600 007.

3. The Inspector of Police,
F2 Egmore Police Station,
Egmore High Roadm Egmore,
Chennai-008.

4. The Branch Manager,
IDFC First Bank,
Fort Branch, Mumbai,
Maharashtra.

5. M/s.Dharma Karma Company,
Rep. By its Managing Partner,
Bharathi Sethia
(South Region of India)
No.64/20, Tulsi Kripa,
Avadi Srinivasan Road,
Choolai, Chennai-12. ... Respondents

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. directing the respondent to issue directions to the 4th respondent to de-freeze Account No.10008386694 in IDFC First Bank, Fort Branch, Mumbai in the name of Gobble Me Good within a period of 7 days from the date of the receipt of the order of this Hon'ble Court and permit any representation to be accepted without the physical presence of the petitioner.

For Petitioner : Mr.Thriyambak J Kannan

For Respondents : Mr.M.Mohamed Riyaz- R1 to R3
Addl. Public Prosecutor

ORDER

This petition has been filed for a direction to the respondent police to de-freeze the account of the petitioner maintained in the 4th respondent Bank.

2. The grievance of the petitioner is that a complaint was earlier given against the petitioner and the petitioner was called for an enquiry and parallely, the account of the petitioner was also freezed, even before the registration of an FIR. Therefore, the petitioner approached this Court and filed a petition in Crl.OP.No.8461 of 2020 seeking for a direction to de-freeze the account maintained in the 4th respondent Bank.

3. When the matter came up for hearing on 26.06.2020, the following order was passed by this Court:-

> ''....2. The learned Additional Public Prosecutor submitted that on the complaint lodged by the defacto complainant, enquiry was conducted and closed as against the petitioner. Even, till today, the petitioner never submitted any representation to de-freeze the account.
>
> 3. Considering the above facts and circumstances, the petitioner is directed to submit proper representation to the second respondent to de-freeze his account lying in the 4th respondent. On receipt of such request, the second respondent is directed to take appropriate action on the request made by the petitioner, within a period of one week from the date of receipt of copy of this order.''

4. According to the petitioner, even though a specific stand was taken before this Court to the effect that the complaint has been enquired and closed, the account has not been de-freezed and as a result of the same, the petitioner is not in a position to operate his account in the 4th respondent Bank.

5. The learned Additional Public Prosecutor appearing on behalf of the respondent Police submitted that even though the earlier complaint was enquired and closed, subsequently, nearly 1004 complaints were received against the petitioner with an allegation that he has received deposits and an FIR came to be registered in Crime No.109 of 2020 by the Central Crime Branch, Bank Fraud Division. The learned Additional Public Prosecutor further submitted that after the registration of the FIR, no steps have been taken to freeze the account of the petitioner and if any such steps are taken,

the respondent police will strictly comply with the provisions of Section 102 of Cr.P.C.

6. In the considered view of this Court, the respondent Police can resort to freezing of account only after the criminal law is set in motion by registering an FIR. Such freezing of accounts can take place only in the course of investigation and it must also satisfy the requirements of Section 102 of Cr.P.C. The law on this issue has been dealt with by this Court in the case of Padmini Vs. Inspector of Police, District Crime Branch, Tirunelveli, Crime Nos.7 and 8 of 2007 and others reported in 2008 (3) CTC 657 and in the case of T.M.Prakash and others Vs. District Collector, Tiruvannamalai District, Tiruvannamalai and another reported in 2014 (1) MLJ 261. A specific stand was taken before this Court in the earlier petition to the effect that the earlier complaint was enquired and closed by the third respondent and therefore, the natural consequences would be to de-freeze the account maintained before the 4th respondent Bank.

7. If at all a situation has arisen at a later point of time by virtue of a series of complaints given against the petitioner, which resulted in the registration of FIR, it can only give a fresh cause of action to the respondent Police to proceed further and freeze the accounts, if warranted, by complying with the mandatory procedure under Section 102 of Cr.P.C. Till this is done, the freezing of account that took place even prior to the registration of FIR, cannot be sustained in the eye of law and the same has to be necessarily withdrawn.

8. In view of the above, there shall be a direction to the respondent Police to withdraw the earlier communication issued to the 4th respondent Bank for freezing the account of the petitioner. It goes without saying that by virtue of the subsequent registration of the FIR against the petitioner, if the situation so warrants, it will always be open to the respondent police to take a decision regarding freezing of account in the course of investigation by complying with the mandatory procedure under Section 102 of Cr.P.C.

9. This Criminal Original Petition is disposed of accordingly.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

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Fort Branch, Mumbai,
Maharashtra.

5. The Public Prosecutor
High Court of Madras
Chennai - 600 104.

LN(CO)
SM/19/02/2021

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