IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2021

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CRL.O.P.No.20449 of 2020

Sunita Sunderdas Damani
D/o.Sunderdas Damani,
No.6/A, Shanaz Building,
No.90, Nepensea Road,
Malabar Hill, Police Station,
Mumbai. ..Petitioner

.Vs.

1.The Inspector of Police,
District Crime Branch,
Coimbatore District.

2.The Manager,
Phillip Capital (India) Pvt.Ltd.,
No.3, Asha Towers,
Longford Cross Road,
Bengaluru-560 025,
Karnataka, India. ...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to direct the 1st respondent to de-freeze the DEMAT account bearing DP ID.IN302164 Client ID: 10208317, maintained with the 2nd respondent.

For Petitioner : Mr.B.Kumarasamy
For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor
for R 1
Mrs.P.Megana Nair
for R 2

O R D E R

This Criminal Original Petition has been filed to de-freeze the DEMAT Account maintained by the petitioner with the 2nd respondent.

2.The case of the petitioner is that the petitioner is a limited liability partnership which facilitates transactions in unlisted stocks for its clients and associates. The petitioner in the usual course of business, purchased and sold to various clients 10,000 shares of HDB Financial Services at Rs. 630/- per share amounting to total consideration of Rs. 63,00,000/-.

3.On 20.11.2020, the petitioner discovered that their DEMAT Account bearing account bearing DP ID.IN302164 Client ID: 10208317 held with the 2rd respondent was frozen without prior notice or intimation. On enquires, it was brought to the notice of the petitioner that based on a criminal complaint registered by one Sai Akash in FIR No. 21/2020 dt. 21.10.2020 before the 1st respondent, the account was frozen. The further case is that in the course of investigation, the 2nd respondent has directed to freeze not only the DEMAT Account through which the subject shares have been transacted, but also that of their innocent clients leading to heavy financial losses and loss of reputation.

4.The case of the petitioner is that though representation was made to the 2nd respondent on 27.11.2020 with relevant documents, no action was taken on the same. The petitioner also submitted that the 2nd respondent has failed to follow the procedure as contemplated under Section 102 of Code of Criminal Procedure, 1973 while freezing the DEMAT Account of the petitioner.

5.Heard Mr.B.Kumarasamy, learned counsel counsel for the petitioner, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor for the respondent and Mrs.P.Megana Nair, learned counsel appearing on behalf of the 2nd respondent.

6.The learned Additional Public Prosecutor appearing on behalf of the respondent Police submitted that the DEMAT Account was freezed on 02.11.2020 and the confirmation regarding the freezing of the account was received from the 2nd respondent on 04.11.2020 and the same was informed to the learned Judicial Magistrate No.VI, Coimbatore on 30.11.2020.

7.In the present case, it is seen that there is an agreement between the parties and they are governed by the terms and conditions of the agreement. That apart, the transaction is said to have been taken place during May 2020 and the complaint was given only during October 2020. If the respondent Police deemed it fit to freeze the DEMAT Accounts of the petitioner in the course of investigation, appropriate orders could have been obtained from the concerned Magistrate Court by submitting a report to the Magistrate. In the present case after the account was freezed, there is a delay of more than 20 days. When there was a considerable delay in lodging the complaint, it could have been more appropriate for the respondent Police to submit a report before the concerned Magistrate and after obtaining orders, this process should have been undertaken. Once, the respondent Police took a decision to freeze the account without notice to the petitioner and without submitting a report to the Magistrate, in that case, the report should have been sent to the Magistrate immediately failing which the freezing of account gets vitiated. This is the mandatory procedure that has been provided under Section 102 of the Code of Criminal Procedure. Useful reference can be made to the judgments of this Court in Padmini .v. The Inspector of Police, District Crime Branch, Tirunelveli, and others reported in (2008) 3 CTC 657 and Smt. T. Subbulakhsmi v. The Commissioner of Police, Egmore, Chennai-08 and others reported in (2016) 2 Mad Weekly Notes Crl 411.

8.In the present case, there is a considerable delay in sending the report to the concerned Magistrate Court after the DEMAT account was freezed by the respondent Police and hence the freezing of account gets vitiated.

9.In view of the above discussion, there shall be a direction to the respondent Police to immediately defreeze the DEMAT Account maintained by the petitioner before the 2nd respondent. If the respondent Police deems it fit to resort to freezing of account during the course of investigation, it is left open to the Police to follow the mandatory procedure under Section 102 of the Code of Criminal Procedure and proceed further in accordance with law.

10.In the result, this Criminal Original Petition is allowed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

KP
To

1.The Inspector of Police,
District Crime Branch,
Coimbatore District.

2.The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.B.Kumarasamy, Advocate sr 4507.

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LN(CO)
SP(03/03/2021)