



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.03.2021

Delivered on : 26.04.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.26 of 2021

and

Crl.M.P(MD) .No.414 of 2021

R.V.Chari @ Venkatasari .. Petitioner/Petitioner
Vs.

1.The Inspector of Police,
Cantonment Police Station,
Trichy.
(Crime No.1036 of 2019)

2.Shajahan .. Respondents/Respondents

Prayer : This criminal revision case is filed under Sections 397 read with 401 of Cr.P.C., to call for the records pertaining to the impugned order in Cr.M.P.No.7599 of 2019 dated 12.10.2020 on the file of the learned Judicial Magistrate No.II, Tiruchirappalli District.

For Petitioner	: Mr.T.Aswin Rajasimman
For 1 st Respondent	: Mrs.S.Bharathi Government Advocate (Crl. Side)
For 2 nd Respondent	: Mr.J.Sulthan Basha For M/s.Ajmal Associates

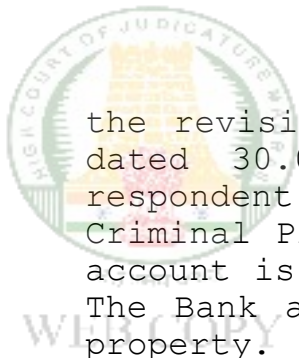
ORDER

This revision case has been filed to quash the impugned order, dated 12.10.2020 in Cr.MP No.7599 of 2019 on the file of the learned Judicial Magistrate No. 2, Thiruchirappalli District.

2.The defacto complainant filed a petition before the trial Court in Cr.M.P. No.7599 of 2019 to transfer the alleged amount to the account of the defacto complainant or to freeze the amount till the disposal of the case. The petition was allowed by the learned Judicial Magistrate No.2, Thiruchirappalli. Against the same, the petitioner has preferred this revision.

3.On the side of the revision petitioner, it is stated that

<https://hcservices.ecourts.gov.in/hcservices/>



the revision petitioner has withdrawn the amount through a cheque, dated 30.08.2019 and he has not committed any offence. The respondent Police has violated Section 102(3) of the Code of Criminal Procedure, while freezing the account. The freezing of the account is illegal and it cannot be legalized by an impugned order. The Bank account of the petitioner falls under the definition of property. Therefore, seizure of bank account ought to have been in accordance with Section 102 of the Code of Criminal Procedure. As per Section 102 of the Code of Criminal Procedure, the Police Officer should have informed the concerned Magistrate regarding the seizure and the Police Officer has to give notice to the accused regarding the seizure and prayed the impugned order to be set aside.

4.The learned counsel appearing for the revision petitioner submitted that a word "property" could include bank account and he relied upon a judgement reported in **2005(1) CTC657** in the case of **Sri.Kanchi Kamakoti Peetadhipathi Jagadguru Sri.Sankaracharya Samigal Srimatam Samasthanam Vs. The State** is cited. He has further submitted that the police officer has to give notice to the account holder before freezing the account and the police officer has to sent a report to the Judicial Magistrate concerned. He has relied upon a judgment reported in **1988 Cri LJ241(Delhi)** in the case of **Ms. Swaran Saharawal Vs. Commissioner of police** and another judgement reported in **2008 Cr.L.J 148** in the case of **Dr. Shashikant D.Kanik Vs. Stae of Maharastra**.

5.On the side of the first respondent, it is stated that the case of the defacto complainant is that a signed cheque leaf was stolen by A1 and with the help of the revision petitioner, was placed for collection. The defacto complainant had received his retirement benefit on 23.08.2019. On 30.08.2019, at about 01.00 pm., he received message as if Rs.17,00,000/- was debited from his account. The cheque was Non CTS cheque, which cannot be used as an encashable instrument, which has to be used for transaction between the banks. The respondent police registered a case against the revision petitioner and another person and requested the bank to freeze the account of the second accused for a sum of Rs.17,00,,000/-. There is no violation in freezing of the account of the accused. The condition under Section 102 of the Code of Criminal Procedure is not violated. The charge sheet has been laid and the same was taken on file. The revision petitioner is a retired Bank Manager and that in collusion with A1, he placed the cheque for collection and credited the same to his account and prayed the petition to be dismissed.

6.On the side of the second respondent it is stated that, the cheque was stolen from the defacto complainant and the same was encashed by the revision petitioner. For an amount above Rs.1,00,000/-, the permission of the account holder has to be obtained by the Bank Manager. The cheque, which was an old one, was used in violation of the rules. The retirement benefits of the



respondent/defacto complainant was swindled from his account. A1 was a colleague of the defacto complainant. He has stolen the cheque more than 10 years ago and with the help of the revision petitioner, he has encashed the cheque. The respondent police have reported "No Objection" in returning the amount to the defacto complainant and prayed the petition to be dismissed.

7. On the side of the respondents it is stated that, even without giving notice to the account holder, the account can be freezed by the police and a judgement of this Court in Crl.R.C.No. 45 of 2010, dated 31.07.2017 is cited, wherein Para 10 reads as follows:-

"On perusal of Section 102 of Cr.P.C and also citattion referred to by the learned counsel on either side, it is settled law that before freezing the account, notice has to be given and also report has to be submitted before the Judicial Magistrate but where as perusal of the records in this case, the offence is punishable under Section 13 of Prevention of Corruption Act. Even if necessity arises, without giving notice, the account can be freezed. Where the police officer seizing the property is subordinate officer, he should forthwith report the seizure to his superior i.e., to the officer-in-charge of the police station. Therefore, the submission made by the learned counsel for the petitioner is not acceptable and the order passed by the trial Court does not warrant any interference of this Court and hence, the revision petition is liable to be dismissed."

8. On the side of the petitioner it is stated that, the petitioner is ready to produce sureties and to execute bond for the above said sum and undertakes to return the sum as and when required by the Court.

9. The contention of the respondents is that if the impugned order is set aside, there is every likelihood for the revision petitioner to withdraw the amount and to invest the same in the name of his wife or children.

10. The case of the petitioner is that the respondent police failed to file report before the concerned Magistrate and failed to follow the procedure prescribed under Section 102 Cr.P.C. It is further stated that on the request of the Cyber Crime Branch, the account was freezed by the bank. But, the charge sheet was filed by the Trichy Contonment Police and that only the Bank Manager has sent intimation to the Court regarding the freezing of the account and not the police.



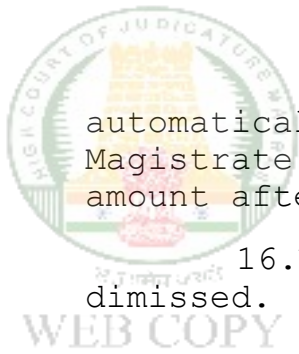
11.On the side of the first respondent it is stated that, the respondent police froze the account and the right of the defacto complainant cannot be curtailed on any mistakes that would have been committed by the respondent police. In support of his contention a judgement of this Court in Crl.O.P. No. 4429 of 2019, dated .. 04.2019 is cited.

12.It is seen that the case of the revision petitioner is that the police failed to follow the procedure contemplated under Section 102 Cr.P.C., in freezing the account. But, the petitioner has not filed any petition against the freezing of the account under Section 102 Cr.P.C., by the respondent police. The account was already frozen by the respondent police, but the freezer of the account was not questioned by the revision petitioner till the passing of the impugned order. Now, he seeks only to set aside the impugned order passed by the learned Judicial Magistrate No.2, Tiruchirappalli.

13.The contention of the revision petitioner is that there was loan transaction between A1 and the revision petitioner and that the Co-accused (A1) has repaid the loan amount to the revision petitioner through the cheque. The contention of the wife of A1 before the trial Court is that there was some money transaction between the defacto complainant and A1 and in furtherance to the money transaction, the defacto complainant gave a cheque leaf to A1. Though the wife of A1 has filed a counter before the trial Court stating that there was financial transaction between the defacto complainant and A1, she has not given any statement regarding the transaction between her husband and the revision petitioner. Though the wife of A1 has filed a counter before the trial Court, the revision petitioner failed to implead her as one of the respondents in this revision.

14.Whether the defacto complainant had financial transaction with A1, whether the defacto complainant was liable to pay Rs.17,00,000/- to A1 and whether A1 was liable to pay Rs.17,00,000/- to the revision petitioner or not, can be decided at the time of trial. Those factual matrix cannot be decided by this Court at this juncture. Only after the trial, the Court can come to the conclusion as to the ownership of the amount that is lying in the account of the revision petitioner.

15.Until the ownership of the amount is fixed by the trial Court, permitting the revision petitioner/A2 to withdraw the amount may be prejudice to the defacto complainant. Freezing an account and keeping it idle is not useful for any of the parties. Hence, this Court ordered the amount to be transferred to the account of the learned Judicial Magistrate No.2, Tiruchirappalli. The learned Judicial Magistrate No.2, Tiruchirappalli, is hereby directed to deposit the same in Crime No. 1036 of 2019 in a fixed deposit scheme



automatically renewable once in three years and the learned Judicial Magistrate No.2, Tiruchirappalli can decide the ownership of the amount after the completion of the trial in accordance with law.

16. With the above observation, this Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AE)

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/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Judicial Magistrate No.II, Tiruchirappalli District.

2.The Inspector of Police,
Cantonment Police Station,
Trichy.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-17837[F] dated 28/04/2021)

Crl. R.C.(MD)No.26 of 2021

26.04.2021

CN(06.05.2021) 5P 5C