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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 04.07.2022

Delivered On : 23.12.2022

CORAM:

THE HON'BLE **MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

Crl.O.P.No.11933 of 2021

Hemanth Kumar Venkatesan
S/o. N.Venkatesan
57, Juneau Crescent,
Whitby, L1R3A2, Ontario, Canada
Rep. by its duly authorized Power Agent
N.Venkatesan S/o. A.Natarajan ... Petitioner

Vs.

1. The State Rep. By
   The Inspector of Police,
   Arumbakkam Police Station,
   Chennai.

2. The State Rep. By
   The Inspector of Police,
   CCB (EDF) Team – II,
   Vepery, Chennai. ... Respondents

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C, praying to direct the second respondent Police to defreeze the Petitioner's Bank Account bearing A/c.No.069801000017914, Indian Overseas Bank, Labour Welfare Board Branch, DMS Office Campus, Teynampet consequentially direct the first Respondent Police to return the

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blank A/c payee Crossed cheque bearing No.360036 of the same Bank.

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For Petitioner : Mr.S.Sathish Rajan

For Respondents : Mr.L.Baskaran
Government Advocate (Crl. Side)

ORDER

This Petition has been filed to direct the second respondent Police to defreeze the Petitioner's Bank Account bearing A/c.No.069801000017914, Indian Overseas Bank, Labour Welfare Board Branch, DMS Office Campus, Teynampet consequentially direct the first Respondent Police to return the blank A/c payee Crossed cheque bearing No.360036 of the same Bank.

2. The learned Counsel for the Petitioner submitted that the Petitioner is a Canadian citizen. He is in no way involved in the Crime alleged by the Prosecution. The Petitioner's brother is alleged to have involved in Criminal case. Initially, the first Respondent had conducted enquiry. Thereafter, the case had been taken over by the second Respondent and investigated. On the investigation proceedings, the Investigation Officer had directed the Indian Overseas Bank, to freeze the account of the Petitioner bearing

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Account No.069801000017914. Based on the direction of the Investigation Officer, the Bank had freezed the account of the Petitioner. Therefore, the petitioner is unable to operate his account. The parents of the Petitioner who are senior citizens are unable to maintain themselves. Now they are undergoing untold suffering. From the Petitioner's account statement, it can be seen that no deposits were made by any third person except that were made by the Petitioner and also the amount received by selling his property on his own interest.

2-A. It was also submitted by the learned Counsel for the Petitioner that the procedure under Section 102 of Cr.P.C was not at all followed by both the first Respondent as well as the second Respondent.

2-B. The learned Counsel for the Petitioner relied on the following reported rulings:

(I) CDJ 2006 MHC 3243 in the case of K.Mahendran Vs. State Rep. By the Sub Inspector of Police, the relevant portion reads as follows:

> *"6. The Order has been passed by the State Bank of India under instructions by the Respondent Police on 23.06.2006. The seizure effected, as per Section 102(3) of Cr.P.C., would have been*

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intimated to the learned Magistrate forthwith and the same has not been done. As per Section 105(E)(2) of Cr.P.C., proceedings would have been initiated before the learned Magistrate by the Respondent Police and the Respondent Police would have received an Order in this regard. Such steps have not been taken by the Respondent Police."

(II) CDJ 2009 MHC 273 in the case of Padmini Vs. The Inspector of Police, District Crime Branch & Others, the relevant portion reads as follows:

"6. In the former Judgment, a learned Judge of this Court in paragraph 11 has held as follows:

"The respondents/Police has also not followed the mandatory requirements of Section 102 of the Code of Criminal Procedure. The Police Officer shall forthwith report the same to the Magistrate and also give notice to the Petitioner and allow him to operate the Bank Account subject to executing a bond undertaking to produce the amount in Court, as and when required as contemplated in Clause 3 of Section 102, but not given any such notice. Even the copy of prohibitory order was not served to the Petitioner".

7. In the latter judgment, a learned Judge in paragraph 21 has held as follows:

"Yet another legal aspect pointed out on the part of the Petitioner by his Counsel is the procedure that is to be adopted on seizure of Bank Account. In case of seizure of a Bank Account, the Police Officer should do two things; he should inform the concerned Magistrate forthwith regarding the prohibitory order. He should also give notice of the seizure to the Accused and allow him/her to operate the Bank Account subject to his/her executing

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abond undertaking to produce the amounts in Court as and when required or to hold them subject to such orders as the Court may make regarding the disposal of the same. An Order under Section 102, without doing so is liable to be set aside, as held in Ms.Swaran Sabharwal V. Commissioner of Police, 1988 Cri.L.J.241 (Delhi). This procedure that is to be followed and felt mandatory has also not been followed by the first Respondent."

8. The learned Government Advocate (Criminal Side) would fairly concede that no such report was given to the learned Magistrate as required under Section 102 of the Code of Criminal Procedure and no notice was also issued to the Petitioner. Since it has been well settled by this Court in the above two judgments that in case where such mandatory provision has not been followed, then the entire proceeding is liable to be quashed."

(III) CDJ 2012 SC 341 in the case of M.T.Enrica Lexie & Another Vs. Doramma & Others, the relavant portion reads as follows:

"13. The Police Officer in course of investigation can seize any property under Section 102 if such property is alleged to be stolen or is suspected to be stolen or is the object of the crime under investigation or has direct link with the commission of offence for which the Police Officer is investigating into. A property not suspected of commission of the offence which is being investigated into by the Police Officer cannot be seized. Under Section 102 of the Code, the Police Officer can seize such property which is covered by Section 102(1) and no other."

(IV) CDJ 2013 MHC 3863 in the case of T.Subbulakshmi & Another Vs. The Commissioner of Police, Chennai & Others, the relevant portion reads as follows:

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"18................. Therefore, I am of the opinion that when it has been clearly held in the said Judgment that the bank account is a property within the meaning of the Section 102(1) of Cr.P.C., and the Investigating Officer can seize the same in the course of investigation, the same has to be done only in accordance with the provisions of Section 102. As per Section 102(3) of Cr.P.C., the Police Officer shall report with regard to seizure of the property forthwith to the concerned Magistrate, but in the instant case, the freezure of the bank account was not reported forthwith to the Magistrate, which is in total violation to the provision under Section 102(3) of Cr.P.C.,"

" 27. From the dictum laid down in the judgments relied on by the learned Senior Counsel for the Petitioners it is clear that the Bank Account is a property within the meaning of Section 102 of Cr.P.C., and sub-Section (3) to Section 102 requires the reporting of seizure of the proeprty to the concerned Magistrate forthwith, which is mandatory in nature. Moreover, the freezing of bank account is an act of the investigation and therefore, the duty is cast upon the Investigating Officer under Section 102(3) of Cr.P.C to report the same to the Magistrate, since the freezure of the bank account prevents the person from operating the bank account pursuant to an investigation by the Police in a criminal case registered against him. If there is any violation in following the procedures under Section 102 of Cr.P.C., the freezing of the bank account cannot be legally sustained. Since in the case on hand the second Respondent-Police has not reported the freezing of the bank accounts of the Petitioners herein to the concerned Magistrate forthwith, which is mandatory under Section 102(3) of Cr.P.C., the proceedings of the second Respondent-Police in freezing of the bank accounts of the Petitioners herein are not legally sustainable."

3. The learned Government Advocate (Crl. Side) had objected the line of arguments of the learned Counsel for the Petitioner stating that the entire

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family is involved in the alleged crime. Initially, the case was registered on the basis of the complaint of the De-facto complainant. After, the case was registered with the first Respondent Police which was subsequently, transferred to the file of the second Respondent. The second Respondent after investigation had issued instructions to the Bank, considering the safeguard of the interest of the persons who had been cheated and whose money had been misappropriated by the family members of the Petitioner.

4.On consideration of the rival submissions it is found that the FIR was registered by the first Respondent on 18/09/2020. Subsequently, a fresh case was registered by the Central Crime Branch in Cr.No.353 of 2020 dated 17.12.2020. The bank had blocked the account of the Petitioner as per the direction issued by the Investigation Officer dated 07.09.2021. From the copies of the typed set enclosed along with the Petition, it is found that the Investigation Officer had not obtained prior permission from the learned Judicial Magistrate before proceeding with the freezing the account of the Petitioner. Also the learned Counsel for the Petitioner undertakes to furnish bond regarding the operation of the Bank account. The Petitioner had also enclosed a copy of the sale deed regarding property, it proceeds for

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Rs.17,76,000/-

5. Therefore, the submission of the learned Counsel for the Petitioner is found acceptable. In the facts and circumstances of the case as seen from the records therein, the Investigation Officer/second Respondent had furnished status report wherein it is stated that the De-facto complainants were examined. Summons sent to witness for examination of Witness, did not turn up for enquiry, having sent a letter dated 21.06.2021 through their Counsel seeking two months time to come for enquiry.

6. It is the contention of the learned Government Advocate (Crl. Side) that the Petitioner herein had been arrayed as Accused No.5 in the FIR.

7. The learned Counsel for the Petitioner relied on the rulings of the Hon'ble Supreme Court of India in ***CDJ 2021 SC 066,*** he also relied on the rulings of the High Court reported in ***CDJ 2022 MHC 092***.

8. On perusal of the copy of the Petitioner's account statement maintained with the Indian Overseas Bank, Teynampet, nowhere it is found

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the accumulation of deposit or deposit from persons other than the Petitioner for huge amounts. Therefore, the submission of the learned Counsel for the Petitioner is found acceptable. When there is no deposit from third parties in the account of the Petitioner or huge amount by the Petitioner, the freezing of the account by the Investigation Officer without following the procedure under Section 102 of Cr.P.C., and in the light of the following rulings reported in

(I) CDJ 2006 MHC 3243 in the case of K.Mahendran Vs. State Rep. By the Sub Inspector of Police.

(II) CDJ 2009 MHC 273 in the case of Padmini Vs. The Inspector of Police, District Crime Branch & Other.

(III) CDJ 2012 SC 341 in the case of M.T.Enrica Lexie & Another Vs. Doramma & Others

(IV) CDJ 2013 MHC 3863 in the case of T.Subbulakshmi & Another Vs. The Commissioner of Police, Chennai & Others.

it is found that the Investigation Officer in this case had not followed the procedure under Section 102 of Cr.P.C.

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In the light of the above rulings, this ***Criminal Original Petition is allowed*** with direction to the Petitioner to co-operate with the pending investigation. The de-freezing of Petitioner's Account with I.O.B, DMS Office Campus, is ordered only on condition that the Petitioner execute a bond for Rs.17,76,000/- before the learned Metropolitan Magistrate, Special Court for CBCID and CCB cases, Egmore. He shall co-operate with the pending investigation. If there is violation of condition the Investigation Officer shall de-freeze the same account only after following the due procedure laid down in Section 102 of Cr.P.C.,

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Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order

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To

1. The Inspector of Police,
   Arumbakkam Police Station,
   Chennai.

2. The Inspector of Police,
   CCB (EDF) Team – II,
   Vepery, Chennai.

3. The Public Prosecutor,
   High Court, Madras.

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SATHI KUMAR SUKUMARA KURUP.J.,

dh

Pre-delivery Order made in

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