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WP.No.21344 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.21344 of 2022 and
WMP.Nos.20435 & 20436 of 2022

Sahil Raj

... Petitioner

Vs.

1.The State of Tamil Nadu,
Through: Inspector of Police,
Cyber Crime P.S. Villupuram,
Tamilnadu 605 602

2.The Superintendent of Police,
District Police Office, Collector Office Road,
Moovendar Nagar, Villupuram,
Tamilnadu 605 602

3.IDFC First Bank,
Branch: Karol Bagh,
2109, Ground Floor, Desbandhu Gupta Road,
Karol Bagh, New Delhi 110 005
Through: Branch Manager

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari to quash the impugned notice under Section 41A of Cr.P.C. dated 08.06.2022 in FIR No.33 of 2021 P.S. Villupuram which was illegally issued by the respondent No.1 against the



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petitioner without jurisdiction and without compliance of the conditions precedents imposed under Section 41A of Cr.P.C. and consequently for quashing the entire proceedings emanating from notice under Section 41A of Cr.P.C. dated 08.06.2022 in FIR No.33 of 2021 P.S. Villupuram issued by respondent No.1 against the petitioner; to quash notice dated 07.04.2022 under Section 91 of Cr.P.C. in FIR No.33 of 2021 P.S.Villupuram, issued by the respondent No.1 to IDFC First Bank, New Delhi for freezing the bank accounts of the petitioner, which are patently illegally and cannot be termed under Section 102 of Cr.P.C. which is also not even applicable in the present case as per directions of this Court in the case titled as 'R.Chandrasekar Vs. Inspector of Police' in CrI.OP.No.24398 of 2002.

For Petitioner : Mr.H.K.Chaturvedi

For Respondents

For R1 & 2 : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

The writ petition has been filed to defreeze the bank account of the petitioner which has been freezed in pursuant to the registration of



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FIR in crime No.33 of 2021 on the file of the first respondent.

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2. The case of the prosecution is that the cheating committed by anonymous person by using whats app No.9003174336 who offered a part time job to the complainant in flipkart and for the purpose of getting job, complainant had followed the instructions of the anonymous person who directed the complainant to open a link i.e. www.U12.in and to open an account. He had followed the instructions of the anonymous person and invested a sum of Rs.5,58,749/- in 26 instalments via Oceanpay link and the amount was sent to the Account No.110009711723 IFSC: CNRB 0019454 (while putting this information in various bank applications the auto-fetch name of the account holder is displayed as Ankit Bansal). Further alleged that the payments made through his mobile phone by using phonepe, google pay account and Punjab National Bank net banking and the anonymous person further told him to deposit a sum of Rs.60,000/- in order to complete the task and only after depositing Rs.60,000/- he will get full amount. However, he could not make the said payment.



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3. The learned counsel for the petitioner submitted that the petitioner is the sole proprietor of his proprietorship business 'AD Street' with GSTIN 07BUHPR7097E1Z4 which engaged in the work of printing business and also engaged in the work trading i.e. purchase and sale of virtual digital assets i.e. crypto currency on different exchanges. While being so, he had received an order of purchase of USDT (virtual digital asset in the form of crypto currency) from a user named Raj Ghosh on 21.10.2021. He had made payment of Rs.89,000/- for the said purchase which is linked with his HDFC Bank current account by phonepe application. He had released the said crypto currency within 15 days to the said Raj Ghosh. While being so, the first respondent issued notice under Section 91 of Cr.P.C. to the Branch Manager of Punjab National Bank, Inderpuri, New Delhi and directed to freeze the petitioner's account. The first respondent has no jurisdiction under Section 91 of Cr.P.C. to freeze the petitioner's account. It cannot be termed under Section 102 of Cr.P.C. Admittedly, the petitioner is not an accused in crime No.33 of 2021. The first respondent also freezed the petitioner's following accounts”

(a) Bank account No.3063000100396702 IFSC: PUNB0306300
Punjab National Bank



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(b) Savings Bank Account No.10074558873 IFSC:
IDFB0020109 (IDFC First Bank)

(c) Banking through phonepe mobile application with phone
number 8586873572 which is attached/linked with my
HDFC bank account.

Therefore, the petitioner could not able to operate his accounts.

3.1 He further submitted that on 20.06.2022, the petitioner was served with notice under Section 41-A of Cr.P.C. from the file of the first respondent, thereby called upon the petitioner to attend enquiry on 20.06.2022 before the first respondent. However the said notice was issued only on 20.06.2022. It requires atleast minimum 14 days to appear before the first respondent with complete documents and records. It was issued without compliance with the conditions prescribed under Section 41-A of Cr.P.C.

4. The learned Additional Public Prosecutor appearing for the respondents 1 & 2 submitted that in pursuant to the registration of FIR, the accounts of the petitioner were freezed in crime No.33 of 2021. Now, the



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investigation is still pending. Further, even according to the petitioner, a sum of Rs.89,000/- was received from one, Raj Ghosh for purchase of virtual digital assets in the form of crypto currency. Therefore, there is reason to believe that the petitioner also involved in similar kind of offence. Therefore, the first respondent rightly requested the petitioner's banker to freeze the account. He further submitted that the petitioner was issued notice under Section 41-A of Cr.P.C. and even then, he failed to appear before the first respondent for enquiry.

5. Heard, Mr.H.K.Chaturvedi, the learned counsel for the petitioner and Mr.E.Raj Thilak, the learned Additional Public Prosecutor appearing for respondents 1 & 2.

6. It is also seen that admittedly the petitioner is not an accused in crime No.33 of 2021 on the file of the first respondent. In pursuant to the registration of FIR, the first respondent issued notice under Section 91 of Cr.P.C. It revealed that during investigation found that the victim money was transferred to various bank accounts. In one of the accounts used by



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fraudster, the cheated money was transferred to the petitioner's account.

Therefore, they requested the third respondent to total freeze the bank account which is linked with suspect bank account. It is relevant to extract provision under Section 91 of Cr.P.C.

91. Summons to produce document or other thing.

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or



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(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

7. Thus, it is clear that the first respondent has no jurisdiction. In the summons issued under Section 91 of Cr.P.C., the investigation officer summons the person to produce the document or other things. On the summons issued under Section 91 of Cr.P.C., account cannot be freezed. That apart, the first respondent failed to comply with the procedure as contemplated under Section 102(3) of Cr.P.C. Admittedly the first respondent failed to inform the freezing of the petitioner's account to the concerned jurisdictional Magistrate even till now. However, the petitioner himself admitted that he placed order of purchase of USDT (virtual digital asset in the form of crypto currency) from a user named Raj Ghosh on 21.10.2021. He also had made a payment of Rs.89,000/- to his HDFC Bank current account.

8. In view of the above, the petitioner is directed to deposit a sum of Rs.89,000/- in the form of fixed deposit in favour of crime No.33



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of 2021 on the file of the first respondent and on such deposit, the third respondent is directed to permit the petitioner to operate his Account No.10074558873 IFSC: IDFB 0020109, Karol Bagh Branch, IDFC First Bank. Insofar as the notice under Section 41-A of Cr.P.C., now the date of enquiry has expired. However, the first respondent is directed to issue fresh notice after compliance of the procedure laid down under Section 41-A of Cr.P.C. for enquiry.

9. With the above directions, this writ petition is disposed of. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Speaking order

Index : Yes

Internet : Yes

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G.K.ILANTHIRAIYAN, J.

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To



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Tamilnadu 605 602
2. The Superintendent of Police,
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3. Branch Manager,
IDFC First Bank,
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4. The Public Prosecutor,
High Court of Madras

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