IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.01.2022
PRONOUNCED ON : 12.01.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.22419 & 22421 of 2021 and
Crl.M.P.No.12182 & 12184 of 2021

1.J.Satheesh Kumar ... Petitioner in Crl.O.P.No.22419 of 2021
2.R.Jayapriya ... Petitioner in Crl.O.P.No.22421 of 2021

Versus

1.State Rep. by,
Inspector of Police,
EOW, Chennai,
Cr.No.24/2021.

2.The Branch Manager,
HDFC Bank Limited,
56, G.N.Chetty Road,
T.Nagar, Chenani-600 017.

3.The Branch Manager,
Axis Bank,
Chennai Main Branch,
82, Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.
... Respondents in Crl.O.P.No.22419 of 2021

1.State Rep. by,
Inspector of Police,
EOW, Chennai,
Cr.No.24/2021.

2.The Branch Manager,
Chennai Central Co-Operative Bank Limited,
Saidapet Branch,
No.37, Jeenis Road,
Saidapet, Chennai-600 015.
... Respondents in Crl.O.P.No.22421 of 2021

PRAYER in Crl.O.P.No.22419 of 2021: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to direct the first respondent to defreeze the petitioner's bank account bearing Account No.02061050214196 maintained in the 2nd respondent bank and account bearing Account No.006010101427125 maintained in the 3rd respondent bank within the time stipulated by this Court.

PRAYER in Crl.O.P.No.22421 of 2021: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to direct the first respondent to defreeze the petitioner's bank account bearing Account No.219026363 maintained in the 2nd respondent bank within the time stipulated by this Court.

In both cases:

For Petitioners : Mr.M.Mohamed Riyaz

For Respondents : Mr.E.Raj Thilak, Additional Public Prosecutor

COMMON ORDER

Crl.O.P.No.22419 of 2021 has been filed to direct the 1st respondent to defreeze the 1st petitioner's Bank Account No.02061050214196 maintained in the Branch Manager, HDFC Bank Limited, 56, G.N.Chetty Road, T.Nagar, Chennai and the Account No.006010101427125 maintained in the Branch Manager, Axis Bank, Chennai Main Branch, 82, Dr.Radhakrishnan Salai, Mylapore, Chennai.

2.Crl.O.P.No.22421 of 2021 has been filed to direct the 1st respondent to defreeze the 2nd petitioner's Bank Account No.219026363 maintained in the Branch Manager, Chennai Central Co-Operative Bank Limited, Saidapet Branch, No.37, Jeenis Road, Saidapet, Chennai.

3.Gist of the case is that M/s.Nivaya Resources Private Limited Company/defacto complainant is engaged in the business of trading of imported coal, besides bunkering and marketing of fuel oil, base oil and steel. The business was managed by the 1st petitioner/A1-Satheesh Kumar-Head-Coal, South & East India and Masilamani-A2-Operations-Pet Coke & Minerals, Chennai. A3 is M/s.GPR Resources Private Limited, Chennai and A4 is M/s.Indian Coal Company, Chennai. The company during the course of business, having imported 56,300 MT of coal from Indonesia through vessel MV Beaufort during the month of November 2019 at Tuticorin port. Again, 2,864.10 MT was inter-carted from other plot where MV Incredible Blue cargo was discharged. Accordingly, there was stock of coal at 59,164.10 MT in plot where Cargo MV Beaufort was unloaded. The defacto complainant company had appointed M/s.Villavarayar & Son, VOC Port, Tuticorin for handling the cargo operations at Tuticorin Port. M/s.Villavarayar & Son., was under instruction to deliver goods to contracted buyers of such goods under cover of valid delivery order in terms of agreement. The 1st petitioner/A1 and A2 were responsible for concluding sales contract with prospective buyers, forwarding delivery order to handling agent, collection of advance money from such contracted buyers in accordance with the company procedures. During the COVID-19 pandemic from 21.03.2020, the coal operations were halted. After resumption of normalcy, from 10.10.2020 onwards, the company decided to sell the coal and took out a inventory of coal lying at Tuticorin port.

4.Later, it was found that A2-Masilamani manipulated the stock quantity numbers in handling Agent's despatch report and sent it to the defacto complainant company. Thereafter, the documents of despatch details, lorry details, gate pass etc., were verified. At that time, it was found that the coal were despatched to A3 and A4 without proper documents and the sale procedures were not followed. On enquiry with A3 and A4 with regard to payment and supply, it revealed that all the accused have conspired together and fraudulently misappropriated the coal worth of Rs.2,19,52,847/- and Rs.72,73,344/-. When A1 and A2 questioned the same, they admitted the date and delivery of goods was without proper invoice. Both the accused agreed to recover the funds for supply of 7715 MT of coal. A2 confessed about the misdeeds as to fraudulent sale and theft of coal amounting to 7715 MT and thereby, the defacto complainant company suffered loss to the tune of Rs.2.92 Crores. Hence, a complaint was lodged by the defacto complainant against the accused and the same was registered in FIR in Crime No.24 of 2021, for offence under Sections 408, 420 and 120(b) IPC on 18.08.2021.

5.The learned counsel for the 1st petitioner in Crl.O.P.No.22419 of 2021 submitted that the 1st petitioner resigned from the defacto complainant company by submitting his resignation letter during the month of August 26th 2020, which was was accepted and, was relieved from the service of the defacto complainant company on September 21st 2020. The 1st petitioner had handed over all the charges and the documents to the defacto complainant company. He further submitted that the defacto complainant company gave relieving letter appreciating the 1st petitioner's service during his employment period. After resignation, the petitioner moved to Singapore and, is doing similar business. Being aggrieved over the 1st petitioner switching on to the similar business, the defacto complainant lodged a false complaint against the 1st petitioner and others. After registration of FIR, the petitioner was arrested on 25.08.2021 and later, he was granted bail by this Court in Crl.O.P.No.17445 of 2021, dated 24.09.2021, on condition that the petitioner to deposit Rs.50,00,000/- to the credit of Crime No.24 of 2021, as per the order of this Court, the petitioner deposited the amount complying the order.

6.The learned counsel further submitted that the duty of the 1st petitioner is that he has to take orders from the prospective buyers, forward delivery order to handling agent and collect advance money from contracted buyers and instruct A2 to deliver the goods to perspective buyers. The petitioner got relieved from the defacto complainant company without any adverse remarks. Earlier to the present case, a complaint was lodged on 22.03.2021, wherein enquiry was conduced by the respondent Police and the same was closed as civil in nature.

Suppressing the same, the present complaint has been filed against the petitioner. Further, the petitioner was not intimated about freezing of his bank accounts. To shock and surprise, when the petitioner wanted to operate his bank accounts, he was informed by the bank officials, by communication, dated 16.10.2021 that directions were received from the respondent Police, vide notice, dated 26.08.2021 to freeze the accounts. Now, the bank accounts of the 1st petitioner blocked and no debits were permitted. The learned counsel further submitted that the 1st petitioner's account in the 2nd respondent bank/HDFC Bank Limited, 56, G.N.Chetty Road, T.Nagar, Chenani is the salary account, wherein his salary were credited. To substantiate the same, the learned counsel for the 1st petitioner produced the statement of accounts showing the salary credits in HDFC Bank Limited, T.Nagar, Chenani and the other account maintained in the 3rd respondent bank, which was used to make his payments and credits were predominantly from the salary account.

7.The learned counsel for the petitioner in Crl.O.P.No.22421 of 2021 submitted that the 2nd petitioner's husband is the 1st petitioner/A1 in Crime No.24 of 2021. The 2nd petitioner has got nothing to do with her husband transaction and she maintained her account independently and she was not informed about freezing of her account. Due to freezing of the account, the petitioner is unable to operate her account and when she questioned the same with the bank officials, she was informed that on the instructions of the respondent Police on 26.08.2021, her account is put on hold and freezed. The 2nd petitioner produced the bank statement of her account to show that there is no suspicious credits in her account. He further submitted that the mandatory condition contemplated under Section 102 Cr.P.C., not followed in this case. As per Section 102 of Cr.P.C., the Police officer after freezing the bank account of any person, forthwith to inform the same to the jurisdictional Magistrate. Added to it, no explanation was sought from the 2nd petitioner with regard to freezing of bank account. Now the 2nd petitioner are not permitted to operate the account. Due to freezing of bank account, the entire financial transaction of the 2nd petitioner is crippled. The 2nd petitioner is due to make his Income Tax payments and other statutory payments. Hence, he prayed for appropriate direction of this Court.

8.In support of his submissions, the learned counsel for the petitioners relied on the decision of the Hon'ble Apex Court in the case of “Opto Circuit India Limited Versus Axis Bank and others reported in (2012) 6 SCC 707” and submitted that as per Section 102(3) Cr.P.C., the Police Officer are forthwith to report to the Magistrate having jurisdiction about freezing the bank account.

9.The learned counsel further submitted that there is nothing in the communication, dated 06.12.2021 sent by the respondent Police.and for what reason, the seizure of bank account made and for what reason not informed the jurisdictional Court. In the case of "Mohinder Singh Versus Chief Election Commissioner reported in 1978 1 SCC 405" the Hon'ble Apex Court had held 'when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out'.

10.Thus, the Hon'ble Apex Court has time and again held that if a statue provides for a thing to be done in a particular manner, then to it has to be done in that manner alone and in no other manner. In this case, the FIR has been registered on 18.08.2021 and the petitioner was arrested on 25.08.2021. The instructions to the banks to freeze the account of the petitioners issued on 26.08.2021. The seizure intimated to the jurisdictional Court and to the petitioners were made on 06.12.2021. The petitioners have filed the above petitions before this Court on 16.11.2021. Thus, the respondent Police sent the communication to the jurisdictional Court and to the petitioners about freezing of bank accounts, after filing the above Criminal Original Petitions. In view of the same, freezing of the petitioners' bank accounts to be lifted and the prohibitory orders to be quashed.

11.The learned Additional Public Prosecutor appearing for the respondents in both cases filed common counter and submitted that the defacto complainant company imported coal of 56,300 MT from Indonesia in the year 2019 and 2864.10 MT was inter carted from other plot cumulatively 59164.10 MT in plot where cargo MV Beaufort was unloaded. M/s.Villavarayar & Son., carried out the deliver of the other orders duly issued from corporate office was under instruction to deliver goods under cover of valid delivery order. During COVID-19, the delivery of coal was stopped for sometime and after resumption of lock down, the defacto complainant company decided to sell the remaining coal after inventory. It was reported that 7715 MT coal available at Tuticorin port by the accused A1 and A2. One Rajesh Jain from the defacto complainant decided to verify the same from handling agent and also physically verified the same. On verification, it was found that no coal was available contrary to the stock certificate. On verification of documents, the defacto complainant company found that the 1st petitioner/A1 and A2 dispatched coal in a concealed and unauthorized manner to A3 and A4. It was also found that A3 and A4 had fraudulently misappropriated coal worth Rs.2,19,52,487/- and Rs.72,73,344/- respectively. Thus, all the accused had misappropriated, deceived and cheated the defacto complaint to the tune of Rs.2.92 Crores and hence, a case in Crime No.24 of 2021, for offence under Sections 408, 420 and 120(b) IPC registered on 18.08.2021. During investigation, A1 was arrested on 25.08.2021 and he remanded back to judicial custody. Thereafter, he moved bail application before the lower Court in Crl.M.P.No.6237 of 2021 and the same was dismissed. In the meanwhile, the Investigating Officer sent a letter on 26.08.2021 to the banks with a direction to freeze the bank accounts of the petitioners. The bank accounts of the 1st petitioner/A1 was freezed on 06.10.2021 and the 2nd petitioner on 21.10.2021. In the meanwhile, the mother of the Investigating Officer died on 05.09.2021, due to which, she proceeded on leave and later, when she joined the duty, she was informed about freezing of bank accounts.

12.It is further submitted that the Investigating Officer suspected that the misappropriate amount would have been credited in the account of the 1st petitioner/A1's wife and hence, her bank account was also freezed. The respondent Police admitted that they have not informed the concerned Magistrate forthwith about freezing of bank accounts of the petitioners. When the respondent Police took steps to inform the Magistrate about freezing of bank accounts, the case diary in Crime No.24 of 2021 got mixed up with other papers and it could not be traced immediately for that reason it got delayed. Further, the Economic Offence Wing was ordered to shift from Guindy to Ashok Nagar. Later, the Case diary was retrieved and intimation was sent to the Magistrate on 06.12.2021 as well as to the petitioners about freezing of bank accounts. The mistake happened inadvertently and it is due to the administrative reason in shifting the office. During investigation, it was found that in the HDFC Bank Limited, T.Nagar, Chenani, Rs.6,08,611.93/- is available and in Axis Bank, Chennai Main Branch, 82, Dr.Radhakrishnan Salai, Mylapore, Chennai, Rs.10,671.99/- is available. Both the account stands in the name of the 1st petitioner. In the 2nd petitioner's account in Chennai Central Co-Operative Bank Limited, Saidapet Branch, Chennai, Rs.1,68,882.00/- is available. In total, Rs.7,88,165.92/- is available. Since the amount in these bank accounts was suspected to be misappropriated amount involved in the commission of offence, the bank accounts have been freezed. Only after completion of investigation, the genuineness and veracity of the petitioners' contention can be ascertained. Thereafter, the petitioners can file appropriate petition for defreezing their bank accounts. Now, for the purpose of investigation, freezing of bank accounts is necessary. As per Section 102 Cr.P.C., the Police officer during the course of investigation can seize the operation of the assets/bank account. Hence, the petitioners cannot challenge the seizure of their bank accounts and the above petitions are liable to be dismissed.

13.In support of his contention, the learned Additional Public Prosecutor relied on the decision in the case of "Teesta Atul Setalvad Versus State of Gujarat reported in (2018) 2 SCC 372".

14.This Court considered the rival submissions and perused the materials available on record.

15.The requirement of Section 102 Cr.P.C., is that the Police officer to seize the bank account, if it is found that the amount in the bank account of the accused or others has got a direct link with the case. The power of Police officer issuing prohibitory order to freeze the bank account is not in dispute. In the case of “State of Maharashtra Versus Tapas D.Neogy reported in (1999) 7 SCC 685”, the Hon'ble Apex Court held that the two pre-conditions for applicability of Section 102(1) Cr.P.C., are that it must be 'property' and secondly, in respect of the said property there must be suspicion of commission of any offence. If these two conditions were found the prohibitory orders can be issued. In the case of “Adarsh Cooperative Housing Society Limited Versus Union of India reported in 2012 Cri LJ 520” it is held that 'once again considered the issue and rejected the argument that prior notice to the account-holder was required to be given before seizure of his bank account. It is also noted that the bank account need not be only of the accused but it can be any account creating suspicion about the commission of an offence.'. This point has been reiterated in the case of “Jayendra Saraswathy Swamigal Versus State of Tamil Nadu reported in (2005) 8 SCC 771” wherein it is held that '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. Thus the power of the Police officer in seizing the account is not in dispute, but with the rider of the pre-condition as stated above.'.

16.In the case of “Opto Circuit India Limited Versus Axis Bank and others reported in (2012) 6 SCC 707”, the Hon'ble Apex Court had held that under sub-section (3) to Section 102 Cr.P.C., requires that the Police Officer shall forthwith report the seizure to the Magistrate having jurisdiction. In this case, admittedly, the direction to freeze the bank accounts was issued on 26.08.2021 and the 1st petitioner bank accounts seized on 06.10.2021 and the 2nd petitioner bank account seized on 21.10.2021. The intimation of seizure reported to the jurisdictional Magistrate was only on 06.12.2021. Thus, the condition under Section 102(3) Cr.P.C., to forthwith report the seizure to the Magistrate have not complied with, as well as it is not known whether superior officer have been informed in compliance to Section 102(2) of Cr.P.C.

17.The reason given by the Investigating Officer for not informing the freezing of bank accounts that her mother passed away on 05.09.2021 and she proceeded on leave, is not acceptable. The office of the respondent Police is perpetual and absence of the Investigating Officer for any reason would no way take the duty and responsibility in compliance of the mandatory provisions. The other reason given by the Investigating Officer that shifting of office, mixing of Case Diary with other files, cannot be accepted. Admittedly, in this case, the learned Magistrate was informed only on 06.12.2021 and this petitions filed before this Court on 16.11.2021. Certainly, after filing of the above petitions, realizing the mistake, such explanation are given by the Investigating Officer.

18.In the case of "Mohinder Singh Versus Chief Election Commissioner reported in (1978) 1 SCC 405 and Chandra Kishor Jha Vs. Mahavir Prasad and Ors. (1999) 8 SCC 266", the Hon'ble Apex Court had categorically held that statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. In the case of "Chandra Kishore Jha" (cited supra) in paragraph No.17, it had held that 'It is a well settled salutary principle that if a statue provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner.'

19.In the counter filed by the learned Additional Public Prosecutor, the respondent Police unable to give reason showing nexus on the amount available in the petitioners' account with the commission of offence. The explanation given by the 1st petitioner that his account in M/s.HDFC Bank Limited, T.Nagar, Chenani is a salary account, wherein periodically the salary amounts created, cannot be brushed aside. Likewise, the credits in the 2nd petitioner's bank account no way indicates that the amount had any nexus to the case. The explanation given by the petitioners are credible and acceptable.

20.The Hon'ble Apex Court time and again categorically held the mandatory condition contemplated under Section 102 of Cr.P.C., have to be scrupulously followed. Thus, this Court finds that freezing of the bank accounts of the petitioners is without following the mandatory provision and failure in compliance of the statutory provisions contemplated under the Code of Criminal Procedure, 1973. In view of the same, it is necessary to defreeze the respective bank accounts of the petitioners. Hence, the prohibitory orders passed by the respondent Police is hereby quashed. It is open to the respondent Police to follow the compliance required with the procedure afresh as contemplated in law.

21.With the above directions, both Criminal Original Petitions are allowed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police,
EOW, Chennai,

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Mohamed Riyaz, Advocate SR. No.2634

Crl.O.P.Nos.22419 & 22421 of 2021

PL (CO)
PR (28/01/2022)