



W.P.(MD)No.23953 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 30.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.(MD)No.23953 of 2022

Harish Kennedy, S/o.Devaraj

... Petitioner

Vs

1.The Branch Manager,
Tamilnad Mercantile Bank Ltd.,
Nalumavadi Branch,
10/122, Main Road,
Nalumavadi,
Thoothukudi District.

2.The Deputy Registrar,
Co-operatives,
Medona Street,
Veerapandianpattinam,
Tiruchendur,
Thoothukudi District.

3.The Inspector of Police,
CCIW Police Station,
Thoothukudi.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to de-freeze petitioner's current account in Account Number 068150050800195 in the first respondent bank forthwith.

For Petitioner

: Mr.T.A.Ebenezer



W.P.(MD)No.23953 of 2022

For 1st Respondent : Mr.N.Dilipkumar
For 2nd Respondent : Mr.M.Senthil Ayyanar
Government Advocate
For 3rd Respondent : Mr.B.Thanga Aravindh
Government Advocate
(Criminal side)

ORDER

The petitioner has prayed for issuance of a Writ of Mandamus, directing the respondents to de-freeze his current account in Account Number 068150050800195 in the first respondent bank forthwith.

2. The case of the petitioner is that his wife namely, Jancy Gnanabai Chandrakantha was working as Assistant Secretary in Kurumbur Primary Agricultural Co-operative Credit Society. She was affected by Paralytic and hence, she took leave. During the inspection, it came to light that the Secretary working in the Society mishandled and misappropriated huge amount from the Society by pledging the jewels from the Society in some other Society. Therefore, the second respondent preferred a complaint against the Secretary, Assistant Secretary and the President of the Society, which was registered in Crime No.2 of 2021, on the file of the CCIW, Thoothukudi.



W.P.(MD)No.23953 of 2022

3. The petitioner's wife wrote a letter to the CCIW Police, explaining the fact that all the jewels are pledged in another Society by the Secretary. But, CCIW Police without doing proper investigation for recovery of jewels from the Secretary, implicated the petitioner's wife unnecessarily. The Secretary of the Society surrendered before the learned Judicial Magistrate No.II, Tirunelveli and got bail on the same day. The petitioner's wife filed an application for anticipatory bail before this Court and the same was dismissed. In order to harass her, the respondents herein freezed the petitioner's bank account. Before freezing the petitioner's account, the first respondent Bank never gave an opportunity of hearing to the petitioner. Hence, the petitioner submitted a representation dated 30.09.2022, to the first respondent seeking to defreeze his account.

4. According to the learned counsel for the petitioner, the respondent Police has no *locus standi* to freeze the petitioner's account. Even if the same is frozen, it must be reported to the jurisdictional Magistrate forthwith in view of Section 102(3) of Cr.P.C. The petitioner's transaction is nothing to do with his wife's transactions. A property not suspected of commission of the offence, which is being investigated into by the Police Officer, cannot be seized.



W.P.(MD)No.23953 of 2022

5. The third respondent filed a counter affidavit stating that the petitioner is engaged in Transport business and for business purpose, he opened a current account before the first respondent and his wife was working as Assistant Secretary in Kurumbur Primary Agricultural Co-operative Credit Society. While so, huge misappropriation was happened in the Society, for which, a case in Crime No.2 of 2021 was registered against her and other Society members. Therefore, she gave a written explanation to the third respondent, narrating the real facts. Subsequently, she moved anticipatory bail petition and the same was dismissed and now, she was in desperate situation. While so, the account maintained by the petitioner was freezed on 29.09.2022 by the third respondent without following due process of law and hence, on 30.09.2022, he gave a representation to the first respondent for de-freezing the account.

6. While the petitioner's wife was in service, she has misappropriated a sum of Rs.2,03,92,700/- during the period from 22.05.2019 to 24.08.2021. An enquiry revealed that a total sum of Rs.28 Crores and odd has been misappropriated in the Society. By pleading guilty, the petitioner's wife had given an undertaking on 09.09.2021 that she will pay the misappropriated amount. However, she did not comply with the same. Hence, a complaint came to be lodged, which culminated in Crime No.2 of 2021 on 13.10.2021. After



W.P.(MD)No.23953 of 2022

registration of the case, all the accused persons, including the petitioner's wife have absconded and the petitioner's wife filed three anticipatory bail petitions before this Court and the same were dismissed and she did not co-operate for enquiry. Accused No.1 was surrendered and Accused No.3 was arrested and enlarged on bail by the Court concerned. Now, the prosecution suspects that the petitioner used the above mentioned account for converting the amount as an income from his business. Further, the petitioner is harbouring his wife and made her to escape from the clutches of law. Therefore, on 29.09.2022, a requisition letter was sent to the first respondent for freezing the account as part of investigation and accordingly, his account was freezed by following the due process of law as envisaged in Section 102 of Cr.P.C. After freezing the account, the same was duly intimated to the jurisdictional Magistrate. Section 102 of Cr.P.C. does not contemplate that the issuance of any notice to the account holder for the purpose of investigation and that no notice to the suspect can be expected under law. In this case, the procedures laid down in Section 102 of Cr.P.C. were duly complied with and the petitioner's account was freezed by following the due process of law and therefore, he prayed for dismissal of the Writ Petition.



W.P.(MD)No.23953 of 2022

7. The learned Government Advocate appearing for the second respondent submitted that the property of the petitioner has been attached by the second respondent and steps are being taken by him for bringing the property to auction sale and he has no instruction regarding the Society, which has now become defunct and there is no authority and authorized officer in the said Society to proceed further.

8. Considering the aforesaid facts and circumstances of the case and also considering the submissions made by the learned counsel on either side, this Court directs the second respondent to proceed further diligently as per the procedures established under law, regarding the attached property as the amount involved in this case is more than Rs.28 Crores and odd. The first respondent shall not de-freeze the account till the orders obtained from the competent Court. The third respondent Police cannot simply state that the investigation is pending for a very long time. The authorities have to do their duty as envisaged by the Constitution. They have to perform their duties in a proper manner and they cannot shirk their responsibility. The Superintendent of Police, EOW, Chennai, is hereby directed to supervise the investigation of the Deputy Superintendent of Police, Tirunelveli and file a final report within a period of 90 days from today before the concerned Judicial Magistrate.



W.P.(MD)No.23953 of 2022

9. This Writ Petition stands dismissed with the above directions. No costs.

Index : Yes/No
smn2

30.11.2022

To

1.The Deputy Registrar of Co-operative Societies,
Medona Street,
Veerapandianpattinam,
Tiruchendur,
Thoothukudi District.

2.The Inspector of Police,
CCIW Police Station,
Thoothukudi.

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

Copy to:-

The Superintendent of Police,
EOW, Chennai.



W.P.(MD)No.23953 of 2022

V.BHAVANI SUBBAROYAN, J.

smn2

W.P(MD)No.23953 of 2022

30.11.2022