IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED **12.01.2023**

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No. 4819 of 2022
And
W.M.P.No. 4931 of 2022
And
W.M.P.No. 24224 of 2022

1. Mrs. Chitra Kanagaraj

2. Mrs. Vidhya Saraswathi Kanagaraj

3. Mrs. Kavitha ... Petitioners

..Vs..

1. The Under Secretary to Government
Ministry of External Affairs
Overseas Indian Affairs
Government of India
South Block, New Delhi – 110 001.

2. The Regional Manager
Reserve Bank of India
Fort Glacis, Chennai – 600 001.

3. The Regional Manager
IDBI Bank Ltd.,
No.37, P.M.Towers
Thousand Lights,
Chennai – 600 006.

4. The Branch Manager
IDBI Bank Ltd., Avadi Branch
Vasantham Nagar,
Avadi, Chennai – 600 054.

5. Mrs. K.Subbulakshmi ... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus directing the respondents 3 and 4 to freeze the bank accounts, more fully described in the schedule hereunder, and pass such other order or relief that may deem fit and proper in the circumstances of the case.

SCHEDULE

IDBI Bank A/c. Nos. 28810400013244 & 288104000208277 vide Customer ID Nos. 70764640 & 71716177 – Associated Cust.ID: 71726177 – Avadi Branch, and Fixed deposits (from common property sales inherited by all legal heirs, but under K.Subbulakshmi), ending 5166, 5173, 10812, 15783, 12892, 8709, 10973.

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For Petitioners :: Mr. R.Prabhakaran

For 1st Respondent :: Mr. K.Subbu Ranga Bharathi
Central Government Standing Counsel

For RR 3 & 4 :: Mr. V.Suresh
for Mr. Shiva Kumar

For 5th Respondent :: Mr.V.Vijaya Shankar

ORDER

This Writ Petition has been filed by three sisters, who are all residents at USA in the nature of a Mandamus seeking a direction against the third and fourth respondents, namely, the Regional

Manager, IDBI Bank Ltd., Chennai – 600 006 and the Branch Manager, IDBI Bank Ltd., Avadi Branch at Chennai – 600 054, to freeze the bank accounts which had been given in the schedule, namely, IDBI Bank A/c. Nos. 28810400013244 & 288104000208277 vide Customer ID Nos. 70764640 & 71716177 – Associated Cust.ID: 71726177 – Avadi Branch, and Fixed deposits (from common property sales inherited by all legal heirs, but under K.Subbulakshmi), ending 5166, 5173, 10812, 15783, 12892, 8709, 10973.

2. The entire Writ Petition surrounds private disputes between the petitioners on the one hand and the fifth respondent on the other hand. The petitioners are the daughters of R.Kanagaraj and Mrs. Renuka Devi. After the death of their mother, their father had married the fifth respondent. The father R.Kanagaraj died on 21.06.2016. The marriage between R.Kanagaraj and the fifth respondent took place in the year 1996. One of the statements made across the bar is that the petitioners, after the year 1996, are all residents of USA. The fifth respondent had occasion to go over to USA on several occasions. She had similarly gone over to USA and stayed there during the Covid-19 lock down period. She then came back to India on 01.12.2021.

3. Another statement made across the bar is that the petitioners provided her the tickets and also packed her bags. They evidently wanted her to go away from their house. She came back to India. After about a week, she had thought it fit for some reason, to cancel a power of attorney over a particular property which had been granted in favour of the father-in-law of the third petitioner. That appears to have triggered some grievance on the petitioners as one group against the fifth respondent. The petitioners also allege that the fifth respondent had also taken away jewellery, cash in USD currency and also title deeds of properties and to this extent, they had lodged a complaint before the jurisdictional police at USA.

4. It is stated by the learned counsel for the petitioners that the investigation did not proceed further but had stalled since the fifth respondent had come over to India. It appears that the entire records had been transferred to the Indian Embassy and have finally landed up in the desk of the Inspector of Police, V-7 Nolampur Police Station, Ambattur, who registered CSR No. 42 of 2022 against the fifth respondent herein.

5. It is trite in law to point out that at this particular stage the fifth respondent can never be categorised as an accused. It was only an enquiry on the basis of a complaint given. In this case, the complaint was not directly given but had been transferred through proper channel to the said police station. After due enquiry, the Inspector of Police had closed the said complaint by stating that action had been dropped.

6. Aggrieved by the same, the petitioners herein had filed Crl.M.P.No. 2686 of 2022 before the Judicial Magistrate at Ambattur, through their power of attorney agent, who is a resident of Ayyappanthangal in Chennai. The learned Magistrate by an order dated 29.09.2022 in Crl.M.P.No. 2686 of 2022 had directed the Inspector of Police, Nolambur Police Station, to conduct a thorough enquiry and if any cognizable offence had been made out, further directed that a First Information Report should be registered and a report should be given to the said Magistrate Court. No information is forwarded as to the further investigation or progress consequent to the said direction.

7. In the present Writ Petition, the petitioners seek a direction against the third and fourth respondents to freeze the bank accounts aforementioned.

8. During the dictation of this order, the Court had stated that the petitioners had presumed that the amounts in the said bank accounts were the stolen amounts from USA. But the learned counsel for the petitioners refuted that particular statement made by the Court and stated that was not the specific case of the petitioners. It is therefore clear that even according to the petitioners, the amounts in the aforesaid bank accounts are not the amounts which could be traced to any amount alleged to have been taken away by the fifth respondent from the petitioners in USA. Thus there is no connection between the amounts in the bank accounts and the amounts alleged to be taken away by the fifth respondent from the petitioners at USA.

9. The learned counsel for the petitioners took this Court through a Treaty signed between India and USA in the year 2001 and stated that in accordance with the Treaty there should be co-operation in investigation of offences committed by any Indian, an offence in USA and by any USA citizen, in India.

10. A person can be categorised as an accused only when convicted in a Court of law. Till then, every Indian Citizen presumed to be innocent of commission of any offence for which he or she is charged. This is a strong presumption which has to be drawn.

11. The learned counsel for the petitioners relied on Section 102(e)(i) and (ii) of Cr.P.C. The reliance on the said Section is misplaced. Section 102 (e) of the Criminal Procedure Code comes into play when an officer who is authorised to investigate an offence comes to personal satisfaction that any amount lying in a bank account are the proceeds of any crime, then, the said Officer can apply to the said Court to freeze the said account. No investigation had been completed for any officer to come to any personal satisfaction that the amounts lying in the aforementioned bank accounts are the alleged amounts which are alleged to have been taken away from the petitioners by the fifth respondent. As a matter of fact, even the learned counsel for the petitioners had admitted that the amounts in the bank are not the amounts alleged to have been taken away from USA. Further the Court as stated in Section 102(e)(ii) is not this Court but rather the concerned jurisdictional Magistrate Court. A direction also has been given by the learned Judicial Magistrate at Ambattur, to investigate and if at all any cognizable offence is made out, to register an FIR.

12. It is to be kept in mind that in the initial investigation, the Investigating Officer / Inspector of Police had dropped further action. It is also stated by the learned counsel for the petitioners that it was done so on two grounds, namely that the dispute is civil in nature and tht it is a family dispute.

13. The learned counsel for the third and fourth respondents raised a preliminary objection stating that the Writ Petition is not maintainable against the IDBI Bank and in this connection, placed reliance on the Judgment of a Division Bench of Bombay High Court in ***W.P.No. 2833 of 2012 [All India IDBI Officers Association Vs. Union of India and Ors.]*** wherein it had been very clearly held that a Writ Petition is not maintainable as against IDBI Bank.

14. Let me not enter into that particular controversy since the issue today is whether this Court should grant Mandamus to direct freezing of an account wherein the amounts are not related to the petitioners herein at all.

15. The learned counsel for the petitioners stated that as daughters of the family, the petitioners will have a share of the amounts but again that does not entitle an order of freezing the account. They can seek a share of the amounts but certainly cannot urge this Court sitting under Article 226 of the Constitution of India to pass an order to freeze the bank accounts. There is no nexus between the amounts alleged to be taken away from the residences of the petitioners and the amounts in the bank account. When that be the case, the fifth respondent will have and shall have every liberty to operate the bank account.

16. The learned counsel for the petitioners relied on a string of Judgments both delivered by the Indian Courts and by Courts in England.

17. He first placed reliance on the Judgment of the House of Lords in ***Siskina (Owners of Cargo Lately Laden on Board) and others and Distos Compania Naviera S.A.*** That was a matter relating to Admiralty Jurisdiction. The issue in the present case is certainly different. In that particular case, bills of lading had been raised. There had been a contractual arrangement between the parties necessitating raising of bills of lading. In the instant case there is no contract at all between the petitioners and the fifth respondent. There is only a remote relationship of the fifth respondent being a step mother of the petitioners. The learned counsel for the petitioners stated that the petitioners have taken any extra ordinary step of seeking cancellation of the marriage of their father with the fifth respondent herein.

18. The next Judgment relied on by the learned counsel for the petitioners is again of the House of Lords, ***Fourie v Le Roux and others [2007] 1 WLR***. There was an order for payment of costs of indemnity and then there was an injunction granted. There was an originating summons which had been raised and served in the form of an order. It is seen that the respondents had been held to have committed fraud and deception and had removed the assets of a company.

19. In the instant case, the bank accounts which are sought to be frozen do not reflect the amounts alleged to have been taken away by the fifth respondent from the petitioners' residences. It is admitted there is no nexus at all. It is highly inappropriate that a relief is sought to freeze the accounts over which the petitioners as on date have admitted have no connection with the amounts alleged to have been taken away by the fifth respondent from their residences at USA.

20. The learned counsel for the petitioners also relied on ***2019 SCC OnLine Cal 1779 [Tata Chemicals Ltd., Vs. Kshitish Bardhan Chunilal Nath and Others]***. In that case, an order of attachment before Judgment had been passed. Prior to ordering attachment before Judgment, security was always directed to be furnished. When security is not furnished, consequential order are passed. It should always be kept in mind that the order was passed in a civil suit between two individuals. The Writ Court cannot used as a platform to venture personal grievance of the petitioners as against the fifth respondent. The said Judgment is not applicable for the facts of this case.

21. The learned counsel for the petitioners also relied on ***(2007) 4 SCC 795 [Mohith Bhargava Vs. Bharath Bhushan Bhargava and Others]***, wherein again the Hon'ble Supreme Court had invoked the provisions under Order 21 Rules 3 & 50 relating to execution of a decree. The stage of execution of a decree indicates a prior adjudication of a particular right which has crystalised in the form of a decree of amount payable by one party to another party.

22. In the instant case, there has been no crystalisation of any amount payable by the fifth respondent to the petitioners. Moreover as repeatedly pointed out the amounts lying in the bank accounts which are sought to be freezed have no nexus with the amounts of the petitioners which they had at in USA. The said Judgment is distinguishable on facts.

23. The learned counsel for the petitioners then relied on ***[2021] UKPC 24 [Broad Idea International Ltd., Vs. Convoy Collateral Ltd.,*** which was a Judgment by the Court of Appeals by the Eastern Caribbean Supreme Court. That Judgment again placed reliance on an earlier Judgment which had been stated, ***Siskina*** (referred supra).

24. **I**t is seen that the claim arose from Admiralty Jurisdiction where there was a contractual relationship between two parties. In the instant case, the petitioners have no such relationship with the fifth respondent. Therefore, the petitioners can never seek freezing of any account of the fifth respondent.

25. It was also represented by the learned counsel for the fifth respondent that the accounts involved were joint accounts. It is alleged by the learned counsel for the fifth respondent that each one of the petitioners had taken away about Rs.30/- lakhs to Rs.50/- lakhs from the said accounts. The statement made across the bar is recorded.

26. It is thus evident that the amounts earned by the father are now being tossed around by the petitioners and the fifth respondent. They have not earned or put their sweat. They however seek to enjoy the fruits of the labour or their father. They have in their hands a free legacy and have inherited the amounts and are now before the Courts of law trying to grab as much as they could.

27. It is contended by the learned counsel for the petitioners that the daughters have a share in the property. As already stated, they should seek such share in manner known to law and not by an order of freezing the bank accounts.

28. It is also contended by the learned counsel for the third and fourth respondents that after the date on which the fifth respondent came back to India, she had deposited only a sum of Rs.1,25,516/- on 25.11.2021 and had withdrawn a sum of Rs.1/- lakh on 04.12.2022.

29. It is thus evident that, the fifth respondent had not deposited any amounts in any of the aforesaid accounts. There is absolutely no reason to continue the interim order granted.

30. The Writ Petition suffers and is accordingly, dismissed with costs. Consequently, connected Miscellaneous Petitions are closed.

31. The petitioners are together directed to pay a sum of Rs.50,000/- to the fifth respondent for the mental agony caused by filing the present frivolous Writ Petition.

12.01.2023

vsg
Index: Yes/No
Internet: Yes/No
Speaking / Non Speaking Order

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