



WEB COPY

WP.No.17192 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.02.2023

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.17192 of 2016

and

WMP.No.14640 of 2016

Subramaniam Mohan
S/o R.Subramaniam (Aged 58 years)
737/1, Thottipalayam Road,
Civil Aerodrome (PO)
Coimbatore - 641 014
represented by Power of Attorney Agent
A.Sampath Kumar,
737/1, Thottipalayam Road,
Civil Aerodrome (PO)
Coimbatore-641 014.

...Petitioner

Vs

- 1.State Bank of India,
Personal Banking Branch,
rep. by its Chief Manager,
No.16A, 17 and 17A, Abdul Raheem Road,
Race Course,
Coimbatore-641 018.
- 2.The Chief Manager,
State Bank of India,
Personal Banking Branch,
No.16A, 17 and 17A, Abdul Raheem Road,
Race Course,
Coimbatore - 641 018.



3.The Inspector of Police,
Cyber Crime Cell,
Coimbatore City.

... Respondents

(R3 impleaded vide order dated 9.2.2023 made
in WMP.2258/2023 in WP.17192/2016)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st respondent to close the NRE Fixed Deposits in its branch in the writ petitioner's name (Subramaniam Mohan) bearing Nos.32478292945 for Rs.50 lacs and 32478320372 for Rs.62 lacs, totaling 1.12 Crores, pay the proceeds to the Writ-Petitioner with interest together with a compensation of Rs.1.00 Crore to the Writ-Petitioner, all within a time frame to be fixed at the discretion of this Court.

For Petitioner : Mr.K.Ganesan

For Respondents : Mr.B.Raghavalu (for R1 & R2)

Mr.Alagu Goutham (for R3)
Government Advocate

ORDER

The petitioner seeks a mandamus directing the first respondent being the State Bank of India, Personal Banking Branch to close the NRE fixed deposits in its branch in the petitioner's name bearing Nos.32478292945 and 32478320372 for the amounts of Rs.50 lakhs and Rs.62 lakhs totaling a sum of Rs.1.12 crores and pay the same to the petitioner with interest and compensation of an amount of Rs.1 crore.

2.Mr.K.Ganesan, learned counsel who appears for the petitioner does not

press the compensation sought and restricts his arguments only to the refund of



the amounts to the petitioner. The counter filed by the bank officials reveals that the matter is pending before the Debt Recovery Tribunal in O.A.No.317 of 2016 for determination of debt due from the petitioner.

3.Thus, it would be premature for this Court to consider the issuance of a direction for refund of the amounts to the petitioner when admittedly the debt due from the petitioner to the bank is yet to be determined by the appropriate authority.

4.The request for mandamus is hence denied and this writ petition is dismissed.

5.The petitioner had also filed a criminal complaint against the bank officials and the Inspector of Police, Cyber Crime Cell was impleaded on 09.02.2023 in order to receive a report on the status of the criminal complaint.

6.Status report dated 22.02.2023 reveals that FIR in Crime No.47 of 2013 was registered based on the complaint lodged by the defacto complainant i.e. the petitioner on 09.08.2013 and investigation was conducted thereafter and cognizance was taken by the learned Judicial Magistrate No.III, Coimbatore in C.C.No.317 of 2017. Accused 1 and 2 had approached this Court in Crl.O.P.No.1360 of 2019 for quashing of the final report in C.C.No.317 of 2017 and the Criminal Original Petition was closed on 19.04.2022. This Court had directed that A1 and A2 shall instead of being arrayed as accused be arrayed as

witnesses. At paragraph 5, this Court has stated as follows:



'5. With the above observations, this Criminal Original Petition stands closed. The learned Judicial Magistrate-III, Coimbatore is directed to pass appropriate orders based on the additional charge sheet that is to be laid after examining the de-facto complainant. Consequently, connected miscellaneous petition is closed.'

7. The matter was thereafter listed for mentioning and on 01.09.2022, it was amended in the following terms:

'Today the case is listed under the caption "for being mentioned".

2. The learned counsel for the petitioner submitted that in the order dated 19.04.2022, in paragraph 2 of the order in fourth line, it should be read as "Petitioners". Wherein, "Petitioners herein" is to be added instead of the word "Advocate". By typographical error it was typed as "Advocate". Hence, it would suffice if this Court directs the Registry to carry out the necessary corrections in the order copy and reissue fresh order copy.

3. Satisfied with the above submissions made by the learned counsel for the petitioner Paragraph No.2 of the order dated 19.04.2022 shall stand replaced with the following:-

"2. When the case came up for hearing on an earlier occasion, this Court had passed an order on 21.10.2021. Subsequently, the case came up for hearing on 25.10.2021, on which date the SubInspector of Police, Cyber Crime Cell, Peelamedu, Coimbatore was present and this Court directed to list the case after two weeks. Subsequently, when the case came up for hearing on 29.03.2022, the Investigation Officer was directed to appear before this Court and to file a status report and adjourned the matter to 19.04.2022. On 19.04.2022, as directed by this court, a status report was filed, wherein it was stated, that as per the observation made earlier by this Court, the names of the Petitioners herein were removed from the list of the accused and their statements were recorded. Further, it is stated that the investigation is completed and final



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report filed before the learned Judicial Magistrate-V and a copy of the status Report had been furnished to the de-facto complainant."

4. As per the arguments of the learned Counsel for the Petitioners, the Petitioners were the complainant, instead of citing them as witness the Investigation Officer cited them as Accused. Therefore, this Petition is prayed for. Accordingly, this Petition is allowed. In the result portion of the order, it is stated that with the above direction this Criminal Original Petition has been closed. The learned Judicial Magistrate is directed to pass appropriate orders based on the additional charge sheet that is to be laid after examining the de-facto complainant. The same order holds good.'

Let the needful be done in this regard expeditiously.

8.This writ petition is dismissed. No costs. Connected miscellaneous petition is closed.

24.02.2023

Index : Yes/No

Speaking Order

Neutral Citation: Yes

vs

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Dr.ANITA SUMANTH, J.

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