



WEB COPY

WP No.28729 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07-12-2023

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

WP No.28729 of 2023

M/s.Shanmuga Earth Movers,
Proprietor Vedarathinam,
S/o.Natarajan,
No.12/50, Melaveli,
Thethakudi,
Vedaranyam Taluk,
Nagapattinam District.

... Petitioner

Vs.

1.The Branch Head,
Tamil Nadu Mercantile Bank Ltd.,
Vedaranyam Branch,
AL-Hassan Commercial Complex,
No.145, Nagai Road,
Vedaranyam 614 810,
Nagapattinam District.

2.The Director General of Police,
State Cyber Crime Cell,
CID Crime, Gandhi Nagar,
Police Bhavan,



Gandhinagar Sector 18,
Ahmedabad – 382 010.

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... Respondents

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Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the first respondent herein dated 23.08.2022 thereby freezing the debit operation of the petitioner Current Account maintained at the first respondent-Bank in Account No.395509786385695, quash the same in view of violation of procedure enumerated under Section 102 Cr.P.C., and consequently direct the first respondent to de-freeze the above petitioner's account so as to enable the petitioner to operate.

For Petitioner	: Mr.G.Mageshkumar
For Respondent-1	: Mr.P.Tamilavel
For Respondent-2	: Mr.Leonard Arul Joseph Selvam, Government Advocate (Criminal Side).

ORDER

The petitioner herein is the account holder of Tamil Nadu
Mercantile Bank, Vedaranyam Branch, Nagapattinam District.



2. It appears that the Cyber Cell of Gujarat State Police has communicated to the Bank to freeze his account, since a sum of Rs.50,193/- been transferred to the account of the petitioner by a suspect of On-line fraud. Soon after the intimation, the first respondent-Bank has freezed the account of the petitioner on 23.08.2022. Till date, the account of the petitioner not de-freezed and no progress in the investigation. There is no representation on behalf of the second respondent also.

3. This Court is unable to find under what authority, the account of the petitioner was defreezed. Except from the communication of the first respondent to the petitioner herein that his account was freezed under Sections 91 and 102 of Cr.P.C., because a sum of Rs.50,193/- transferred to the account of the petitioner from a fraudulent account, Section 102 of Cr.P.C., can be exercised to freeze the account, but such freezing of account should be in accordance with law and cannot be in force perpetually.



4. The Police Officer, if had acted under Section 102 (1) of Cr.P.C., he is bound to report about the freezing of the account of the petitioner to the learned Magistrate having jurisdiction and from where the account of the petitioner is maintained. The decision regarding the continuation of freezing ought to be taken without any unwanted delay.

5. In this case, this Court finds that for more than three years, the account of the petitioner has been freezed and no decision taken by the Police Officer to de-freeze. It is also pertinent to note that the petitioner herein had requested the Deputy Superintendent of Police, State Cyber Crime Cell, Gujarat to mark lien of Rs.1 lakh in the account of the petitioner and permit him to operate the account and thereby enable him to do his business. For that request, the second respondent had replied that the request of the petitioner is under process. His response is dated 23.11.2023 and even after more than one year no action has been taken.

6. The learned counsel appearing on behalf of the first respondent-Bank submitted that the account of the petitioner was freezed on the instructions of the second respondent-Police and the first respondent-



Bank is ready to abide by any direction issued by this Court. The petitioner is carrying on Excavating Business using Earth Movers and according to the learned counsel for the first respondent-Bank, a sum of Rs.50,193/- transferred to the account of the petitioner from unknown source and he is not aware of the identity of the Depositor.

7. Taking note of these facts on hand and long pending freezing of account, the present Writ Petition is partly allowed directing the first respondent-Bank to retain Rs.1 lakh in the account of the petitioner and allow the petitioner to operate the account in respect of the balance amount.

8. With the abovesaid directions, the present Writ Petition is partly allowed. However, there shall be no order as to costs.

07-12-2023

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn



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DR.G.JAYACHANDRAN, J.

Svn

To

- 1.The Branch Head,
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Nagapattinam District.
- 2.The Director General of Police,
State Cyber Crime Cell,
CID Crime, Gandhi Nagar,
Police Bhavan,
Gandhinagar Sector 18,
Ahmedabad – 382 010.
- 3.The Public Prosecutor,
High Court of Madras,
Chennai.

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