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W.P.(MD)NO.12244 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.01.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.12244 of 2022

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... Petitioner

Vs.

1. The Branch Manager,
Union Bank of India,
Anuradha Building, 51B, Salai Street,
P.B.No.25, Sinduppoondurai,
Tirunelveli – 627 859.

2. C.S.Patel,
Police Sub Inspector,
Cyber Crime Police station,
Rajkot City, Gujarat.
(R-2 is suo motu impleaded
vide order dated 12.07.2022)

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to de-freezing the petitioner's bank account bearing No.336002011000253 on the respondent bank enabling him to operate the bank account by considering his representation dated 13.01.2022 and legal notice dated 17.02.2022.

For Petitioner : Mr.R.Mathava Selvam

For R-1 : Mr.C.Karthick

For R-2 : No appearance.

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ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Standing counsel appearing for the first respondent bank.

2. Even though the second respondent has been served and their name is printed in the cause list, there is no appearance on their behalf.

3. The petitioner is said to be a Central Government employee. His grievance is that the salary account has been frozen by the first respondent. Seeking de-freezing of the petition mentioned bank account, this writ petition came to be filed.

4. When the matter was taken up for hearing, the learned Standing counsel appearing for the bank informed that they have not unilaterally taken any action and that they very well acted on the instructions given by the second respondent. Thereupon, the second respondent was impleaded



and notice was also ordered to be issued. The notice has since been served. However, the second respondent has not chosen to appear before this Court to justify their stand. When the matter was taken up for hearing, the learned Standing counsel appearing for the bank produced a copy of the communication issued by the second respondent under Sections 91 and 102 of Cr.P.C. The said communication reads as follows:-

Sub/Case Ashvat No.366/2021 dated 01.01.2022

NOTICE UNDER SECTION 91 & 102 OF CRPC AND
UNDER SECTION 65-B OF INDIAN EVIDENCE ACT 1872

To
The Compliance Officer,
Union Bank of India,
EmailId:-
zcc.ahmedabad@unionbankofindia.com; jlmbhagalpur@unionbankofindia.com;

Sub:- Provide Information related to fraudulent Accounts
and seize account.

Dear Sir,

I undersigned, C S.Patel Police Sub Inspector, Cyber Crime Police Station, Rajkot City, Gujarat State, India would like to bring to your notice that someone has misused banking services for making fraudulent credit transactions in your Bank accounts. We have found following Account holder.

Account Number

336002011000253

As we are inquiring this case are requested to provide transaction details for said period and accounts.

- (1) Scanned copies of account opening forms and documents given at the time of account opening.
- (2) Transaction statements from 01.07.2021 to till date.
- (3) All other traceable details like mobile numbers used for communications or any authentication, Email addresses for transactions.
- (4) Latest KYC check/verification reports with details of responsible official to make KYC inquiry / verification at any point during operation of these accounts.
- (5) Full Beneficiary details available at your side which can help in investigation.
- (6)



You are requested to mark this account as “Debit Freeze”until our next directions or court order.

Thanking you,

(C S Patel),
Police Sub Inspector
Cyber Crime police station,
Rajkot City Gujarat

5. The petitioner's counsel relied on the decision reported in **(2002) 5 CTC 598 (R.Chandrasekar V. Inspector of Police, Fair Land Police Station Salem and the Dy. Superintendent of Police, C.B.C.I.D.)**. In paragraph Nos.7 and 8 of the said decision reads as follows:-

“7. No doubt, under Section 102 of Cr.P.C., a police officer in the course of investigation can prohibit the operation of the bank account, as the bank account is property provided it is found under circumstances creating suspicion that an offence has been committed. Section 102 of Cr.P.C. runs as follows;-

'102. Power of police officer to seize certain property;-

1. Any police officer may seize any



property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

2. Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

3. Every police officer acting under sub-section [1] shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.'

8. Section 102 empowers a police officer to seize any property, which may be alleged or suspected to have been stolen or



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which can be found under circumstance which create suspicion of commission of any offence. In other words, when a property not found under circumstance creating suspicion of an offence having been committed, Section 102 of Cr.P.C. does not apply.”

6. In the case on hand, no doubt the second respondent had mentioned that he had come across certain suspicious activities in the petition mentioned account. But the second respondent has not justified before this Court what led him to come to the said conclusion. Unless the second respondent satisfied this Court that the amount deposited in the petition mentioned bank account is traceable to some crime, this Court will not be justified in interfering in the matter.

7. A learned Judge of this Court in the decision reported in **2013 SCC OnLine Mad 2629 (T.Subbulakshmi V. Commissioner of Police)** had held as follows:-



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“ 27.From the dictum laid down in the judgments relied on by the learned senior counsel for the petitioners it is clear that the bank account is a property within the meaning of Section 102 of Cr.P.C and sub-section (3) to Section 102 requires the reporting of seizure of the property to the concerned Magistrate forthwith, which is mandatory in nature. Moreover, the freezing of bank account is an act of the investigation and therefore, the duty is cast upon the Investigating Officer under Section 102(3) of Cr.P.C. to report the same to the Magistrate, since the freezure of the bank account prevents the person from operating the bank account pursuant to an investigation by the Police in a criminal case registered against him. If there is any violation in following the procedures under Section 102 of Cr.P.C., the freezing of the bank account cannot be legally sustained. Since in the case on hand the 2nd respondent-Police has not reported the freezing



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of the bank accounts of the petitioners herein to the concerned Magistrate forthwith, which is mandatory under Section 102(3) of Cr.P.C., the proceedings of the 2nd respondent-Police in freezing of the bank accounts of the petitioners herein are not legally sustainable.”

8. It is seen therefrom that the report must be forwarded at the earliest to the jurisdictional Magistrate. It is not known if the second respondent has complied with the aforesaid statutory requirement. The petitioner's counsel also asserts that till date the petitioner has not been served with any notice or prohibitory order. No order has been received by the bank from any jurisdictional Magistrate. In these circumstances, the prohibitory order has to be necessarily set aside. The petitioner is permitted to operate the petition mentioned account. This writ petition stands allowed. No costs.

24.01.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes/ No
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To:

The Branch Manager,
Union Bank of India,
Anuradha Building, 51B, Salai Street,
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G.R.SWAMINATHAN,J.

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