BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 11.07.2023

DELIVERED ON : 21.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Writ Petition (MD)No.13736 of 2021
and
W.M.P.(MD)Nos.10663 and 10664 of 2021

V.Rajasekar ... Petitioner

Vs.

1.The Chief Manager,
State Bank of India,
Ramanathapuram Branch,
R.C.Church Compound,
Salai Street,
Ramanathapuram.

2.The Branch Manager,
State Bank of India,
Ramanathapuram Branch,
R.C.Church Compound,
Salai Street,
Ramanathapuram.

3.The Inspector of Police,
District Crime Branch,
Ramanathapuram. ... Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in BR/06/2021-2022 dated 15.06.2021 on the file of the respondent no.1 and quash the same as illegal and consequently direct the respondent nos.1 and 2 to defreeze the petitioner's savings account in Account No.20385139218 maintaining with respondent no. 2 branch.

For Petitioner : Mr.T.Thirumurugan
For Respondents 1 and 2 : Mr.P.Pethu Rajesh
For 3rd Respondent : Mr.R.M.Anbunithi
Additional Public Prosecutor

ORDER

The petitioner has filed this writ petition to quash the impugned order in BR/06/2021-2022 dated 15.06.2021 on the file of the first respondent and to direct the respondent nos.1 and 2 to defreeze the petitioner's savings account in Account No.20385139218 maintaining with respondent no.2 branch.

2.According to the petitioner, he is having a saving account in Account No.20385139218 with the second respondent Branch. The third respondent had registered a false criminal case against the petitioner for the offences under Sections 465, 468, 471 and 420 of IPC in Crime No.20 of 2021 dated 10.04.2021. The main allegations in the said complaint is that the petitioner involved in preparation of forged patta. The petitioner was arrested by police on 10.04.2021 and later on he was released on bail. In the mean time, he received an impugned order from the first respondent dated 15.06.2021 wherein it was stated that his savings account number maintaining by the second respondent was freezed by the first respondent through letter dated 10.04.2021,was issued by the third respondent. Without giving any prior notice, the first respondent passed orders. Further the criminal case is not related to the respondents 1 and 2 and there is no question of freezing of account by the respondents 1 and 2. The respondents have not followed any procedure contemplated under Section 102(3) of Cr.P.C., and the factum of freezing account was not intimated to the concerned Judicial Magistrate Court. Therefore, the order passed by the respondents 1 and 2 is illegal and liable to be quashed.

3.The second respondent has filed a counter stating that their bank do not have any comments in respect of the compliance which the third respondent police expected to follow under Section 102(3) of Cr.P.C., and does not have any knowledge about the proceedings. The petitioner after committing a grievous crime and obtaining unlawful gain cannot seek any equity before this Court and the impugned order passed by the bank is in consonance with the request made by the third respondent and the same is not liable to be quashed.

4.The learned counsel appearing for the petitioner would contend that the third respondent has registered the case in Crime No.20 of 2021 for the offences under Sections 465, 468, 471 and 420 of IPC. But without giving any prior notice or enquiry to the petitioner, the first respondent has freezed the account maintaining with the second respondent. The above said freezing of the account was not intimated to the Judicial Magistrate Court as contemplated under Section 102(3) of Cr.P.C. Therefore, the order passed by the first respondent is liable to be quashed.

5.In support of this contention, the learned counsel appearing for the petitioner relied in the decision of this Court in the case of ***R.Sivaraj and another vs State*** reported in ***(2013) 4 MLJ (Crl.) 152***.

6.The learned counsel appearing for the third respondent would contended that the defacto complainant, Sathaiyah, Vayaloor, Kulathoor Post, Paramakudi, had given a complaint and thereby the third respondent has registered FIR in Crime No.20 of 2021 for the offences under Sections 465, 468, 471 and 420 of IPC and thereafter, investigated the case and as per investigation, the petitioner assured to get patta for the land to the defacto complainant and obtained Rs.2,00,000/-. Thereby, the first respondent has freezed the bank account of the petitioner. Now the investigation was completed.

7.The learned counsel for the respondents 1 and 2 contended that the petitioner is maintaining accounts with other banks and based on the request made by the third respondent for administrative purpose, the account was freezed by the respondents 1 and 2.

8.This Court heard both sides and perused the materials available on records.

9.On perusal of the records, it is observed that the main contention of the petitioner is that the first respondent freezed the account and the same was not intimated to the Judicial Magistrate Court and thereby, the provision under Section 102(3) of Cr.P.C., has not followed by the respondents. There is no nexus between the allege crime and the bank account of the petitioner and not the case of the prosecution that the accused deposited the cheated amount in the bank. It is admitted fact that the respondents 1 and 2 based on the request of the third respondent, have freezed the account of the petitioner in Account No.20385139218. It is admitted by the third respondent that the factum of freezing account has not been intimated to the learned Judicial Magistrate. As per records submitted by the petitioner, no such report was filed before the learned Judicial Magistrate in respect of freezing the account of the petitioner. Therefore from the records submitted by the petitioner, it is seen that the factum of freezing has not been intimated to the learned Judicial Magistrate.

10.In the context, the learned counsel appearing for the petitioner has drawn attention of this Court to the case of ***R.Sivaraj and another v. State*** reported in ***(2013) 4 MLJ (Crl.) 152***, in paragraph no.14, 18 to 24, which reads as follows:-

> *"14. In seizing the properties, the investigating officer has to follow certain procedures. That has been prescribed in Section 102 Cr.P.C. It runs as under :*
>
> *"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 or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, 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:

Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of Sections 457, and 458, shall, as nearly as may be practicable, apply to the net proceeds of such sale."

18.In R.CHANDRASEKAR VS. INSPECTOR OF POLICE, SALEM [2002 (5) CTC 598], it was held that seizure of bank account by the investigating officer must be reported to the Magistrate as it is a mandatory requirement of law.

19. In Dr.SHASHIKANT D. KARNIK VS. STATE OF MAHARASHTRA [2008 CRL.L.J. 148], it was held that seizure of property under Section 102 Cr.P.C has to be reported to the Magistrate.

20. CHANDRASEKAR (supra) was subsequently followed in PADMINI VS. THE INSPECTOR OF POLICE, DCB,

TIRUNELVELI [2008 (3) CTC 657].

21. In VINOSHKUMAR RAMACHANDRAN VALLUVAR VS. THE STATE OF MAHARASHTRA [2011 (1) MWN (Cr.) 497 (FB) (Bom.)], a Full Bench of the Bombay High Court held that the requirement of reporting of freezing of bank account to the Magistrate prescribed under Section 102(3) Cr.P.C is mandatory in nature.

22. In pursuing their investigation under Section 102 Cr.P.C., the Code empowered the police officers to deprive a person of his properties. In this context, the phrase, "shall" employed in Section 102(3) Cr.P.C, is held to be mandatory in nature. Violation of it cannot be an irregularity committed by the investigating officer.

23. Very recently, a learned single judge of this court in Crl.O.P.No.13103 of 2013, etc, on 30.8.2013 [T.SUBBULAKSHMI VS. THE COMMISSIONER OF POLICE, EGMORE, CHENNAI AND OTHERS] also took similar view.

24. Thus, in this case, admittedly, the investigating officer, in freezing the bank accounts of the petitioners, has not reported the freezing of the bank accounts to the Magistrate. It is vitiated. It is required to be annulled."

11.From the reading of the above said case law, it is clear that as per Section 102(3) of Cr.P.C., it is mandatory to report the freezing of account to the learned Judicial Magistrate and violation of it cannot be an irregularity committed by the Investigation Officer and the same is vitiated and in the case on hand, as per prosecution, there is no averments that the accused kept the cheated money in the bank account and further, the freezing of bank account was not intimated to the learned Magistrate as per Section 102(3) of Cr.P.C. Therefore, the impugned order passed by the first respondent in BR/06/2021-2022 dated 15.06.2021, is hereby quashed and the respondent nos. 1 and 2 to defreeze the petitioner's savings account in Account No. 20385139218 maintaining with respondent no.2 branch forthwith.

12.Accordingly, this Writ Petition is allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

NCC: Yes/No **21.07.2023**
Index: Yes/No
Internet: Yes/No
Mrn
To

1.The Inspector of Police,
District Crime Branch,
Ramanathapuram.

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

P.DHANABAL,J.

Mrn

Writ Petition (MD).No.13736 of 2021

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