IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.84 of 2023
and W.M.P.Nos.77 & 78 of 2023

Khushbu Mohankumar Jain ... Petitioner

Vs.

1.The State Rep. by:
The Inspector of Police,
Central Crime Branch-I,
Egmore, Chennai – 600 008.

2.The Inspector of Police,
Central Crime Branch, Job Racket Team 28,
Vepery,
Chennai – 600 007.

3.Axis Bank Limited,
Rep. by its Authorized Signatory,
Purasaiwakkam,
Chennai 600 007. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records relating to the letter dated 17.12.2022 of the 3rd respondent herein as per the instructions of the 2nd respondent herein to freeze the account No.189010100155502 in the 3rd respondent Bank under Crime No.169 of 2022 on the file of the 2nd respondent herein and the impugned order of the 2nd respondent dated 15.12.2022 and quash the same.

For Petitioner	: Mr.Palanivel Rajan Senior Counsel for M/s.B.Ramesh Babu
For Respondents	: Mr.A.Gopinath Government Advocate for R1 and R2 Mr.R.Palanikumar Ramesh for R3

ORDER

This writ petition has been filed challenging the impugned letter dated 17.12.2022 issued by the 3rd respondent Bank pursuant to the freezing of the bank account of the petitioner by the 2nd respondent in the course of investigation in Crime No.169 of 2022.

2.The petitioner is aggrieved by the fact that an FIR came to be registered in Crime No.169 f 2022 based on the complaint given by one Ranganathan against the petitioner's father and her sister for alleged offence under Section 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 and Sections 406, 420 and 34 of IPC. In this complaint, the petitioner was not even shown as an accused. However, in the course of investigation, the bank account maintained by the petitioner before the 3rd respondent Bank was freezed. This was intimated to the petitioner by the 3rd respondent Bank through letter dated 17.12.2022. It is under these circumstances, the present writ petition has been filed before this Court.

3.When the matter came up for hearing on 15.02.2024, this Court passed the following order:

> *The learned Government Advocate (Crl. Side) on instructions submitted that the bank account was freezed on 15.12.2022 and it was intimated to the jurisdictional Magistrate Court on 16.12.2022. Therefore it was contended that the mandate under Section 102 of Cr.P.C. has been complied with. The learned Government Advocate (Crl. Side) further clarified that the petitioner is not an accused in this case and that the amount has been transferred to her bank account by A1. Therefore the learned Government Advocate (Crl. Side) contended that it is a tainted money.*
>
> *2. The learned Senior Counsel appearing on behalf of the petitioner submitted that the investigation has been completed and the petitioner is not an accused in this case. Therefore there is no reason as to why the freezing of the bank account must continue.*
>
> *3. Post this case under the caption 'for orders' on 20.02.2024 at 2.15 p.m.*

4.When the matter came up for hearing today, the learned Government Advocate filed the counter of the 1st respondent. The relevant portions in the counter affidavit are extracted hereunder:

> *7. It is submitted that the accused A1 collected exorbitant interest from the victims utilized the same in his family members bank accounts like in his daughter Bavika M. Jain, his daughter Khushbu M. Jain bank accounts.*
>
> *8. It is submitted that the investigation conducted revealed that the A1 Mohan Kumar's daughter Khushbu M.Jain had collected money a sum of Rs. 21,00,000/- on 09.12.2011 from one Mr. Venkateswara Rao on behalf of the defacto complainant out of the property power cancellation of Chrompet property. The said amount was transferred to the petitioner Tmt.Khushbu M.Jain's A/c. No. 189010100155502 on 09.12.2011. Also, in this account a sum of Rs.6,00,000/- was received by the petitioner from de-facto complainant Tr. Renganathan on 30.03.2010 and a sum of Rs.49,00,000/- was received by the petitioner from A1 Mohan kumar.*
>
> *9. It is submitted that on behalf of the defacto complainant, one Mr. Srinivasa Reddy had paid a sum of Rs.30,00,000/- on 19.11.2013, Rs.4,00,000/- on 02.12.2013 and Rs.1,00,000/- on 07.12.2013 in to the account No.189010100155526 of Divya*

M.Jain, who is the daughter of A-1 Mohankumar, wherein the accused Mohankumar is the Joint account holder of this account. In turn, While Mrs. Divya. M.Jain closed her bank account, the sum of Rs.1.28,00,000 have been transferred to the Account of petitioner Khushbu Jain's Bank account No.189010100155502 on. 29.11.2023. The accused-1 have collected money from the defacto complainant and transferred the amount in to the accounts of his family members.

10. It is submitted that thereafter completion of investigation in this case, a Final Report has been filed against the accused S.Mohan Kumar(A1) and his daughter M.Bhavika Jain (A2) under section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 and 406, 420 r/w 34 IPC, through E Filing on 03.11.2023. The same is yet to be taken on file in the learned Addl. Metropolitan Magistrate, CCB Court, Egmore, Chennai-8.

5.Heard Mr.Palanivel Rajan, learned Senior Counsel appearing on behalf of the petitioner, Mr.A.Gopinath, learned Government Advocate appearing on behalf of respondents 1 and 2 and Mr.R.Palanikumar Ramesh, learned counsel appearing on behalf of the 3rd respondent.

6.The freezing of the Bank account is an exercise undertaken by the Investigation Officer during the course of investigation, if the Investigation Officer finds that such freezing of Bank account is essential in order to conduct an effective investigation. This procedure is normally resorted to when it involves public funds and it is very rarely resorted when the dispute is between two individuals. In the instant case, the dispute is between the defacto complainant and the father of the petitioner and allegation is that the father of the petitioner had collected exorbitant interest from the defacto complainant and that he and the sister of the petitioner were harassing the defacto complainant and demanding for more money. The Bank account of the petitioner was freezed on the ground that certain amounts that were collected by A1 also came in to the bank account of the petitioner. Admittedly, the petitioner has not been made as an accused in this case. It is clear from the status report that the investigation has been completed and the final report has also been filed before the learned Additional Metropolitan Magistrate, CCB Court, Egmore, Chennai and this final report has been filed as against father and sister of the petitioner who are arrayed as A1 and A2.

7.It is also clear from the records that the defacto complainant did not take any steps to seek for the withdrawal of the money that was freezed.

8.The moot question that arises for consideration is as to whether the freezing of the Bank account of the petitioner should continue even after the completion of the investigation and after the final report is filed before the concerned jurisdictional Court.

9.Once the investigation is completed and final report is filed under Section 173(2) of Cr.P.C., the criminal case moves from the hands of the police and it enters into the Court. Thereafter, it is for the Court to decide the case based on the materials that are placed before the Court and the evidence that is gathered in the course of trial. During this exercise, there is no need for continuing with the freezing of the Bank account of the petitioner. Such continuation of the freezing of the Bank account is not supported by any provision under the Code of Criminal Procedure. Money in the Bank account must be considered to be a movable property and right over property is now guaranteed under the Constitution under Article 300-A of the Constitution of India. When such right is sought to be deprived, it can be done only in accordance with law or in other words with the authority of law. Therefore, the continuation of the freezing of the bank account after the filing of the final report must be based on some provision of law or by some order passed by the Court during the course of the proceedings. In the absence of the same, the freezing of the Bank account cannot continue after the filing of the final report before the concerned jurisdictional Court.

10.There is another way of looking at this issue issue. If ultimately, the case ends in a conviction, the punishment that could be imposed by the Court would be imprisonment and/or fine and/or compensation. The Court while sentencing cannot direct the amount that is lying in the Bank account to be paid to the defacto complainant. Even insofar as the fine/compensation is concerned, normally there is a default sentence provided in the absence of the payment of fine/compensation. Hence, the continuation of the freezing of the Bank account of the petitioner will not serve any purpose after the investigation is completed and final report has been filed before the concerned jurisdictional Court.

11.If a case involves misappropriation of public money by the accused, the Court can always issue appropriate directions for deposit of the money or for the continuation of the freezing of the bank account of the accused person. This approach is adopted keeping in mind the larger interest of the community. However, such an approach would not be warranted in cases of private dispute where the private parties complaint of their money being involved in the offence of cheating and misappropriation. This principle must also be kept in mind by this Court.

12.In the light of the above discussion, there shall be a direction to the 1st respondent to defreeze the Bank account of the petitioner maintained in the 3rd respondent bank, forthwith.

13.In the result, this writ petition stands allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

22.02.2024

Index : Yes
Internet : Yes/
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Note:Issue Order Copy on 26.02.2024

To

1.The Inspector of Police,
Central Crime Branch-I,
Egmore, Chennai – 600 008.

2.The Inspector of Police,
Central Crime Branch, Job Racket Team 28,
Vepery,
Chennai – 600 007.

3.The Public Prosecutor,
High Court, Madras.

<u>N. ANAND VENKATESH, J.</u>

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