



W.P.No.13509 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 03.07.2024

Pronounced on: 10.07.2024

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

W.P.No.13509 of 2024

S.Rasu.

... Petitioner

/versus/

1. The Branch Manager,
H.D.F.C Bank,
No.1547, Classic Towers,
Trichy Road, Coimbatore – 641 018.

2. The Superintendent of Police,
Office of the Superintendent of Police,
Chikkaballapur, Chikkaballapur District.
Karnataka State.

3. The Inspector of Police,
Gauribitanur Town Police Station,
Chikkaballapur District.
Karnataka State.

.... Respondents

Prayer: Writ Petition has been filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent to forthwith defreeze Petitioner Savings Bank Account No.50100545293834 on the basis of Petitioner representation dated 13.04.2024 within the time stipulated by this Hon'ble Court.

For Petitioner : Mr.P.Dinesh Kumar



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For R1 : Mr.C.Mohan,
for M/s.King & Partidge

For R2 & R3 : No appearance

ORDER

The petitioner is an account holder in H.D.F.C Bank, Tiruchy Road Branch, Coimbatore (first respondent) and his Savings Bank Account No.50100545293834 is in operation since 2022. While so, on 04/08/2023 he deposited Rs.1,60,000/- in his account and when tried to transfer the amount to some of his friends accounts, he could not able to transfer the money. On enquiry with his Bank, he was informed that the account has been blocked pursuant to the intimation of the Inspector of Police, Gaurbitanur Town Police Station, Karnataka (3rd respondent). Immediately, he contacted the 3rd respondent and enquired about the reason for blocking his account. The third respondent, after enquiry being satisfied that the petitioner is a Law student in Tamil Nadu and has nothing to do with the case under investigation at Karnataka promised to defreeze the account immediately. However, even after lapse of more than a year, the account is not defreezed.

2. Contending that without notice account been freezed. Even after



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enquiry, the 3rd respondent had not intimated the first respondent to defreeze the account. The 3rd respondent failed to give details to the Bank or to the account holder (the petitioner) the purpose for which the account to be freezed. The 3rd respondent had not even intimated the Judicial Magistrate, which he is supposed to under section 102(3) of Cr.P.C about the seizure of the account. Hence, he gave a representation on 13/04/2024 to the second and third respondent for defreezing the account. Both the respondents, in spite of the demand to defreeze the account, had not acted on the representation. Hence, the present petition has been filed to issue Writ of Mandamus to the respondents for defreezing the account.

3. After notice, Mr.C.Mohan, Learned Counsel for the M/s.King & Partidge appeared on behalf of 1st respondent/the Bank Manager, HDFC. None appeared on behalf of the 2nd and 3rd respondents i.e., Superintendent of Police, Chikkaballapur and the Inspector of Police, Gauribitanur Town Police Station.

4. The Learned Counsel appearing for the 1st respondent/H.D.F.C. Bank submitted that the account of the petitioner bearing No.50100545293834 was blocked on the basis of the directive received from the Wribidanur Police Station *vide* notice dated 09.08.2023. The intimation received from the 3rd



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respondent police revealed that one N.Arthish son of Nagaraj, Gauribitanur

District has given a online financial fraud complaint alleging that he lost Rs.25,382/- through investment purpose fraud and requested to block the account which prompted them to freeze the account. On receipt of the e-mail from the account holder, the reason for freezing the account was intimated to him through e-mail on 04.09.2023. As a banker been Governed by the R.B.I Regulations, the request from competent authority to freeze the account been complied. On specific direction/order from the Court of Law or Competent Authority, they are ready to defreeze the account of their customers.

5. Referring the communication received from the 3rd respondent, the Learned Counsel appearing for the 1st respondent/H.D.F.C Bank submitted that though the compliant appears to be for loss of Rs.25,382/-, the 3rd respondent/H.D.F.C has not restricted the limit to freeze and therefore, they sought for clarification from the 3rd respondent but so far, they have not received any reply from them.

6. Mr.C.Mohan, Learned Counsel appearing for the 1st respondent/H.D.F.C Bank submitted that though there is no clear guidelines, the Bank is bound to implement the request from Investigating Agency, at times, it



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causes inconvenience to the Bank as well as to their customers. Particularly, having collected deposit from the customers, Bank are directly responsible to the customers. When Investigating Officers through National Cyber Crime Portal advice the Bank to freeze the account, they immediately freeze the account and intimate to their customers. Accounts of persons who are not connected to the crime also been freezed endlessly. After requesting to freeze the account, in many cases, Investigating Agency failed to intimate the progress of the investigation or the amount to be freezed or how long the account to be freezed. It is also stated that in many cases the seizure/freezing of bank account not intimated to the concern Jurisdictional Magistrate forthwith, as a result, the customers are unable to take recourse through Court seeking return of the property.

7. Referring the judgment of the Hon'ble High Court of Kerala in ***Dr.Sajeer and others -vs- Reserve Bank of India, Represented by its Governor*** as well as the judgment of the Hon'ble Supreme Court passed in ***Shento Varghese vs. Julfikar Husen and others*** reported in ***2024 SCC Online SC 895***, the Learned Counsel Mr.C.Mohan for the 1st respondent submitted that unless a clear guidelines is issued to the Investigating Agency and to the Bank innocent customers of the Bank will be put to great hardship.



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8. Mr.C.Mohan, Learned Counsel for the 1st respondent submitted that in this case the intimation received from the 2nd respondent apparently indicates that loss of money stated in the complaint is only Rs.25,382/-. Whereas, the instructions from the 3rd respondent was to freeze all the accounts of the petitioner, hence on 09.08.2023 the account of the petitioner was freezed. On the date of complaint i.e., 02.08.2023, the petitioner had closing balance of Rs.18,074.74. On 03.08.2023 through UPI, the petitioner has paid Rs.1500/- to one Karthi. On 04.08.2023 he has made a cash deposit of Rs.1,60,000/-. On 09.08.2023 when his account was freezed, a balance of Rs.1,76,574.74 was in the account of the petitioner. The 3rd respondent has issued a blanket request to block the account. His request does not indicates how much money in the account to be blocked and how long it should be blocked. Inspite of reminders to the 3rd respondent, till date, there is no response received by the Bank from the 3rd respondent

9. The power to freeze the account generally emanates from Section 102 of Cr.P.C. When clarification sought regarding whether bank account will fall within the import of the word 'property' used in Section 102 of Cr.P.C., the Hon'ble Supreme Court in *State of Maharashtra -vs- Tapas D.Neogy* reported in (1999) 7 SCC 685, made clear that the Bank account of



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accused or his relatives also constitutes “property” and they can be prohibited

from operation of the Bank account. The relevant portion of the judgment reads

as below:-

“12. Having considered the divergent views taken by different High Courts with regard to the power of seizure under Section 102 of the Code of Criminal Procedure, and whether the bank account can be held to be “property” within the meaning of the said Section 102(1), we see no justification to give any narrow interpretation to the provisions of the Criminal Procedure Code. It is well known that corruption in public offices has become so rampant that it has become difficult to cope up with the same. Then again the time consumed by the courts in concluding the trials is another factor which should be borne in mind in interpreting the provisions of Section 102 of the Criminal Procedure Code and the underlying object engrafted therein, inasmuch as if there can be no order of seizure of the bank account of the accused then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdrawn by the accused and the courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer. We are, therefore, persuaded to take the view that the bank account of the accused or any of his relations is



“property” within the meaning of Section 102 of the Criminal Procedure Code and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence for which the police officer is investigating into.”

10. The Hon'ble Supreme Court in ***M.T.Enrica Lexie and another -vs- Doramma and others*** reported in ***MANU/SC/0409/2012*** observed as below:-

“14. The police officer in course of investigation can seize any property under Section 102 if such property is alleged to be stolen or is suspected to be stolen or is the object of the crime under investigation or has direct link with the commission of offence for which the police officer is investigating into. A property not suspected of commission of the offence which is being investigated into by the police officer cannot be seized. Under Section 102 of the Code, the police officer can seize such property which is covered by Section 102(1) and no other.”

11. The Hon'ble Supreme Court in ***Teesta Atul Setalvad and others -vs- The State of Gujarat and others*** reported in ***(2018) 2 SCC 372***, has concluded its opinion as under:-



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“26.....Once the investigation is complete and police report is submitted to the court concerned, it would be open to the appellants to apply for defreezing of the bank accounts and persuade the court concerned that the said bank accounts are no more necessary for the purpose of investigation, as provided in sub-section (3) of Section 102 of the Code. It will be open to the court concerned to consider that request in accordance with law after hearing the investigating agency, including to impose conditions as may be warranted in the fact situation of the case.”

12. In this case, due to non-appearance of the respondents 2 and 3, this Court is not sure whether the seizure of the petitioner's account intimated to the concern Jurisdictional Magistrate as required under Section 102 (3) of Cr.P.C. The Court also not able to ascertain whether investigation is completed or not. Almost one year has lapsed from the date of registering the complaint and freezing of the petitioner's account.

13. Since, Courts in India had expressed conflicting view about Section 102 (3) of Cr.P.C. For the question whether failure to intimate the Jurisdictional Magistrate about the seizure of the account will vitiate the seizure order, the Hon'ble Supreme Court in ***Shento Varghese -vs- Julfikar Husen and***



others reported in **2024 SCC Online SC 895**, the expression 'forthwith' used in

Section 102 (iii) of Cr.P.C discussed and held that:-

“23. We are of the considered view that the said expression must receive a reasonable construction and in giving such construction, regard must be had to the nature of the act or thing to be performed and the prevailing circumstances of the case. When it is not the mandate of the law that the act should be done within a fixed time, it would mean that the act must be done within a reasonable time. It all depends upon the circumstances that may unfold in a given case and there cannot be a straight-jacket formula prescribed in this regard. In that sense, the interpretation of the word ‘forthwith’ would depend upon the terrain in which it travels and would take its colour depending upon the prevailing circumstances which can be variable.

24. Therefore, in deciding whether the police officer has properly discharged his obligation under Section 102(3) of Cr.P.C., the Magistrate would have to, firstly, examine whether the seizure was reported forthwith. In doing so, it ought to have regard to the interpretation of the expression, ‘forthwith’ as discussed above. If it finds that the report was not sent forthwith, then it must examine whether there is any explanation offered in support of the delay. If the Magistrate finds that the delay has been properly explained, it would leave the



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matter at that. However, if it finds that there is no reasonable explanation for the delay or that the official has acted with deliberate disregard/wanton negligence, then it may direct for appropriate departmental action to be initiated against such erring official. We once again reiterate that the act of seizure would not get vitiated by virtue of such delay, as discussed in detail herein above.”

14. In this case, the High Court defreezed the account of the petitioner, since the Investigating Agency failed to inform the Judicial Magistrate forthwith about the seizure.

15. Being aggrieved, the defacto complainant/1st informant preferred appeal before the Hon'ble Supreme Court challenging the order of the High Court of Madras which allowed the claim of the accused to defreeze the account. Pursuant to defreezing, the accused has withdrawn the money deposited. Considering this factual scenario, the Hon'ble Supreme Court, after holding that the act of seizure would not get vitiated if not reported forthwith to the Jurisdictional Court by the Police Officer. Therefore, to meet the ends of Justice, the accused was called upon to execute a bond/undertaking to deposit the amount which has been withdrawn from the Bank account and even the Court written a finding of guilt against the accused persons, he should deposit



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the amount within four weeks from the date of order of conviction.

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16. a) In this case, there is no record placed by the Investigating Officer to show the seizure of the petitioner's bank account duly intimated to the Jurisdictional Magistrate.

b) The complaints on the face of the record is for cheating to the tune of Rs.25,382/-. Whereas in the petitioner's account as on date, a sum of Rs.1,76,574.74 is available.

17. Therefore, the 1st respondent/H.D.F.C Bank shall permit the petitioner herein to operate his account with minimum balance of Rs.26,000/- being the amount alleged to have been cheated. In other words the freezing of petitioner's account shall stand restricted to Rs.26,000/-

18. For further remedy, the petitioner herein shall approach the appropriate Jurisdictional Magistrate where the 3rd respondent is supposed to intimate/report about the seizure.



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19. With these directions, this Writ Petition is disposed of. No

costs.

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Index :Yes.

bsm

To:-

1. The Branch Manager,
H.D.F.C Bank, No.1547, Classic Towers,
Trichy Road, Coimbatore – 641 018.
2. The Superintendent of Police,
Office of the Superintendent of Police,
Chikkaballapur, Chikkaballapur District.
Karnataka State.
3. The Inspector of Police, Gauribitanur Town Police Station,
Chickballapur District. Karnataka State.
4. The Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,J.

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