



WMP No.32769 of 2023

in

WP No.25076 of 2023

N.ANAND VENKATESH, J.

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When the matter came up for hearing on 29.01.2024, this Court passed the following order :-

The clarification petition has been filed mainly on the ground that this Court after having held that the freezing of the Bank account was illegal for non-compliance of the mandate under Section 102 of Cr.Pc, consequently, should have directed the de facto complainant to deposit the amount that was withdrawn from the Bank account of the petitioner. Since this consequential order was not passed, this clarification petition has been filed seeking for further directions.

2. The learned Additional Public Prosecutor appearing on behalf of respondent police submitted that the second respondent, who is complainant filed an application in C.M.P.No.2273 of 2023 in Crime No.26 of 2022 seeking for transferring the amount that was lying in the Bank account of the petitioner which was frozen. This application was allowed by an order dated 24.07.2023. Pursuant to the same, the amount lying in the Bank account was withdrawn by the second respondent / complainant and the second respondent was directed to execute a bond for a sum of Rs.92,77,839/- and he was further directed to file an affidavit stating that he will indemnify against any third party claim and shall deposit the amount as and when directed by the Court.

3. The specific case of the petitioner is that the petitioner was not made as a party in the above application and was never heard and an order was passed behind the back of the petitioner. Since the very freezing of the Bank account was held to be illegal for non-compliance of Section 102 of Cr.PC, the petitioner is seeking for re-deposit of the amount that was withdrawn by the second respondent.

4. The learned counsel for the second respondent seeks for some time in this case.

5. Post this case under the caption 'FOR ORDERS' immediately after admission on 02.02.2024.

2. When the matter came up for hearing today, the learned counsel for 2nd respondent submitted that he will deposit the amount within the time stipulated by this Court to the Credit of Crime No.26 of 2022 before the Court below.



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3. The learned counsel for the petitioner submitted that the petitioner will file an undertaking affidavit before this Court by undertaking not to withdraw the amount until orders are passed in the application filed by the 2nd respondent seeking for transferring the amount lying in the account of the petitioner.

4. In the light of the submissions, there shall be a direction to the 2nd respondent to deposit the sum of Rs.92,77,839/- to the bank account of the petitioner within a period of four weeks from today. The order passed in CMP No.2293 of 2023 in Cr.No.26 of 2022 dated 24.07.2023 is hereby set-aside. The matter is remanded back to the file of the learned Judicial Magistrate, Udthagamandalam, and the learned Magistrate is directed to afford an opportunity to the petitioner and thereafter, pass final orders in the petition strictly in accordance with law within a period of four weeks from the date of deposit of the amount by the 2nd respondent. The undertaking affidavit of the petitioner shall be filed before this Court on or before 20.02.2024.

5. This Writ miscellaneous petition is disposed of in the above terms.

02.02.2024

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