



Crl.O.P.(MD)No.637 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.07.2024

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THE HON'BLE MR.JUSTICE B.PUGALENDHI

Crl.O.P.(MD)No.637 of 2023

A.Kalimuthu

... Petitioner

versus

1. The Superintendent of Police,
O/o. The Superintendent of Police,
Sivaganga District.

2. The Inspector of Police,
Pallathur Police Station,
Sivaganga District.

3. The Branch Manager,
Indian Bank,
Kalayarkovil Branch,
Sivaganga District.

... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. to direct the respondent No.2 to instruct the 3rd respondent to de-freeze the bank account of the petitioner bearing account No.6886892500 of the 3rd respondent's bank, based on the representation of the petitioner dated 21.12.2022.



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For Petitioner : Mr.G.Karuppasamy Pandiyan

For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

ORDER

The petitioner has approached this Court to direct the respondents 1 and 2 to instruct the 3rd respondent Bank to de-freeze her bank account bearing Account No.6886892500, by considering her representation dated 21.12.2022.

2. The second respondent Police has made a request to the 3rd respondent Bank to freeze the bank account of the petitioner in connection with the case in Crime No.91 of 2022 which is pending on the file of the second respondent. The 3rd respondent has also frozen the account of the petitioner on the request made by the 2nd respondent.



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3. The learned counsel for the petitioner submits that the petitioner is neither an accused nor a witness in the case registered in Crime No.91 of 2022. However, the second respondent, in a mechanical manner, has made a request to freeze the account of the petitioner lying in the 3rd respondent Bank and the 3rd respondent has also frozen the account of the petitioner. He further submits that the petitioner was not issued with any notice before the freezing of the account and the respondent Police has not complied with the procedure as contemplated under Section 102(3) of Cr.P.C. He further submits that the report of the freezing the account has not been intimated to the concerned Judicial Magistrate forthwith. In this regard, the learned counsel for the petitioner has also relied on a Judgment of this Court reported in **2022 (3) MWN (Cr.) 460 (Venkatesh Babu vs. State, Re. By the Inspector of Police, Royakottai Police Station, Krishnagiri District and another,** wherein, this Court has held as under:

7. Freezing of Bank Accounts has been held to fall within the purview of Section



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102 of Code of Criminal Procedure since the Bank Account is treated to be a movable property. Where the Bank Account is freezed without Notice to the concerned person and Report is not immediately sent to the jurisdictional Magistrate Court, the freezing of Bank Accounts gets vitiated and the same requires the interference of the Court.

8. Useful reference can be made to the Judgment of the Honourable Supreme Court in the case of *State of Maharashtra v. Tapas D.Neogy, 1999 (3) CTC 350 (SC) : 1999 (7) SCC 685*. This Court has also taken into account the Judgment of this Court in the case of *T.Subbulakshmi and another v. Commissioner of Police, Chennai – 8 and others, 2016 (2) MWN (Cr.) 411*.

9. In the present case, the Bank Account has been freezed without Notice to the Petitioners and without a Report submitted to the Magistrate. Therefore, the



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action on the part of the Respondent-Police in freezing the Bank Accounts maintained before the 2nd Respondent-Bank is completely vitiated and it is unsustainable in the eyes of law. Such view of the matter, Respondent-Police is directed to send a communication to the second Respondent-Bank to defreeze the Bank Accounts of the petitioners within a week from today, i.e. 25.07.2022.”

4. In response to this petition, the learned Additional Public Prosecutor submits that the case in Crime No.91 of 2022 was registered on 06.10.2022 based on the complaint of one Vigneswaran, who is working as Supervisor and Cashier at Soleeswarar & Co., Karaikudi, which is an Agency for ITC Products, as against one Goodlu Karthick @ Karthick and 8 others for the offence under Section 397 IPC. The prosecution case is that on 06.10.2022, the defacto complainant and one Tamilarasan, a driver, were taking goods in a TATA Ace van bearing Reg.No.TN



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36 AR 6018 for sale and after completing the sale, they were returning to their company with the collection money of Rs.11,00,000/- and when they were proceeding near Ambedkar Nagar, Kottaiyur, at about 4.30 p.m., a Blue Colour Swift Car, which came behind them, waylaid their van and five unknown persons from the car with deadly weapon attacked the defacto complainant and robbed the collection money of Rs.11 lakhs and also his mobile phone. Based on the complaint, the respondent Police has registered a case in Crime No.91 of 2022 and also seized the car which was used for the commission of offence and also arrested the accused. The main accused/A1 is the son of the petitioner. On the date of occurrence, i.e. on 06.10.2022, the first accused has transferred a sum of Rs.6,50,000/- to the petitioner's bank account No. 6886892500. He further submits that the petitioner is a house wife and she is not having any source of income and the crime amount was transferred into the petitioner's account on the date of occurrence. The accused, in his confession statement, has stated that he deposited a portion of the amount in the petitioner's bank account.

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Based on the confession statement and the materials collected, the 2nd respondent has made a request to the 3rd respondent to freeze the account of the petitioner, in which the crime amount has been deposited.

5. The learned Additional Public Prosecutor further submits that if any notice has been issued before attaching the bank account, the accused would have withdrawn the entire amount and it is very difficult to recover the amount from the accused. He also submits that summon has been issued to the petitioner and the petitioner has not co-operated for the investigation. He further submits that freezing of account was also duly reported to the learned Judicial Magistrate, Karaikudi on 17.10.2022.

6. The learned Additional Public Prosecutor, by relying on the Judgment of the Hon'ble Supreme Court in *State of Maharashtra vs. Tapas D.Neogy*, reported in *1999 (3) CTC 350 (SC)*, further submits that the crime amount was deposited in the petitioner's



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account and the petitioner is also the mother of the first accused.

The Bank account is the property capable of seizure for the purpose of investigation and the investigating officer can seize it under Section 102 Cr.P.C. by serving a prohibitory order on the bank to freeze the bank account. The purpose of freezing the account is to prohibit the account holder from operating the account.

7. The learned Additional Public Prosecutor has also relied on the Judgment of the Hon'ble Supreme Court in *Shento Varghese vs. Julfikar Husen and others (Crl.A.Nos.2531-2532 of 2024, dated 13.05.2024)* and submits that the word “forthwith” is used in Section 102(3) Cr.P.C. has been elaborately discussed by the Hon'ble Supreme Court as under:

“22. From the discussion made above, it would emerge that the expression '*forthwith*' means '*as soon as may be*', '*with reasonable speed and expedition*', '*with a sense of urgency*', and '*without any unnecessary delay*'. In other words, it would



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mean as soon as possible, judged in the context of the object sought to be achieved or accomplished.

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



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obligation under Section 102(3) 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 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.”

8. The learned Additional Public Prosecutor further submits



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that the investigation was completed in Crime No.91 of 2022 and the final report has also been filed before the learned Judicial Magistrate, Karaikudi and the same is now pending in PRC No.14 of 2023.

9. In view of the decision in *Shento Varghese vs. Julfikar Husen and others as cited above* and the fact that the final report has been filed before the learned Judicial Magistrate, Karaikudi, this Criminal Original Petition is dismissed with liberty to the petitioner to work out her remedy before the learned Judicial Magistrate, Karaikudi, or before the trial Court.

23.07.2024

Index : Yes / No.

Internet : Yes / No.

NCC : Yes / No.

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To

1. The Superintendent of Police,
O/o. The Superintendent of Police,
Sivaganga District.

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B.PUGALENDHI, J.

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2. The Inspector of Police,
Pallathur Police Station,
Sivaganga District.
3. The Branch Manager,
Indian Bank,
Kalayarkovil Branch,
Sivaganga District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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