IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.Nos. 504 & 508 of 2023

Gunasekaran ..... Petitioner in both Crl.O.Ps

Vs

1.State by
Inspector of Police,
CBCID, Puducherry.
Crime No.32 of 2022.

2.The Branch Manager,
City Union Bank,
Semmencherry,
Chennai – 600 119. ..... Respondents in both Crl.O.Ps

PRAYER in Crl.O.P.No.504 of 2023: Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to direct the first respondent police to defreeze the Savings Bank A/s.No.500101010671424 in second respondent's City Union Bank, Semmacherry Branch, Chennai, as per the impugned notice under Section 102 of Cr.P.C under Ref. No.1247/OW/CBCID/2022, dt.nil in Crime No.32/2022, freezed by the first respondent police in Crime No.32 of 2022 on the file of the respondent Inspector of Police, CBCID, Puducherry and permit the petitioner to operate the savings bank account.

PRAYER in Crl.O.P.No.508 of 2023: Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to direct the first respondent police to defreeze the Current Account No.510909010027631 in the name of Hotel Sri Chandra Vilas, maintained in 2nd second respondent's City Union Bank, Semmacherry Branch, Chennai, as per the impugned notice under Section 102 of Cr.P.C under Ref. No.1247/OW/CBCID/2022, dt.nil in Crime No.32/2022 on the file of the respondent Inspector of Police, CBCID, Puducherry and permit the petitioner to operate the current account.

(In both Crl.O.Ps)

For Petitioner	:	Mr.S.Xavier Felix
For R1	:	Mr.K.S.Mohandass Public Prosecutor (Puducherry)

COMMON ORDER

These Criminal Original Petitions have been filed seeking a direction to the first respondent to defreeze the bank accounts of the petitioner, bearing Current Account No. 510909010027631 and the Savings Account No. 500101010671424 maintained with the second respondent.

2. The petitioner had entered into an agreement for sale in respect of the properties owned by the legal heirs of the original pattadar. Thereafter, based on the said agreement for sale, the petitioner entered

into another agreement for sale with the defaco complainant. However, it was not taken place. The petitioner subsequently returned the amount which was received from the defacto complainant towards part of the sale consideration. In the meantime, the petitioner was given power of attorney by the original owner, based on which he executed a sale deed in favour of his son. Thereafter, the defaco complainant lodged a complaint alleging that the petitioner had received a substantial amount as advance pursuant to an agreement to sell the property, but subsequently failed to execute the sale deed and also failed to return the advance amount which was received by the petitioner.

3. On receipt of the said complaint, the first respondent registered an FIR in Crime No.32 of 2022 for the offence punishable under Section 420 of IPC. Pursuant to the registration of the FIR, the petitioner's Current Account No. 510909010027631 and the Savings Account No. 500101010671424 were frozen by the second respondent based on the request made by the first respondent. The petitioner has now filed these petitions seeking to defreeze the aforementioned bank accounts.

4. The learned counsel appearing for the petitioner would

submit that the first respondent failed to follow the mandatory procedure as contemplated under Section 102(3) of the Cr.P.C. Accordingly, the first respondent ought to have informed the freezing of the accounts to the Jurisdictional Magistrate forthwith. However, the first respondent failed to inform the freezing of the accounts to the concerned Court forthwith. Though the accounts were frozen on 10.02.2021, the intimation to the Court was made only on 10.03.2021. In support of his contention, he relied upon the Judgment of this Court in ***W.P.No.17953 dated 21.07.2022*** in the case of ***Karthika Agencies Export House, Represented by its Partner S.T.Cleopatra Vs. The Commissioner of Police, Chennai.***

5. Heard the learned counsel appearing for the petitioner and the learned Public Prosecutor (Puducherry) appearing for the first respondent. Perused the materials available on record.

6. A counter affidavit filed by the first respondent and the submissions made by the learned Public Prosecutor (Puducherry) appearing for the first respondent reveals that the petitioner had cheated the defacto complainant to the tune of Rs.92,00,000/-. On receipt of the

advance amount, the petitioner failed to return the same. He repaid only a sum of Rs.35,00,000/- and the remaining amount of Rs.57,00,000/-, the petitioner refused to return the same, thereby cheated the defacto complainant and caused loss to him. After registration of the FIR, the petitioner's bank accounts were frozen for the purpose of investigation. Now, the investigation has been completed and the final report was filed. The same has been taken cognizance in C.C.No.588 of 2023. The petitioner, being an accused, is facing trial.

7. A perusal of the records reveals that the first respondent did not even whisper about the communication sent to the Jurisdictional Magistrate Court regarding the freezing of the petitioner's bank accounts, as mandated under Section 102(3) of Cr.P.C. It is relevant to extract the provision under Section 102 of Crl.P.C, which reads as follows :

> *"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) 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, 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."

8. Thus, it is clear that the first respondent shall have to report any seizure to the Magistrate having jurisdiction forthwith in compliance with Section 102(3) of the Cr.P.C. Pursuant to the registration of the FIR, the petitioner was arrested and remanded to judicial custody on 10.11.2022. Even before his arrest, the first respondent instigated the second respondent to freeze the petitioner's bank accounts. Accordingly, the second respondent froze the said bank accounts and not permitted the petitioner to operate the same. That apart, after registration of the FIR, the petitioner paid a sum of Rs.15,00,000/-. While the petitioner was released on bail, a further condition was imposed on him to deposit a sum of Rs.15,00,000/- to the

credit of Crime No.32 of 2022. Accordingly, the petitioner complied with the condition as directed by the Hon'ble Supreme Court of India. The said amount is under the custody of the Court in connection with the Crime No.32 of 2022. Further, the petitioner has also deposited the amount in question as demanded by the defacto complainant. Admittedly, no public money is involved in this case in order to freeze the entire bank accounts of the petitioner.

9. That apart, the first respondent registered an FIR and the petitioner was charge sheeted for the offence under Section 420 of IPC. Though the Hon'ble Supreme Court of India did not interfere with the condition imposed by this Court on the petitioner to deposit a certain amount as one of the conditions for the grant of bail, it was specifically directed that the defacto complainant shall not be permitted to withdraw the same. Consequently, the deposited amount is lying in the credit of Crime No.32 of 2022. Further, admittedly, the first respondent failed to comply with the mandatory provisions as contemplated under Section 102(3) of Cr.P.C. which mandate that any subordinate officer seizing property must report such seizure to the officer in charge of the police station, were also not complied with. Thus, the mandatory conditions contemplated under Section 102(2) and 102(3) of Cr.P.C. have not been

fulfilled by the first respondent.

10. In view of the foregoing discussion and the failure of the first respondent to comply with the mandatory provisions under Section 102(2) and 102(3) of the Cr.P.C, the first respondent is hereby directed to defreeze the petitioner's Current Account No.510909010027631 and Savings Account No.500101010671424 maintained with the second respondent bank. The petitioner is permitted to operate the said accounts forthwith.

11. With the above direction, both the Criminal Original Petitions are allowed.

03.02.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
Lpp

To

1.The Inspector of Police,
CBCID, Puducherry.

2. The Public Prosecutor (Puducherry),
High Court, Madras.

G.K.ILANTHIRAIYAN, J.

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Crl.O.P.No.504 of 2023

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