(2020) 03 MAN CK 0010

In the Manipur High Court

Case No : Writ Petition (c) No. 902 Of 2018

Mr. Canning Keishing APPELLANT

Vs

State Of Manipur RESPONDENT

Date of Decision : 19-03-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 102, 102(3)
Constitution Of India, 1950 — Article 14, 21
Indian Penal Code, 1860 — Section 120B, 420, 468, 511
Prevention Of Corruption Act, 1988 — Section 13(1)

Citation : (2020) 03 MAN CK 0010

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : Ch. Ngongo, Niranjan Sanasam

Final Decision : Allowed

Judgement

[1] Heard Shri Ch. Ngongo, learned Advocate appearing for the petitioner and Shri Niranjan Sanasam, learned Government Advocate appearing for the State respondents.

[2] By the instant writ petition, the petitioner has prayed for issuing a writ of mandamus or any other appropriate writ to direct the respondents to allow the petitioner to draw the balance amount laying in his account which has been freezed by the SBI, M.G Avenue Branch, Imphal.

[3.1] According to petitioner, he is a special class contractor registered in the Public Work and Department, Government of Manipur having a registration No.CET/101/2552 dated 21.08.1996 and GSTIN No.14BACPK3942AIZC. The petitioner has been working as a contractor for the last more than 30 years under various departments, Government of Manipur. He has executed numerous works to the satisfaction of the concerned departments till today and no adverse remark has been made against him by any of the departments in the State.

[3.2] In order to have smooth financial transactions, he did open some accounts in some of the nationalized banks and other well reputed banks operating at Imphal, one of which being the account No.00000020037793394 opened at SBI, M.G Avenue Branch. Numerous cheques and demand drafts have been deposited in the said bank accounts by the Government of Manipur during the last many years.

[3.3] When the petitioner tried to withdraw money from his account at the SBI, M.G Avenue Branch, he was informed that his account had been seized pursuant to the direction of the State Government. On 25.08.2016, he approached the Manager of the bank, through his counsel by way of a legal notice, for seeking information about the freezing of his account and on his query, the bank manager of SBI, M.G Avenue branch supplied him with a copy of the letter dated 06.04.2018 addressed to him by Ms. Priyadharsini Laishram, MPS, Additional S.P (L.O) I/W who happened to be the then I.O of a case under FIR No.78(4)2018 IPC U/S 420/468/120(B)/511 IPC and 13(1) PC Act by which the Branch Manager was instructed to freeze the said account of the petitioner on the ground that it could be involved in criminal activities. On 10.07.2018, the petitioner through his counsel submitted an application for supplying a copy of the said FIR which was duly received by Sub-inspector, Shri L. Pratap Meitei but no copy thereof was supplied to him.

[3.4] Being aggrieved by the action of the respondents, the instant writ petition has been filed by the petitioner on the inter-alia grounds that his account has been seized without assigning any reason thereof; that the freezing of his account on a mere suspicion of involvement in the criminal activities, has violated his right to use his earned money and that such freezing of his account is unreasonable being violative of Article 14 of the Constitution of India.

[4] An affidavit has been filed on behalf of the State respondents stating that on 06.04.2018, the application was submitted by his predecessor to the Branch Manager of the bank for freezing the account of the petitioner, as it was highly suspected that it could be involved in the criminal activities. An application filed by the counsel for the petitioner praying for supplying a copy of the FIR, was received by his office on 10.07.2018 but the same could not be supplied to the petitioner, as no one turned up to receive the same. It has further been stated that the investigation, so far conducted, has revealed that one cheque dated 31-03-2018 for a sum of Rs.76,55,531/-(Rupees seventy six lakhs fifty thousand five hundred thirty) only was issued in favour of the petitioner under Cheque Drawal Authority No.33/161/2016-W dated 30.03.2018. On 02.04.2018, the Finance Department (Expenditure Section) wrote a letter to the Principal Secretary (Works) informing that the said Cheque Drawal Authority was forged/ fake one and on 03.04.2018, the Executive Engineer, Ukhrul Division (PWD), Manipur filed an application to the Branch Manager, SBI MC Avenue Branch not to allow encashment of the said cheque as the Cheque Drawal Authority was a forged one. The balance laying in the said account of the petitioner is

Rs.76,59,210/-, out of which the amount involved in the present case is Rs.76,55,531/- which was deposited with a forged/ fake Cheque Drawal Authority dated 30.03.2018. If the above account was not frozen timely, the petitioner might have encased it which was wrongly deposited with the forged/ fake Cheque Drawal Authority and it would have jeopardized the investigation of the case.

[5] In the rejoinder filed by the petitioner, it has been stated that he has been suspected to have been involved in relation to the case under the said FIR. But only on mere suspicion, his account has been freezed without any substantial material, to be seized, which amounts to petitioner's loss. If the petitioner is suspected to be involved in the said alleged offence, the I.O has to freeze his account as per the provisions of Section 102 of Cr.P.C as has been held by the Hon'ble Court in many cases. The petitioner through his counsel applied for a certificate copy of the report prepared under Section 102(3) of Cr.P.C in respect of the said case but it was found that no report had been submitted in respect of the freezing of account of the petitioner. Freezing his account has violated the provisions Article 14 of the Constitution of India as well as that of the provisions of Section 102 of Cr.P.C. The petitioner has not been arrested till today in connection of the said case and therefore, a prayer has been made to pass an appropriate order imposing heavy cost upon the respondents.

[6] It has been submitted by Shri Ch. Ngongo, learned counsel appearing for the petitioner that when the petitioner was suspected to be involved in criminal offences in respect of the case under the said FIR, the police could have seized his account only in terms of the provisions of Section 102 of Cr.P.C; that when the petitioner applied for a copy of the report submitted under Section 102 Cr.P.C, it was found that no such report had been submitted by the police in respect of seizing his account and that the freezing was totally illegal. It has further been submitted by him that even a copy of the FIR was not furnished to the petitioner, despite a request in writing being submitted to the police. His contention is not denied by the Government Advocate and all that have been submitted by him, are that the intimation was given to the Court only on 04-03-2020 and that before the completion of the investigation, the petitioner might not be permitted to withdraw the amount. As regards the non-supply of a copy of the FIR, it has been stated in the affidavit of the respondent No.4 that although a certified copy of FIR was kept ready, the same could not be given to the petitioner as no one turned up to receive it. The stand of the State respondents appears to be after thought, as nothing prevented them from supplying copies of the report as well as that of the FIR in time. The facts and circumstances of the present case have prima facie shown that the police is not interested in the completion of the investigation except freezing the account of the petitioner which is unfair and unreasonable for the reason that the inaction on the part of police has affected the petitioner's livelihood, as he was denied the use of money lying in his account.

[7] It is not in dispute that the petitioner's account at SBI, M.G Avenue, Imphal had been freezed by the bank on the basis of the letter dated 06-04-2018 written by the Addl. SP (LO), Imphal West, Government of Manipur. But no notice was given to the petitioner by the Bank before his account being freezed by it. A case under the FIR was registered against the unknown persons as regards the alleged forgery for purpose of committing cheating, misconduct etc. In other words, the petitioner's name was not mentioned in the FIR at all. The FIR was registered by the police on 02-04-2018 and the allegation made against the petitioner as is evident from the affidavit filed by the respondent No.4, was that one cheque dated 31-03-2018 for a sum of Rs.76,55,531/-(Rupees seventy six lakh fifty-five thousand five hundred thirty) only which was issued in favour of the petitioner, had been encased by him on the basis of a Cheque Drawal Authority dated 30.03.2018 which was a forged/ fake one. Therefore, the investigation to be conducted by the police, was as to whether the Cheque Drawal Authority was forged by the petitioner or whether a forged Cheque Drawal Authority was used by him while encasing the said amount. The investigation was commenced in the month of April, 2018 but till date, it has not been completed, may be, due to incapability or lack of sincerity on the part of the police. Any material which was found by the police during the course of investigation to connect the petitioner with the alleged offence, has not been placed on record either in the form of an affidavit or in a sealed cover for perusal by this Court. In other words, there is no prima facie case made out so far against the petitioner. If that be the case, there is no reason as to why the petitioner shall be denied the right to operate his account in accordance with the banking law. Freezing of his account indefinitely on the ground that the investigation is going on, the completion of which is quite uncertain, is unreasonable and there is no guarantee that the investigation will definitely be completed by the police in the near future. It is open to the police to go ahead with the investigation in respect of the case under the FIR which is not the subject matter before this Court and file charge sheet, if a case is prima facie made out against the petitioner. The subject matter in issue before this Court relates to the issue whether the petitioner can be denied the right to operate his account indefinitely, when no material/ evidence could be found against him by the police during the last about two years to show a prima facie case against him. The continuation of his account being freezed with no certainty of the investigation being completed by the police, is nothing but harassment meted out to the petitioner. The right to life guaranteed under Article 21 of the Constitution of India includes the right to live with dignity as has been held by the Hon'ble Supreme Court in a catena of decisions. The petitioner is being penalized without his being tried in a court of law.

[8] For the reasons stated hereinabove, the instant writ petition is allowed in part with the following directions:

(a) The State respondents and in particular, the respondent No.4 shall inform the Branch Manager, SBI, MG Avenue, within a week from the date of receipt of a copy of this judgment and order, that the petitioner shall be allowed to withdraw an amount not exceeding Rs.50 lakhs;

(b) The Branch Manager, SBI, MG Avenue shall allow the petitioner to withdraw an amount not exceeding Rs.50 lakhs after the information being received from the State respondents and in particular, the respondent No.4;

(c) The petitioner shall not be allowed to withdraw the balance amount after an amount not exceeding Rs.50 lakhs being withdrawn, without the leave of this Court.

