(2012) 06 KL CK 0061

In the High Court Of Kerala

Case No : Criminal M.C. No. 1897 of 2012

Mujeeb APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 27-06-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2012) 3 KLT 555

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : M.R. Sarin Panicker and M.R. Sasith Panicker, for the Appellant; M.G. Lisha), for the Respondent

Final Decision : Dismissed

Judgement

S.S. Satheesachandran

1. Annexure A4 order passed by the learned Magistrate dismissing an application moved by the petitioner, who is the accused in Crime No. 117/2012 of Pothencode Police Station, for defreezing his bank account which had been freezed on the steps taken by the investigation officer in the crime, is challenged in this petition invoking the inherent powers of this court u/s 482 of the Code of Criminal Procedure, for short, ''the Code''. Petitioner in the aforesaid crime is imputed of committing offences punishable under Sections 406 and 420 of Indian Penal Code. The gist of the accusation is that petitioner, a broker, committed criminal breach of trust and defrauded and cheated a lady, whose immovable property was disposed by apprehension. Collecting four blank signed cheques from that lady and making use of one of such cheques he withdrew an amount of Rs. 10,00,000/- from the account opened by her in a bank, as introduced by him, in which she had deposited the sale price received. Investigation of that crime is in progress. The investigating officer took steps to freeze the account of the petitioner in another bank, Catholic Syrian Bank, Petitioner contending that

the amount in deposit in that account has no connection or nexus with the offences imputed, or to the transaction over the withdrawal of Rs. 10,00,000/- using a cheque executed/signed by the de facto complainant, applied before the Magistrate for defreezing the account. Learned Magistrate turned down the plea of the petitioner stating that no direction can be given to the investigating officer as it would amount to an interference with the investigation. Though the court has authority to supervise the investigation it cannot detect how the investigation is to be conducted, which is within the domain of the investigating officer, was the view taken by the Magistrate to decline the request of the petitioner.

2. Learned counsel for the petitioner relying on State of Haryana and others Vs. Ch. Bhajan Lal and others, , particularly, paragraph 62 of that decision, contended that where the investigating officer transgressed the authority conferred on him by the statute and any infringement on the person or property is proceeded against in violation of statutory authority, then, the injured person has a right to seek the intervention of the court. Relying on Annexure A2, copy of the statement of accounts relating to the account maintained by the petitioner in Catholic Syrian Bank, operation of which had been freezed on steps taken by the investigating officer, the learned counsel contends that no amount withdrawn under the cheque from the account of the de facto complainant on 13.2.2012 has come to the account maintained by him in Catholic Syrian Bank. When that be so, freezing of that account on the steps taken by the investigating officer, according to the counsel, amounts to transgression of the authority vested on him in conducting the investigation over the crime. While the investigation is in progress every step taken by the investigating officer cannot be tested and examined with reference to one or other defence that could be set up or canvassed by the accused person proceeded against. Further more, when investigation is proceeded over grave offence/ offences, sufficient leverage has to be given to the investigating officer regarding the steps to be taken to unearth and trace out the truth to form a conclusion whether the accused person proceeded against on the crime should face any indictment and trial before a court. Looking into Annexure A2, copy of the account, it is seen, some deposits have been made by the petitioner even after the transaction covered by the cheque on 13.2.2012. So, the plea canvassed by the counsel that no part of the amount covered by the cheque transacted on 13.2.2012 forms part of the account maintained by him in Catholic Syrian Bank cannot be accepted on its face value and, at this stage when the investigation of the crime continues. More so, as rightly held by the Magistrate, the court cannot direct the manner in which the investigation of the crime is to be conducted. Apparently, from the facts and circumstances presented in the case, it cannot be stated that the investigating officer has transgressed his authority in taking steps for freezing the account of the petitioner, especially where the petitioner, a broker, who was involved in the sale of an immovable property of the de facto complainant is alleged of cheating a sum of Rs. 10,00,000/- from her. No case has been made out for interfering

with Annexure A4 order.

Petition is dismissed.