(2023) 04 KL CK 0010

In the High Court Of Kerala

Case No : Writ Petition (Crl.) No.90 Of 2023

Samrat Sinha — APPELLANT

Vs

State Police Chief Police Headquarters, Velayambalam, Thiruvananthapuram, Pin 695010 — RESPONDENT

Date of Decision : 03-04-2023

Acts Referred:
Code of Criminal Procedure, 1973 — Section 91, 102, 102(1)
Indian Penal Code, 1860 — Section 406, 420

Citation : (2023) 04 KL CK 0010

Hon'ble Judges : Bechu Kurian Thomas, J

Bench : Single Bench

Advocate : S.Mohammed Al Rafi, Thajuna Maria Francis, Seetha S

Final Decision : Disposed Of

Judgement

Bechu Kurian Thomas, J

1. Petitioner is aggrieved by a communication dated 29.12.2022 issued by the Cyber Crime Police Station directing freezing of his account maintained by the petitioner with the Ratnakar Bank Ltd.

2. Petitioner claims to be doing business in trading of shares and crypto currency. Alleging that one Muhammed Sahil was cheated by an accused who fraudulently collected Rs.1,50,500/-, a notice was issued under Section 91 of the Code of Criminal Procedure, 1973 to the petitioner's bank directing freezing of his bank account. The notice alleged that the amount so fraudulently collected by the accused was seen transferred to the account of the petitioner maintained with the Ratnakar Bank Ltd. and deposited into Account No.407002482275 through transaction ID No.233119540539.

3. Petitioner contends that there is no transaction or relationship between the complainant Muhammed Sahil and the petitioner and petitioner is not even an accused in the crime and further that no procedure under Section 102 of the

Code of Criminal Procedure, 1973 was complied with by the Investigating Officer before directing freezing of his account.

4. In the statement of facts filed on behalf of the first respondent, it was stated that, the National Cyber Crime Cell received a complaint from Sri.Muhammed Sahil stating that he had received a message through his Instagram account for an online trading and he invested certain amounts and lost Rs.1,50,500/- from his Federal Bank Account on 27.11.2022. On verification of the transaction details, it was identified that the amount fraudulently taken from the said Sri. Muhammed Sahil's account was transferred to the writ petitioner's account on the same day and maintained with the Ratnakar Bank Ltd.

5. The statement of the respondents also refer to a detailed enquiry conducted tracing the transaction of Rs.1,50,500/- on 27.11.2022 transferred to Federal Bank Account No.18410200004977 and again on the same day itself transferred Rs.1,46,000/- from the above mentioned account to another account with No.10090100391126 and thereafter transferred Rs.1,41,522.2 to the petitioner's account No.407002482275 maintained with Ratnakar Bank Ltd. The Inspector of Police has filed a further statement, stating that even though petitioner was directed to refund the amount, he refused to do so and it was in such circumstances that his account was frozen. It is further stated that the transaction in the petitioner's account was found to be highly suspicious and a meeting was conducted by the National Cyber Crime Cell on 10.03.2023 and it was informed that due to an alleged fraudulent transaction, the entire bank account need not be frozen and only the particular disputed amount has to have a lien in the account and therefore, a request was sent to the bank authorities for marking a lien on the disputed amount of Rs.1,41,522.2.

6. According to the Inspector of Police, there have been other credits and debits into petitioner's account and that even though the writ petitioner claims to be a businessman, he has hidden his legal source of money and the nature of business being conducted by him. The amount transferred to his account has not been fully justified by proving the legal source and he refused to return the amount also. It is also alleged that petitioner has failed to reveal the identity of the person who send the fraudulent amount and the purpose and therefore it was suspected that the two account holders are acting as a team. It was further stated that the writ petitioner and one Ameer Hassan are suspects in the case.

7. Sri.Muhammed Sahil had complained about loss of Rs.1,50,500/- which was utilised for trading based upon offers of huge profits through online trading. Crime No.15/2023 of the Cybre Crime Police Station, Cochin was registered for the offence under Section 406 and 420 IPC. Admittedly, petitioner has not yet been arrayed as an accused. Without being arrayed as an accused, his account has been frozen.

8. In the decision in State of Maharashtra v. Tapas D Neogy [(1999) 7 SCC 685], the Supreme Court has held that a police officer has power to freeze the bank

account of a person as it is essentially a part of the power exercisable under Section 102 of the Cr.P.C. and all conditions as to seizure of a thing or a movable property as stipulated under Section 102 of the Cr.P.C. will apply with equal force to the seizure of a bank account also. Before exercising the powers under Section 102 Cr.P.C., a police officer must suspect the commission of an offence which suspicion must precede the proposed seizure. If there is no suspicion of the commission of an offence, steps resorted to by the police officer for seizure, will amount to abuse of process of law. Further, the property sought to be seized must have a direct or a close link with the commission of offence in question.

9. Courts have observed that the power to seize a bank account could be justifiably exercised when the Investigating Officer has a reasonable ground to believe that property has a direct nexus with the offence in question. This Court had in the decision in Madhu K. v. Sub Inspector of Police, Marayamuttom and Others [2020 5 KHC 35] held that the pre-request for exercising powers under Section 102 (1) of the Cr.P.C. is the existence of direct link between the tainted property and the alleged offence and that it is imperative that the seizure should never turn out to be an arbitrary, whimsical, perverse, defiant or arrogant action. It has also been observed that a Police Officer while acting under Section 102 of the Cr.P.C. cannot arrogate to himself an unregulated and unbridled power to freeze the bank account of a person on mere surmise and conjuncture since such unguarded power may bring about drastic consequences. The court went on to hold that if the Investigating Officer adopts an arbitrary approach of freezing the account, without even bothering to scrutinise the entries and the nature of transactions and instead, takes a belated chance of tracing the link between the assets and the offence, it is to be said that he acts contrary to the very object and spirit of the section.

10. On a perusal of the statement filed by the respondent, it is evident that despite repeated requests, petitioner failed to reveal any information relating to the source of the transaction or the nature of the debit and credit transactions in his account. The transactions were found to be suspicious too. It was only thereafter that the Investigating Officer proceeded to freeze the account of the petitioner.

11. Since petitioner has failed to co-operate with the investigation, the Investigating Officer suspects the commission of an offence. A particular transaction that is allegedly the proceeds of cheating is traced as having come into the account of the petitioner. The suspicion of the Investigating Officer cannot be faulted in the above scenario.

12. Though the Investigating Officer cannot, at this stage, probe into the legal source of every credit and debit entry in the petitioner's account, he ought to co-operate with the investigation, atleast as regards the particular credit entry. Since the credit entry of Rs.1,41,522/-transferred to petitioner's account on 27.11.2022 is suspected to be part of the proceeds of the crime in FIR No.15/2023 of Cyber Crime Police Station, the freezing of the account to that

extent is justified. Thus to the extent, Ext.P2 notice freezes an amount of Rs.1,41,522.2 in the petitioner's bank account No. 407002482275 at Ratnakar Bank Ltd. cannot be interfered with.

13. However, freezing of the said amount in the petitioner's account cannot restrain petitioner from operating his bank account beyond the said amount. Therefore the freezing of petitioner's account shall stand limited to Rs.1,41,522.2 only. Needless to mention, the respondents shall report the freezing of the account to the extent mentioned above, to the jurisdictional Magistrate within 3 days from the date of receipt of copy of this judgment as contemplated under Section 102 of the Cr.P.C.

Writ petition is disposed of as above.