(2015) 01 KL CK 0160

In the High Court Of Kerala

Case No : Writ Petition (C). No. 33752 of 2014 (T)

Ummer P. APPELLANT

Vs

The Branch Manager, South Indian Bank and Others RESPONDENT

Date of Decision : 29-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 102, 102(1), 452, 83
Penal Code, 1860 (IPC) — Section 406, 420
Prevention of Corruption Act, 1988 — Section 13, 16

Citation : (2015) 01 KL CK 0160

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : Babu S. Nair and K. Rakesh, for the Appellant; K.K. John, SC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

P.R. Ramachandra Menon, J.—Freezing of the account of the petitioner by the 1st respondent on the basis of instructions given by the 2nd respondent, made the petitioner to approach this Court by filing this writ petition to intercept the impugned proceedings and to permit the petitioner to operate the accounts bearing No. NRE 1126 and NRO 1411 maintained with the 1st respondent Bank. The sequence of events is as follows:

2. The petitioner is stated as the holder of two Bank accounts as aforesaid in the 1st respondent Bank and is doing the operation, which according to the petitioner is in a repository manner and lawful means. Referring to some incriminating circumstance and action taken against the brother of the petitioner by name Mr. Abdulla, the 2nd respondent turned against the petitioner as well and instructed the 1st respondent Bank vide Ext.P1 that, a portion of the money collected by the brother of the petitioner from others (forming the subject matter of Crime No. 90/12 of CBCID, Malappuram) was reportedly deposited with the 1st respondent. It was accordingly, that the account was sought to be frozen, in

view of the pending investigation and that the position was let known to the petitioner vide Ext.P2 dated 25.10.2014. This made the petitioner to approach this Court by filing this writ petition.

3. A detailed statement has been filed on behalf of the 2nd respondent opposing the relief sought for, also pointing out that, the petitioner stands arrayed as the 7th accused in the aforesaid Crime in which investigation is going on.

4. Heard the learned counsel for the petitioner as well as the learned State Attorney appearing for the respondents.

5. The case projected by the petitioner is that, the amount in the concerned account of the petitioner is in no way connected with the Crime and the source cannot be traced to any property or action which could be connected with the brother of the petitioner. It is only as a measure to harass the petitioner that, the petitioner has been included as the 7th accused, that too, after filing the writ petition. It is stated that the amount deposited by the petitioner in the concerned account was pursuant to the sale of the property belonging to the petitioner, to the vendee by name M/s Gokulam Chits and Finance Company Pvt. Ltd. It is also pointed out that, on an earlier instance, when the 2nd respondent sought to proceed against the said property, presumably invoking the power and procedure under Section 102 of the Cr.P.C., the petitioner had approached this Court by filing Crl.M.C. No. 1924 of 2011 challenging the relevant order passed by the concerned Magistrate''s Court, which was detrimental to the rights and interests of the petitioner. Placing reliance on the decision rendered by this Court earlier, reported in Kuriachan Chacko Vs. State of Kerala and others, (2012) 3 ILR (Ker) 631 : (2012) 3 KLJ 620 : (2012) 3 KLT 600 , this Court made it clear that no power was vested with the Investigating Officer or the learned Magistrate to have attached the properties, in exercise of the power under Section 102 Cr.P.C. It was accordingly, that the attachment ordered over the property was intercepted and the Crl.M.C. was disposed of.

6. After finalization of the proceedings as above, the said property was disposed of by the petitioner to M/s Gokulam Chits and Finance Company Pvt. Ltd. and the sale consideration generated was deposited in the account with the 1st respondent. This being the position, the said amount is in no way liable to be attached on the instruction of the 2nd respondent, which makes the entire proceedings per se wrong and unsustainable in all respects and hence the challenge.

7. The learned State Attorney submits that the idea and understanding of the petitioner is quite wrong and misconceived in all respects. It is stated that the elder brother of the petitioner, Mr. Abdulla, joining hands with some others had collected huge amounts from the general public assuring elephantine returns (stated as Rs. 8,000/- per month on every Rs. 1lakhs). After collecting the amount of nearly Rs. 1000 crores, the funds were diverted, misappropriated and invested/deposited, also in the form of lands in several parts of the country. An

extent of more than one acre was purchased near Guruvayoor by the aforesaid persons and others. Apprehending further steps pursuant to the complaint preferred by the parties who were cheated, the said properties were conveyed to ''ten'' different persons as plots of about 10 cents each, including the petitioner as well. It was in the said circumstance, that the above property was sought to be attached leading to Ext.P3 verdict passed by this Court.

8. It is pointed out that, the reliance sought to be placed on Ext.P3 to escape from the clutches of law is not at all liable to be entertained. The only observation made by this Court in Ext.P3 is to the effect that, neither the Investigating Officer, nor the learned Magistrate does have any power to attack the immovable property, invoking the power and procedure under Section 102 of the Cr.P.C. But now, the property has lost the status as an immovable property, admittedly pursuant to the sale effected by the petitioner and the sale consideration in turn has been deposited in the Bank, which no more comes within the purview or scope of Section 102 of the Cr.P.C.

9. It is pointed out that the amounts deposited in the Banks can very well be proceeded against in view of the specific observations made by the Apex Court in State of Maharashtra Vs. Tapas D. Neogy, (1999) 98 CompCas 626 : (1999) CriLJ 4305 : (1999) 3 CTC 350 : (1999) 7 JT 92 : (1999) 5 SCALE 613 : (1999) 7 SCC 685 : (1999) 2 SCR 609 Supp : (2000) 1 UJ 431 . The observation made by the Apex Court particularly, in paragraph 12, is relevant, which is in the following terms:

"12. Having considered the divergent views taken by different High Courts with regard to the power of seizure under Section 102 of the Code of Criminal Procedure, and whether the bank account can be held to be "property" within the meaning of the said Section 102(1), we see no justification to give any narrow interpretation to the provisions of the Criminal Procedure Code. It is well known that corruption in public offices has become so rampant that it has become difficult to cope up with the same. Then again the time consumed by the courts in concluding the trials is another factor which should be borne in mind in interpreting the provisions of Section 102 of the Criminal Procedure Code and the underlying object engrafted therein, inasmuch as if there can be no order of seizure of the bank account of the accused then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdrawn by the accused and the courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer. We are, therefore, persuaded to take the view that the bank account of the accused or any of his relations is "property" within the meaning of Section 102 of the Criminal Procedure Code and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence for which the police office is investigating into. The contrary view expressed by the Karnataka, Gauhati and Allahabad High Courts, does not represent the correct law. It may also be seen that under the Prevention of Corruption Act, 1988, in the matter of imposition of fine under sub-section (2) of Section 13, the legislatures have provided that the courts in fixing the amount of fine shall take into consideration the amount or the value of the property which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of Section 13 the pecuniary resources or property for which the accused person is unable to account satisfactorily. The interpretation given by us in respect of the power of seizure under Section 102 of the Criminal Procedure Code is in accordance with the intention of the legislature engrafted in Section 16 of the Prevention of Corruption Act referred to above. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court of Bombay committed error in holding that the police officer could not have seized the bank account or could not have issued any direction to the bank officer, prohibiting the account of the accused from being operated upon. Though we have laid down the law, but so far as the present case is concerned, the order impugned has already been given effect to and the accused has been operating his account, and so, we do not interfere with the same."

10. It is brought to the notice of this Court that, while passing Ext.P3 order extracting the relevant paragraph from the judgment in Kuriachan Chacko Vs. State of Kerala and others, (2012) 3 ILR (Ker) 631 : (2012) 3 KLJ 620 : (2012) 3 KLT 600 , (where reference was also made to Section 83 of the Cr.P.C.) the Court had observed that, the proper course to proceed against the immovable property, if necessitated, was not with reference to Section 102 of the Cr.P.C., but under Section 83 of the Cr.P.C. It was accordingly, that proceedings were sought to be pursued by invoking the power and procedure under Section 83 of the Cr.P.C and on getting the smell with regard to the course which was being proceeded against, the petitioner immediately sought to dispose of the property and thus effected the sale, procuring the sale consideration and effecting the deposit with the 1st respondent Bank. It is also pointed out that, such property, irrespective of the change, is liable to be proceeded against, as the source is one and the same and as such, there is nothing arbitrary or illegal on the part of the 2nd respondent in having issued Ext.P1 causing the Bank Account to be frozen.

11. It is pointed out that, the amount in deposit in the Bank account, will very much satisfy definition of the term ''property'' as envisaged under Section 452 of the Cr.P.C. This aspect has already been made clear by another learned Judge of this Court as per the decision reported in Babu Varghese Vs. Deputy Superintendent of Police and Another, (1999) 97 CompCas 436 : (1999) CriLJ 1111 : (1999) 2 ILR (Ker) 430 . The scope of the said provision has already been discussed by the Apex Court as well; as discernible from paragraph ''9'' of the decision in State of Maharashtra Vs. Tapas D. Neogy, (1999) 98 CompCas 626 : (1999) CriLJ 4305 : (1999) 3 CTC 350 : (1999) 7 JT 92 : (1999) 5 SCALE 613 : (1999) 7 SCC 685 : (1999) 2 SCR 609 Supp : (2000) 1 UJ 431 .

12. The learned counsel for the petitioner points out that, even in a circumstance where the Bank account is caused to be frozen, it is open to permit the party to operate the account on the strength of a ''bond'' which is to be given by the petitioner and that the petitioner is ready to have such a course. Reliance is sought to be placed on two decisions rendered by the Madras High Court in B. Ranganathan Vs. State, Indian Overseas Bank and Allahabad Bank, (2003) CriLJ 2779 : (2003) 2 LW(Cri) 784 and Rajamani Vs. The Inspector of Police, Shevapet Police Station, The Inspector of Police, Suramangalam Police Station and The Dy. Superintendent of Police, CBCID, (2003) CriLJ 2902 in this regard.

13. After going through the said judgments, this Court finds that, this is not a fit case to have such a course as sought to be sanctioned by the petitioner. The gravity of the offence, the involvement of the several persons concerned, the attempt which is stated as taken to divert the funds etc., have to be viewed very seriously and if such a course is permitted, there is every chance to drain out the money from the account and it will be for the concerned respondent to run after other properties, if any, offered as security by the petitioner. Further, this is not a mere civil cause of action involving a money transaction, but is more connected with various offences stated as committed by the culprits, including under Section 420 and 406 of the IPC. Altogether, about 36 crimes have been registered against the accused, which includes the present petitioner as well.

This Court does not find any reason to call for interference. The writ petition stands dismissed accordingly.

