R. Chandrasekar Vs. Inspector of Police, Fair Land Police Station Salem and the Dy. Superintendent of Police, C.B., C.i.D.

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Court : Chennai

Decided On : Oct-11-2002

Reported in : I(2005)BC208; [2004]118CompCas108(Mad); 2003CriLJ294

Judge : A. Kulasekaran, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482

Appeal No. : Crl. OP No. 24398 of 2002

Appellant : R. Chandrasekar

Respondent : inspector of Police, Fair Land Police Station Salem and the Dy. Superintendent of Police, C.B., C.i.

Advocate for Def. : A.N. Thambidurai, Government Adv. (Crl. side)

Advocate for Pet/Ap. : Sudanthiram, Adv.

Disposition : Petition allowed

Judgement :
ORDER

A. Kulasekaran, J.

1. The petitioner has filed the above petition seeking for a direction to direct the 2nd respondent to revoke the instructions given to the bank authorities for freezing the account of the petitioner herein and his firms and to permit the petitioner to operate the accounts of the petitioner.

2. The petitioner/third party has filed this petition against the order of the 2nd respondent directing the banks to freeze his four accounts in connection with crime No. 32 of 2002 on the file of the Inspector of Police, Fair land police station, Salem.

3. The above petition came up before me for admission on 04-10-2002 and on that day, on behalf of the prosecution, Mr. Thambidurai, learned government advocate has taken notice and the matter was posted today. I heard both sides.

4. Mr. Suthanthiram, learned counsel appearing for the petitioner submitted as follows;-

The petitioner is a resident of salem and carrying on business of mining, purchase, sales and conversion of minerals and chemicals along with his family members in the name of Abirami minerals and chemicals, Sekar Mines, Sekar sales syndicate. The said firms are maintaining current account in State Bank of India Nos. 01050 070010, 01050 050025 and 01050 070480 respectively and also personal savings bank account No. 100 in Allahabad bank, Salem. The said bank accounts were frozen by the banks on the instructions given by the 2nd respondent herein. The petitioner is not served with the said prohibitory order, but the bankers have sent intimation to the petitioner. The respondent/police said to have given such instructions allegedly on the basis of the confession statement of one Prabhakaran, who is facing a case for the offences under Sections 465, 468, 471, 420 and 120 of IPC. According to the learned counsel for the petitioner, the petitioner is not at all involved in the said case nor he has anything to do with the business of the said Prabhakaran; that the petitioner's firms are maintaining reputation and the transaction in respect of the said four bank accounts are covered by cheques and drafts. The learned counsel also produced statement of accounts of three current accounts and also pass book of the savings bank account to justify it and prayed for revoking the prohibitory order issued by the police to the banks.

5. Mr. Thambidurai, learned government advocate appearing for the respondents, on instructions from the police vehemently opposed the petition and submitted that the said Prabhakaran, Managing Director of Business Solutions has collected deposits from various persons, but he failed to repay the same; that a case in Crime no. 32 of 2002 for the offences under Sections 465, 468, 471, 420 and 120 of IPC was filed against him and other accused; that in the confession statement made by the said Prabhakaran before the respondents/police he has stated that the petitioner's father has received a sum of Rs. 5 lakhs in one occasion and some other amounts in two occasions and that the said amount was suspected to have been passed on to the petitioner herein. The learned Government advocate also produced the confession statement and prayed for dismissal of the petition.

6. I have carefully gone through the records placed before me namely statement of bank accounts and confession statement of Prabhakaran. The said documents do not support the case of the prosecution to prohibit the operation of the bank account.

7. No doubt, under Section 102 of Cr.P.C., a police officer in the course of investigation can prohibit the operation of the bank account, as the bank account is property provided it is found under circumstances creating suspicion that an offence has been committed. Section 102 of Cr.P.C. runs 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] shall 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. Section 102 empowers a police officer to seize any property, which may be alleged or suspected to have been stolen or which can be found under circumstance which create suspicion of commission of any offence. In other words, when a property not found under circumstance creating suspicion of an offence having been committed, Section 102 of Cr.P.C. does not apply.

9. In the case on hand, the position is different. Here it is not the discovery of property that has created suspicion that an offence has been committed. There are no circumstances attendant upon the bank account or its operation that have led the police to suspect that some offence has been committed somewhere. The allegation of the prosecution is that the bank account in this case is a sequel to the discovery of the commission of the offence. This is not sufficient to attract Section 102 of Cr.P.C. as it cannot be since that the bank account has been traced or discovered in circumstance which have made the police aware of the commission of an offence.

10. I do not find any justification in passing prohibitory order by the respondents/police from operating the bank account. The respondents attempted to establish that some funds are suspected to be transferred by the petitioner's father to the petitioner's bank account, which is not sufficient to attract Section 102 of Cr.P.C. However, this averment can be verified at any time by a comparison between the accounts as the entries in the accounts are always available as such no purpose seems to be served by restricting the operation of the bank account. Indeed, the statements of account produced by the petitioner justify prima facie that are covered by cheques and drafts, besides meagre amounts are available in the accounts. No whispering about the petitioner in the confession statement by Prabhakaran to the police.

11. The respondents/police has also not followed the mandatory requirements of Section 102 of Cr.P.C. The police officer shall forthwith report the same to the Magistrate and also give notice to the petitioner and allow him to operate the bank

account subject to executing a bond undertaking to produce the amount in court, as and when required as contemplated in clause 3 of Section 102, but not given any such notice. Even the copy of prohibitory order was not served to the petitioner.

For the reasons mentioned above, I revoke the prohibitory order issued by the 2nd respondent preventing the petitioner from operating the bank account in question. The petition is therefore allowed as prayed for. No costs.