



W.P.No.17953 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 21.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

WP.No.17953 of 2021 and  
WMP.No.10605 of 2021

Karthika Agencies Export House,  
Represented by its Partner,  
S.T.Cleopatra,  
No.2, Rajan Garden Main Road,  
Chettiyar Agaram, Vanaragaram,  
Chennai 600 095

... Petitioner

Vs.

- 1.The Commissioner of Police,  
Chennai City,  
Vepery, Chennai 600 008
- 2.The Inspector of Police,  
Bank Fraud Wing, Team-XI,  
Central Crime Branch,  
Commissioner Office Building,  
Vepery, Chennai 600 008
- 3.The Regional Manager,  
Chennai Region, ICICI Bank,  
Plot No.24, Arihanth Buildings,  
South Phase, Block-I, 1<sup>st</sup> Floor,  
Ambattur Industrial Estate,  
Chennai 600 058
- 4.The Branch Manager,  
ICICI Bank,  
Koyambedu Branch,  
No.231, Jawaharlal Nehru Road,  
100 Feet Road, Koyambedu,  
Chennai 600 107

... Respondents



W.P.No.17953 of 2021

**PRAYER:** Writ petition is filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the second respondent to defreeze petitioner's company's bank account which is maintained by the fourth respondent by considering her representation dated 11.08.2021 preferred to the second respondent an accordance with law with the time stipulated by this Court.

For Petitioner : Mr.Mohammed Riyaz  
for Mr.M.Mohamed Saifulla

For Respondents  
For R1 & 2 : Mr.A.Gopinath,  
Government Advocate (crl.side)

### **ORDER**

The petition has been filed for a direction to the second respondent to defreeze the petitioner's company's bank account which is maintained by the fourth respondent by considering her representation dated 11.08.2021 preferred to the second respondent.

2. The petitioner neither accused nor witness to the crime registered in FIR.Nos.149 and 151 of 2020 registered for the offence under Sections 120(b), 420, 465, 467, 468, 471 of IPC. Both the FIR's were registered on the allegation that the accused persons started a wholesale company in the name of Karthika Agencies by creating fake office address to borrow loans from the



W.P.No.17953 of 2021

reputed banks. Their office is situated at No.112 Chikkanadhar Street,

WEB COPY

Karthikeyan Nagar , Maduravoil, Chennai. They approached Karur Vysya

Bank, Harrington Road Branch for applying the loan and availed loan to the

tune of Rs.2 crores. Therefore, the bank sought for necessary documents for

which the accused arranged all the documents which were sought by the bank

for availing loan. After perusing all the documents submitted by the accused,

the said Karur Vysya Bank sanctioned loan to the tune of Rs.1,05,00,000/-. In

such a manner, the accused persons approached the South Indian Bank,

Vadapalani Branch in the month of October 2018 and sought for loan by way

of filing application and also submitted necessary documents. The said bank

also sanctioned a sum of Rs.2,60,00,000/- in favour of the accused persons.

Thereafter, the accused persons failed to repay the said loan amount and

committed default. Those banks started recovery process and when they

scrutinized the document, they found that the documents produced by the

accused persons are fabricated one and all the documents were filed only with

malafide intention. Therefore, on the complaint lodged by the Bank officials,

the second respondent registered a case in crime Nos.149 and 151 of 2020

registered for the offence under Sections 120(b), 420, 465, 467, 468, 471 of

IPC. In pursuant to the registration of FIR, the second respondent had taken

steps to freeze the bank account of the accused persons. However, the



W.P.No.17953 of 2021

petitioner's account which is lying with the fourth respondent herein also has been frozen in pursuant to the investigation in crime Nos.149 of 2020 and 151 of 2020.

3. Mr.Mohammed Riyaz, the learned counsel appearing for the petitioner would submit that the petitioner is no way connected with the accused persons in respect of availing loan. The petitioner is neither applicant nor guarantor for the loan availed by the accused persons. The petitioner started agricultural food export business in the name and style of 'Karthika Agencies Export House' along with her partner one, G.Ethirajulu. They have opened the account with the fourth respondent herein in the name and style of Karthika Agencies Export House in A/c.No.189705001491, Koyambedu Branch, Chennai. It is a duly registered firm. Therefore, the accused persons are no way connected with the petitioner and there is no relation between their company and the accused company. However, the second respondent wrongly instructed the fourth respondent to freeze the petitioner's account along with the fraudulent company's account which stands in the name of Karthika Agencies Export House.

4. He further submitted that the second respondent after freezing the



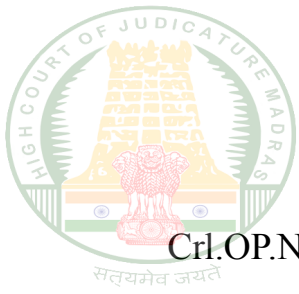
W.P.No.17953 of 2021

account failed to follow the procedure laid under Section 102(3) of Cr.P.C. The

WEB COPY

second respondent requested the banker i.e. the fourth respondent to freeze the account by the communication dated 18.02.2021. It was not communicated to the concerned jurisdictional Magistrate court forthwith as contemplated under Section 102(3) of Cr.P.C.

5. Per contra, Mr.A.Gopinath, the learned Government Advocate (crl.side) appearing for the respondents 1 and 2 submitted that all the procedures laid down in the criminal procedure code were scrupulously followed by the second respondent while freezing the account belongs the petitioner. The entire crime proceeds of the accused persons are invested in the petitioner's bank account. Further, the investigation is still pending. Therefore, the second respondent rightly has frozen the account and the investigation is still pending. The second respondent requested the fourth respondent to freeze the account on 18.02.2021. Thereafter, on 17.09.2021, it was duly informed to the concerned jurisdictional Magistrate court i.e. CCB & CBCID Metropolitan Magistrate Court, Chennai. Therefore, there is no failure on the part of the second respondent. He further submitted that the account holder was informed while freezing the account in pursuant to the investigation. In support of his contention, he relied upon the judgment of this Court passed in



W.P.No.17953 of 2021

CrI.OP.No.14733 of 2021 in the case of ***Kiruthika Vs. State rep. by Inspector***

WEB COPY

***of Police and another***, wherein on relying upon the judgment of the Hon'ble Supreme Court of India in the case of ***Teesta Atul Setalvad Vs. State of Gujarat*** reported in ***(2018) 2 SCC 372***, held that the provision under Section 102(3) of Cr.P.C. does not contemplate issuance of any notice to the account holder for the purpose of investigation, no notice to the suspect can be expected under law. The provision under Section 102(3) of Cr.P.C. is an important step towards investigation, in view of the settled legal position, the accused cannot have any say in the investigation and notice to the suspect is out of question. The intention of the investigation agency is not required to be revealed to suspect at that crucial stage, else message of alert would be received by the suspect creating huge room for manipulation or destruction of evidence.

6. In the case on hand, the only ground raised by the petitioner is that the second respondent failed to follow the procedure contemplated under Section 102(3) of Cr.P.C. The second respondent failed to inform the freezing of the account of the petitioner to the concerned jurisdictional Magistrate forthwith. Therefore, the above judgment is not applicable to the case on hand.



W.P.No.17953 of 2021

In the above case, the Hon'ble Supreme Court of India held that the accused

need not be informed who is holding the account. Whereas in the case on hand,

the petitioner is not an accused and the petitioner is the holder of the account.

Though the petitioner is not entitled for any prior notice, the freezing of the

account shall be informed to the jurisdictional Magistrate forthwith.

7. As stated supra, the second respondent requested the fourth respondent to freeze the account of the petitioner on 18.02.2021. On the said date, account has been frozen by the fourth respondent. But it was informed to the CCB & CBCID Metropolitan Magistrate, Chennai only on 17.09.2021. The provision under Section 102(3) of Cr.P.C is extracted hereunder:

*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. Thus it is clear that the investigation officer shall forthwith report



W.P.No.17953 of 2021

the seizure to the Magistrate having jurisdiction. The Hon'ble Supreme Court of

WEB COPY

India and this Court repeatedly held that the provision under Section 102(3) of Cr.P.C. requires that the police officer shall forthwith report the seizure to the Magistrate having jurisdiction. In the case on hand, the account was frozen on 18.02.2021 and the same was informed to the Magistrate concerned only on 17.09.2021. Therefore, the information of the seizure reported to the Magistrate only on 17.09.2021. Thus, the condition contemplated under Section 102(3) of Cr.P.C. to forthwith report the seizure before the Magistrate has not been complied with as well as it is not known whether superior officer has been informed in compliance with Section 102(2) of Cr.P.C.

9. In view of the above discussion, the seizure of account of the petitioner in A/c.No.189705001491, Koyambedu Branch, Chennai lying with the fourth respondent is hereby set aside. The second respondent is directed to defreeze the A/c.No.189705001491 and the fourth respondent is directed to permit the petitioner to operate his account A/c.No.189705001491. However, the second respondent is at liberty to proceed with the investigation in crime Nos.149 and 151 of 2020 registered for the offence under Sections 120(b), 420, 465, 467, 468, 471 of IPC by freezing the petitioner's account in accordance with law.





W.P.No.17953 of 2021

**WEB COPY**10. With the above directions, this criminal original petition is disposed of. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

21.07.2022

Index :Yes/No  
Internet : Yes/No  
Speaking order/non-speaking order  
lok

**G.K.ILANTHIRAIYAN, J.**

lok

To  
1.The Commissioner of Police,  
Chennai City,  
Vepery, Chennai 600 008  
2.The Inspector of Police,  
Bank Fraud Wing, Team-XI,  
Central Crime Branch,



W.P.No.17953 of 2021

Commissioner Office Building,  
Vepery, Chennai 600 008

3. The Regional Manager,  
Chennai Region, ICICI Bank,  
Plot No.24, Arihant Buildings,  
South Phase, Block-I, 1<sup>st</sup> Floor,  
Ambattur Industrial Estate,  
Chennai 600 058

4. The Branch Manager,  
ICICI Bank,  
Koyambedu Branch,  
No.231, Jawaharlal Nehru Road,  
100 Feet Road, Koyambedu,  
Chennai 600 107

5. The Public Prosecutor,  
High Court of Madras

W.P.No.17953 of 2021

21.07.2022