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CrI.O.P.No.14733 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 01.11.2021	Orders Pronounced On 14.03.2022
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CrI.O.P.No.14733 of 2021

Kiruthika

... Petitioner

Vs.

1.The State represented by
Inspector of Police,
Team-14, Cyber Crime Cell,
Central Crime Branch,
Chennai – 600 007.
[Crime NO.11 of 2011]

2.The Branch Manager,
Axis Bank Ltd.,
Raja Annamalaipuram Branch,
Chennai.

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to direct the respondents to defreeze the account of



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the petitioner in SB.A/c.No.918010071486841 at Axis Bank Limited, Raja Annamalaipuram, Chennai relating to Crime No.11 of 2021, on the file of the 1st respondent police.

For Petitioner : Mr.V.Gopinath
Senior Counsel
for Mr.Swami Subrmanian

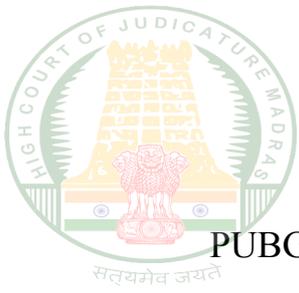
For R1 : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

The petitioner/A2 in Crime No.11 of 2021 filed this petition seeking direction, to direct the respondents to defreeze the account of the petitioner in SB.A/c.No.918010071486841 at Axis Bank Limited, Raja Annamalaipuram, Chennai.

2.The gist of the case is that on 14.06.2021, one Abhishek Rafi lodged a complaint stating that he is running a youtube channel in the name of Briyani Man, he often used to view lots of youtube videos, he came across a video of one Madankumar, who constantly uploads screen recorder of

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PUBG game in his two Youtube channels, namely, MADAN and TOXIC

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MADAN 18+. The said Madankumar [A1] used filthy, abusive, vulgar languages in the videos and circulated those videos in his youtube channels MADAN and TOXIC MADAN 18+ with an intention to insult and indecently represent women in the social media. The accused, Madankumar/A1 and the petitioner/A2 made streaming of PUBG gaming videos with obscene commentary and filthy language against women and teenage subscribers in the videos. Both the accused intentionally made abusive sexual conversation and vulgar talks, uploaded the same, Madan Youtube channel having more than 7.7 lakhs of followers, which includes 13% children below 18 years of age and 64% of followers are aged between 18-24 years. Hence, requested necessary action against the accused.

3. Based on the complaint, case was registered in Crime No.11 of 2021 under Sections 67, 67A of IT Act, Sections 294(b), 509 of IPC and Section 4 of Indecent Representation of Women Act, 1986. During investigation, the IP address of both the youtube channels were verified and found to be at No.9/370, Arputhalaya, Indira Nagar Main Road,

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Vengaiwasal, Chennai – 600 126, wherein the accused/A1 and the petitioner/A2 were residing. The videos in their youtube channel were

verified and found to be with extreme obscenity. Further, it was found that the videos in this youtube channel were viewed by even school going children. Hence, the respondent police went to the residence of the accused in Vengaiwasal, but they absconded, thereafter, on information found that they were available at Thadagapatti, Salem, the respondent police gone to Thadagapatti, Salem on 15.06.2021, wherein the petitioner/A2 was available but A1 absconded. The respondent police verified the mobile of A2, it was found that she is the Admin of the Youtube channel, she is controlling and uploading the videos. On further enquiry, she admitted that she along with her husband Madan Kumar were uploading the Government banned PUBG gaming videos. At about 11.00 am., the petitioner/A2 was arrested, for further investigation, the respondent police brought her to Chennai and at about 6.30 p.m, she gave a confession admitting the offence committed by her along with her husband. Thereafter, she disclosed the fact that on 12.03.2021, she started a Company in the name of Madan Game Station Private Limited, in which the petitioner and her father are the Directors. She



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received money from the Youtube in her account at Axis Bank, Raja

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Annamalaipuram Branch in SB.A/c.No.918010071486841 and

A/c.No.921020010663646. She used VPN mode in uploading the PUBG

gaming videos to conceal her identity and source, since the game was

banned by the Government of India. So far in the channel, the accused

uploaded 659 videos in the youtube channel 'MADAN' wherein, they got the

subscribers base of 7,79,000 and they uploaded 11 videos in TOXIC

MADAN 18+ channel, wherein they got 10,000 subscribers. It is further

submitted that the petitioner along with her husband upload the videos,

controlled the same using mobile phone and computer, during live streaming

of videos, her husband/A1 used to make derogative remarks and at times,

the petitioner also made some remarks in the name of Shalini and Kajal.

The persons who are interested to play PUBG game used to make payment

in Madan Kumar's bank account in Kotak Mahindra Bank,

Valasaravakkam Branch A/c.No.4912454739 and thus, they received huge

sums of money, added to it they collected money on false representation of

helping the needy and poor who got affected during Covid-19 and thus, they

received money in a deceitful manner, failed to make any contribution for



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the which the money was received. On the other hand, the accused purchased cars, jewels and were leading a luxurious life using the said money and thus committed misappropriation, cheating along with other offences. Hence, the petitioner was produced before the XI Metropolitan Magistrate, Saidapet, Chennai on 16.06.2021 along with requisition for remand, complaint, FIR and the documents collected till then.

4.The contention of the petitioner is that the petitioner was arrested on 15.06.2021 and she was remanded on 16.06.2021. The petitioner was arrested along with her eight months old infant baby. The petitioner filed a bail application in CrI.MP.No.5412 of 2021 and bail was granted on 28.06.2021. The petitioner's husband/A1 was arrested on 18.06.2021, he was remanded to custody on 19.06.2021 and thereafter, he was detained under the Goondas Act on 05.07.2021. On coming to know about the bank particulars of the petitioner, the respondent police sent a letter dated 28.06.2021 to the second respondent bank to freeze the bank account of the petitioner in SB A/c.No.918010071486841 without arriving at a satisfaction and without any reason. The second respondent bank freezed the



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petitioner's account and thereafter, sent a confirmation mail to the respondent police on 29.06.2021. Thereafter, alteration report was filed on 01.07.2021 alleging that the petitioner's husband received donation from various persons through Gpay and Paytm for helping the poor people but utilized the same for his personal use and hence, the first respondent altered the offence from Sections 67, 67A of IT Act, Sections 294(b), 509 of IPC and Section 4 of Indecent Representation of Women Act, 1986 to Sections 67, 67A of IT Act, Sections 294(b), 509, 420 IPC and Section 4 of Indecent Representation of Women Act, 1986.

5.The petitioner submits that as per Section 102(3) of Cr.P.C. the respondent police after freezing the bank account ought to have sent a seizure report to the concerned jurisdictional Magistrate without any delay but in this case, no such seizure report was filed by the respondent Police forthwith to the concerned Jurisdictional Magistrate nor informed the same to the petitioner. Since the petitioner detained with the infant baby, she was granted bail, immediately after her release, she was unable to comprehend herself, she was shattered and was not in a fit state of mind, not knowing



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what was happening, she was mechanically appearing before the concerned

Magistrate complying with the bail condition, only on 23.07.2021, when the petitioner approached the second respondent Bank to make some transaction from her bank account, she was shocked and surprised to know that her bank account was already freezed based on the directions of the respondent police. The second respondent by letter dated 23.07.2021 confirmed the same. The petitioner on verifying the status of her account through an Advocate found that mandatory report under Section 102(3) Cr.P.C. was not submitted. The petitioner submits that the Apex Court as well as this Court in plethora of judgments held that freezing of bank account pending investigation to follow the mandatory condition, further prohibitory order shall be for a very short duration and for a specific period and the bank accounts cannot be freezed endlessly. In this case, admittedly no reason was assigned by the prosecution for freezing the bank account and no duration of freezing mentioned. The petitioner relying on the decision in the case of ***T.Subbulakshmi and another vs. The Commissioner of Police, Chennai and others*** reported in ***CDJ 2013 MHC 3863*** submitted that freezing of bank account is not only violative, but also deprive the petitioner of her right



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and not legally sustainable. In view of the violation of the mandatory provision, the petitioner seeks defreezing of her bank account and permit her to continue the banking operations.

6.The petitioner in support of her contention produced the remand report, remand order, bail order, alteration report, letter of the second respondent bank dated 23.07.2021, copy of the notice issued under Sections 91 and 102 of Cr.P.C. to the second respondent bank dated 28.06.2021 and the letter of the bank to the first respondent dated 29.06.2021 to prove the fact that the respondent police sent a letter to the bank only on 28.06.2021, there is no proof to show whether the report was sent to the Court.

7.The learned Additional Public Prosecutor filed counter affidavit, additional counter affidavit, typed set of papers, additional typed set of papers and made his submissions. The complaint against the petitioner and her husband is of serious nature, complaint was received on 14.06.2021, the petitioner was arrested on 15.06.2021 and thereafter, three days later the



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petitioner's husband, A1 was arrested. Both the accused gave a confession admitting that they uploaded the videos in the Youtube channels, namely, MADAN and TOXIC MADAN 18+, the petitioner/A2 is the Admin who uploads the videos and as Admin, she was responsible for posting the same in the social media. Further, during streaming of videos in the Youtube, her husband/A1 as well as the petitioner/A2 used abusive and prohibitory comments, the youtube postings had substantial following of 7,79,000 subscribers, they mentally corrupted viewers and induced them to part with huge sums of money. Apart from this, they were uploading PUBG gaming videos, which software is banned by the Government of India, despite the same, in a camouflaged manner, the same was uploaded in the guise of providing information as how to play the game. They also received money from various persons on false representation for providing aid and helping the needy during Covid 19 situation. They received Crores of rupees by making false representation, misappropriated the same, cheated the general public, used the money received for their personal enrichment and benefit, they bought high end cars, costly jewels, silver articles and lead a life of luxury on the public money. Initially, a case was registered in Crime No.11



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of 2021 for the offences under Sections 67, 67A of IT Act, Sections 294(b), 509 of IPC and Section 4 of Indecent Representation of Women Act, 1986, later alteration report filed and Section 420 IPC was included. The confession of the accused lead to recovery of articles ad the same was produced before the concerned Magistrate without delay.

8.The petitioner along with her husband/A1 MadanKumar collected fund of Rs.2.89 Crores. The petitioner and her husband hail from Salem District, created two email ids, namely, madantheconqueror@gmail.com and mrmadankumarmanickam@gmail.com, and created two Youtube channels, namely, MADAN and TOXIC MADAN 18+ respectively. The petitioner along with her husband made live streaming PUBG gaming videos with obscene commentary and filthy language against women and teenage subscribers of the said Youtube Channels got offended on the comments, which were made with an intention to insult and indecently represent women in social media. The accused received donations through Gpay, Paytm, there are about 2842 victims in this case. On 22.06.2021, notice under Sections 160 and 91 of Cr.P.C. was sent to Google India Private Limited,



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Legal Department requesting to delete the videos of MADAN and TOXIC

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MADAN 18+. On 23.06.2021, the IP details for these Youtube Channels furnished by the Google authorities. The IP address provided by the accused Youtube Channels were accessed by the petitioner using her ACT Broadband connection at her residence in Vengaivasal, Chennai and using her JIO Mobile Network 8248005156. A1 and A2 uploaded 700 videos in MADAN Youtube channel and 33 videos in TOXIC MADAN 18+ Youtube Channel. They earned a sum of Rs.35,62,060.58 illegally between 23.01.2020 to 31.05.2021 from Google Company, USA. The said money was deposited in Axis Bank A/c.No.918010071486841, which is in the name of the petitioner. Both the accused collected funds of Rs.2,89,59,405/ from hundreds of their Youtube followers on false promise of helping poor and needy people whose livelihood are affected and the money was received in Kotak Mahindra Bank A/c No.4912454739 between the period 01.01.2020 to June 2021. Except for transferring Rs.1,20,030/- to Milaap Crowdfunding platform out of the total amount of Rs.2,89,59,405/-, the remaining amount was retained fraudulently, misused for their personal needs and the money was spent lavishly. The accused bought two luxury



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cars, Audi A6 worth Rs.13 lakhs, Audi R8 worth Rs.47 lakhs, gold jewels worth Rs.30 from GRT and silver articles worth Rs.26.85 lakhs from Tanishq Jewellery.

9.In this case, investigation is now completed, charge sheet filed and the case was taken on file in C.C.No.2946 of 2021 by the learned XI Metropolitan Magistrate, Saidapet, Chennai. The letter addressed to the Bank Manager, Axis Bank was intimated to the Court at the time of remanding the petitioner on 16.06.2021 complied with the mandatory condition under Section 102 Cr.P.C. Further, out of 2842 victims across India, 25 victims could be contacted, their statements were recorded and filed in the final report. Now in the bank account of the petitioner/A2, Rs.1,01,32,874.22/- is available which is disputed. The ownership of the said money cannot be decided without recording of evidence, only on completion of trial proceedings, the genuineness or otherwise can be decided, otherwise great prejudice would be caused to the victims who lost money. Hence, he sought for dismissal of this petition.



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10.The learned Additional Public Prosecutor referred to the typed set of papers submitted that L.W.6 to L.W.8 and L.W.13 to L.W.22 are the witnesses who contributed money to the accused in Kotak Mahindra Bank account, Valasaravakkam Branch, from where the amount was transferred to the account of the petitioner. The details of the transactions were enlisted in the counter affidavit. He further submitted that the Bank acknowledged the freezing of account of the accused to the respondent police by letter dated 15.06.2021, the same was produced and submitted to the concerned Court when the petitioner/A2 was remanded on 16.06.2021. Hence, the statutory requirement under Section 102(3) of Cr.P.C. was complied with. Now, investigation completed, charge sheet filed, the petitioner has to undergo trial to prove her case and thereafter, to get back her money by defreezing the account, if she is entitled. Placing reliance on the decision in the case of *Teesta Atul Setalvad vs. State of Gujarat* reported in (2018) 2 SCC 372 submitted that for the proposition that the power of Investigating Officer investigating any offence can issue prohibitory orders in respect of the bank accounts in exercise of power under Section 102 Cr.P.C. cannot be questioned. The two preconditions for applicability of Section 102(1)



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Cr.P.C. is that it must be a property, secondly, in respect of the said property, there must be suspicion of commission of any offence. On the facts above submitted, it is clear that the amount lying in the bank account is a case property.

11.Considering the rival submissions made by both sides and on perusal of the materials placed before this Court, it is seen that the case in Crime No.11 of 2021 was registered on 14.06.2021, the petitioner was arrested on 15.06.2021 and on 16.06.2021, she was produced for remand. After her arrest, the petitioner disclosed the business module, bank transactions and other particulars. The petitioner is the Admin for the two Youtube Channels, namely, MADAN and TOXIC MADAN 18+. The transcript of the Youtube channels produced, the particulars of payment received from the Google Company, the particulars of donations received from the subscribers in the account of A1 in Kotak Mahindra Bank and the statement of account produced. From the statement of account, it is seen that around Rs.2,89,59,405/- was transferred to the account of the petitioner in Axis Bank A/c.No.918010071486841 but now only Rs.1,01,32,874.22/-



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is available. The letter dated 15.06.2021 sent by the Senior Manager & Operations Head, Axis Bank, R.A.Puram Branch, Chennai was produced to the concerned Magistrate during the remand of the petitioner, as could be seen from the Court seal and Magistrate Initial dated 16.06.2021. The aforesaid letter was sent along with Statement of Account for A/c.No.918010071486841 for the period from 01.01.2020 to 31.12.2020 and 01.01.2021 to 14.06.2021 and other relevant documents.

12.The Apex Court in the case of *Teesta Atul Setalvad* [cited supra], held that Section 102 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. Section 102 Cr.P.C. is an important step towards investigation, in view of 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 investigating 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.



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13. In this case, the seizure/freezing of the account and its intimation was sent to the Jurisdictional Magistrate immediately on 16.06.2021 during the remand of the petitioner, hence, the mandatory provision under Section 102(3) Cr.P.C. is complied with. Now, investigation completed and from the list of witnesses, it is seen that L.W.6, L.W.7, L.W.8, L.W.13, L.W.14, L.W.15, L.W.16, L.W.17, L.W.18, L.W.19, L.W.20, L.W.21 and L.W.23 clearly state that they used to play PUBG game videos through the Youtube channel of the accused, they admit of making donations, for helping the poor people during Covid 19 situation. Further, it is seen that from the amount received as donation from their subscribers, less than Rs.2 lakhs was paid as donation by the accused and with regard to the balance amount, the accused are to give reasons. Though it is claimed by the prosecution that 2842 victims across India were cheated and victimized but only 25 victims could be accessed by the prosecution.

14. In view of the above, this Court is not inclined to entertain this petition. Accordingly, this Criminal Original Petition stands dismissed.



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WEB COPY 15. Further, with regard to the freezing of account of the accused, the prohibitory orders cannot be kept in force endlessly. Now, the investigation completed and charge sheet filed, taken on file in C.C.No.2946 of 2021, it is open to the petitioner to apply for defreezing the bank account, give satisfactory explanations to the concerned Magistrate, to show that freezing of account in its entirety is no more necessary for the purpose of investigation as provided under Section 102(3) Cr.P.C. Thereafter, it is for the concerned Court to consider the plea of the accused in accordance with law, after hearing the petitioner and the respondent police on the facts and circumstances of the case and thereafter, to pass appropriate orders.

14.03.2022

Index : Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
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To

- 1.The Inspector of Police,
Team-14, Cyber Crime Cell,
Central Crime Branch,
Chennai – 600 007.
- 2.The Branch Manager,
Axis Bank Ltd.,
Raja Annamalaipuram Branch,
Chennai.
- 3.The XI Metropolitan Magistrate,
Saidapet, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

cse

Pre-delivery order made in

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