

1976 Present : Sirimane, J., and Colin-Thome, J.

U. D. SAMARAWEERA—suspect Petitioner and

(1) THE OFFICER-IN-CHARGE, C.F.B. (Colombo)

(2) THE ATTORNEY-GENERAL, Respondents

S. C. Application No. 562/76—M. C. Colombo No. 45109/1

Administration of Justice Law—Power of Magistrate to “freeze” a Bank account—A.J.L. S. 74 (1)

Relationship between Bank and Depositor—Can depositor of stolen money confer on the Bank a better title.

Where in the course of a Police investigation into a complaint of cheating and/or criminal misappropriation, the Magistrate made an order “freezing” the account of the suspect petitioner.

Held: That while there is no provision in law granting a Magistrate a general power to order the freezing of a Bank Account yet by virtue of the provisions of S. 74 (1) of the Administration of Justice Law, No. 44 of 1973 which imposes a duty on the Magistrate inter alia to assist the conduct of an investigation by making and issuing appropriate orders and processes, the order made by the Magistrate “freezing” the Account is appropriate, in view of the powers conferred on Magistrates by sections 96 and 133 (1) of the Administration of Justice Law.

Held further, that while undoubtedly the relationship between the Bank and the Petitioner was that of debtor and creditor and the depositor is lawfully entitled to the money he had deposited, yet that does not mean that a depositor who deposits stolen property to which he is not entitled can confer on the Bank a better title to such money than his own. Stolen property or the proceeds thereof remain the same wherever it is, whether in a Bank or elsewhere provided however it can be clearly identified as such. If it were otherwise it would mean that a robber who robs one Bank can deposit the stolen money in another Bank and thus put it beyond the reach of the law and enjoy the fruits of his crime.

Application in Revision.

V. S. A. Pullenayagam with A. Chinniah for Petitioner.

Sarath Silva, Senior State Counsel for Respondents.

September 9, 1976. SIRIMANE, J.—

This is an application to revise an order made by the learned Magistrate of Colombo on 13th July 1976, in the course of a Police investigation into a complaint of cheating and/or misappropriation, “freezing” the Bank account of the Petitioner at the People’s Bank, Kandy.

The facts shortly (as stated in the affidavit filed on behalf of the respondents) are that on a complaint of cheating in respect of 4,117 yards of grey sheeting (valued Rs. 45,778) made by one Mohamed Ali of Pettah against the Petitioner the Police investigations revealed that the Petitioner had on 2.7.76 brought an order purporting to be issued by Messrs. Leatherates

Limited of Ratmalana for the above quantity of grey sheeting, received delivery of the same and removed it in a lorry. Later on the same day the Petitioner sold the said quantity of grey sheeting to Messrs. Asian Traders of Pettah for a sum of Rs. 30,282.60. On 5.7.76 the Petitioner opened a new current account No. 100713 at the People's Bank, Kandy, depositing a sum of Rs. 25,000 out of the Rs. 30,282.60 he had received as the proceeds of sale of the grey sheeting. The Petitioner was arrested by the Police on 9.7.76 at the People's Bank, Kandy, when he was about to obtain a draft for Rs. 6,600 from the monies he had deposited. It was in these circumstances that the learned Magistrate, on the application of the Police, made an order directing the Bank to "freeze" the said account until the disposal of the case.

Learned Counsel for the Petitioner strongly urged that there was no provision of law empowering a Magistrate to make such an order. He drew our attention to the provisions of the Criminal Justice Commission Act, which specially grants such a power to the Commission and submitted that in the absence of a special provision of law enabling a Magistrate to make such an order, the order made by the learned Magistrate in this case was illegal. Learned Senior State Counsel referred to section 74(1) of the Administration of Justice Law the relevant part of which reads:

"74. (1) Every Magistrate to whom application is made in that behalf shall assist the conduct of an investigation by making and issuing appropriate orders and processes of court, and may, in particular....."

Whilst I agree with learned Counsel for the Petitioner that there is no provision in law granting a Magistrate a general power to order the freezing of a Bank account, still a Magistrate is required by the provisions of Section 74(1) referred to above, to "assist the conduct of an investigation by making and issuing appropriate orders and processes...". One must therefore examine the facts of a particular case and see whether an order, such as the one made by the learned Magistrate in this case, is an "appropriate order". Such order must of course be an order that the Magistrate is empowered by law to make and not any order. The facts of the instant case reveal that the sum of Rs. 25,000 deposited to open the Bank account in question was admittedly the proceeds of the sale of the grey sheeting which the prosecution alleges is stolen property within the meaning of Section 393 of the Penal Code. Section 262 of the Adminis-

tration of Justice Law which provides for the disposal of property when a trial is concluded defines the term “property”, in subsection (3) thereof, regarding which an offence appears to have been committed, to include also “any property into or for which the same may have been converted or exchanged.....”. So that if in the course of an investigation it appears to a Magistrate that stolen property has been converted into cash. (as alleged in this case) it is open to him to order its production so that an appropriate order may be made in respect of such property at the conclusion of the case in terms of Section 262 referred to above. The provisions of Section 133(1) of the Administration of Justice Law reads:—

“133. (1) Whenever any court considers that the production of any document or other thing is necessary or desirable for the purposes of any proceeding by or before such court it may issue a summons to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it or to produce it at the time and place stated in the summons’.

The provisions of Section 96 of the Administration of Justice Law relating to search and production are also relevant. These sections empower a Court to order production of anything which it considers necessary or desirable for any proceeding before such Court, or to order the search and production of stolen property or of property unlawfully obtained deposited in any place. Where a Magistrate is empowered to order production of property he can certainly exercise the lesser power requiring that such property be kept safely, without being actually produced in Court, pending the conclusion of the case and his further orders if he is satisfied that the property is in safe custody and will be available when necessary. This in effect is what the learned Magistrate has done by the order he made in the instant case.

Learned Counsel for the Petitioner contended that once the Petitioner deposited the Rs. 25,000 to his credit in the Bank, the money became the sole property of the Bank and the relationship thereafter between the Bank and the Petitioner was that of debtor and creditor. He cited the case of *Regina vs. Davenport* (1958—1 W. L. R. 569). That is undoubtedly so when the money deposited in the Bank is the money to which the depositor is lawfully entitled. But that does not mean that a depositor who deposits stolen money to which he is not entitled can confer on the Bank a better title to such money than his own. Stolen property or the proceeds thereof remain the same wherever it is, whether in a Bank or elsewhere provided however it can be

clearly identified as such. In this connection learned Counsel for the Petitioner submitted that money is not goods within the definition of "goods" in the Sale of Goods Ordinance (Cap. 84) and the provisions of that Ordinance will not apply. We are here not concerned with the Sale of Goods Ordinance but with money which is movable property and admittedly the proceeds of alleged stolen property. If it were otherwise it would mean that a robber who robs one Bank can deposit the stolen money in another Bank and thus put it beyond the reach of the law and enjoy the fruits of his crime. I might mention that the Bank to which the order freezing the money was directed has not complained.

I am therefore of the view that although there is no special provision of law conferring a general power on a Magistrate to make orders freezing the Bank account of any person, still the facts of a particular case (such as the instant one) may be so compelling as to warrant the making of such an order in view of the powers conferred on Magistrates by Sections 74 (1), 96, 133 (1) and 262 of the Administration of Justice Law referred to above. Considering the particular circumstances of this case and for the reasons above stated I am of the view that the order made by the learned Magistrate in this case was a lawful and appropriate order and the application of the Petitioner is therefore refused.

COLIN-THOME, J.—I agree.

Application refused.
