

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/02/2005

CORAM

THE HON'BLE MR.JUSTICE K.P.SIVASUBRAMANIAM

W.P.No.1050 of 2005

His Holiness Sri Kanchi Kamakoti Peetadhipathi Jagadguru Sri Sankaracharya Swamigal Srimatam
Samasthanam
rep. by its Manager
No.1, Salai Street
Kancheepuram-631 502. .. Petitioner

-Vs-

1. The State of Tamil Nadu
rep. by the Secretary to Government
Home Department
Fort St. George
Chennai-9.

2. The Secretary to Government
Hindu Religious and Charitable
Endowments Department
Fort St. George
Chennai-9.

3. The Additional Superintendent
of Police
Special Investigating Team
Kancheepuram.

4. The Manager
Indian Bank
Salai Street
Kancheepuram.

5. The Manager
State Bank of India
Kancheepuram.

6. The Manager
Canara Bank
Kancheepuram.

7. The Manager
Union Bank of India
Kancheepuram.

8. The Manager
Indian Overseas Bank
Kancheepuram.

..
Respondents

PRAYER: Writ petition under Article 226 of the Constitution of India for the issue of a writ of mandamus forbearing respondents-1 to 3 from interfering with the right of the petitioner to manage and administer its affairs, property, including the bank accounts in various banks held in its name and in the names of its various endowments and trusts connected with.

!For petitioner :Mr.T.R.Rajagopalan
Senior Advocate for
Mr.K.Chandrasekaran

For respondents-1 & 3 : Mr.K.Doraisami
Public Prosecutor

For 2nd respondent : Mr.A.L.Somayaji
Addl. Advocate General
Assisted by Mr.S.Venkatesh
Special Government Pleader &

Mr.G.Sukumaran
Special Govt. Pleader, HR & CE

:ORDER

By consent of both parties, the writ petition itself is taken up for hearing.

2. This writ petition has been filed by the Senior Pontiff of Sri Sankaracharya Swamigal Srimatam Samasthanam, represented by its Manager. The petitioner has prayed for a writ of Mandamus to forbear respondents-1 to 3 from interfering with the right of the petitioner to manage and administer its affairs, property, including the bank accounts, in various banks held in its name and in the names of the various endowments connected with it.
3. In the affidavit filed in support of the writ petition, after referring to the advent of Sree Adi Sankara and his preachings, it is stated that Adi Sankara was intimately associated with Kanchi

and he established the Mutt for his residence during his last years and also nominated a young boy as his successor. Sree Sankara Mutt, established by Sree Adi Sankara at Kancheepuram, is an organisation built around Advaita Philosophy for its propagation and that the Mutt has a definite name and is a religious denomination within the meaning of Article 26 of the Constitution. The petitioner is, therefore, entitled to administer and manage its affairs and property without interference from the State.

4. On 11.11.2004, the Senior Pontiff was arrested at Mahaboob Nagar, Andhra Pradesh, on alleged charges under Section 302 read with Sections 120-B and 34, I.P.C. on the allegation that he conspired with others to do away with one Sankararaman of Kancheepuram on 3.9.2004. He was brought to Kancheepuram and remanded to custody. From then he was remaining in custody till he was released on bail by the order of the Supreme Court on 10.1.2005 in Criminal Appeal No.44 of 2005. It is alleged that during the custody, he underwent and suffered mental torture and that several other innocent persons connected with the activities of the Mutt and several employees were taken into custody and harassed by the Special Investigation Team, Kancheepuram.
5. The Manager of the Mutt was called at least 15 times for interrogation and was arrested on 24.12.2004. The Junior Pontiff was also arrested on 11.1.2005 and during the arrest, police had trespassed into the Mutt premises and took custody of him, without caring about the religious sentiments of the devotees of the Mutt. Such high-handed action on the part of the police was totally uncalled for, even though the Junior Pontiff and other employees of the Mutt were totally cooperating with the Investigation Team. The police created terror in the minds of the devotees, resulting in the thinning of the visit of devotees of Mutt to a great extent. It is further alleged that the police appears to be interested only in tarnishing the sacred image of the Mutt and the reputation of the Pontiffs. They were also indulging in leakage of information to the Press drawn with ulterior motives. There were unannounced raids by the police in the Mutt premises and a trial was being conducted by the Press.
6. It is further stated that the police have also called for title deeds relating to the property which have no connection with the case. The latest action of the Special Investigation Team is a series of communications sent to various banks in which the Mutt has accounts, but the copies of the communications have not been furnished to the Mutt. But the Mutt has been advised by the banks that all their accounts have been frozen. The petitioners contend that most of the accounts represent the endowments created by the various devotees for carrying out the religious functions of the Mutt. The endowments are placed in the banks as fixed deposits and the income derived therefrom is utilised for performing the various religious functions. Thus, the amounts standing to the credit of the Mutt in the various banks is property belonging to a religious denomination. The State has no right to interfere with the administration and management of the property. The Mutt is a legal entity, and is distinct from the Pontiffs, who preside over the Mutt. The petitioner contends that the Special Investigation Team (S.I.T.) has absolutely no jurisdiction or power under any of the provisions of the Criminal Procedure Code to freeze the accounts of the Mutt. Endowments are not the properties of the Matadhipathi and the Mutt has full control over the endowments created by various devotees. The freezing of the accounts have now rendered the performance of the religious duties impossible, due to the illegal action of the police. It is only with a view to sully the image of the Mutt, the secret communication appears to have been sent to various banks, directing freezing of accounts. The petitioner further contends that in terms of the various judgments of the Supreme Court and this Court, the right of the Mutt to manage its own affairs in matters of

religion is a fundamental right of a religious denomination, which, even a Legislature cannot take away. It is, therefore, not open to the police to interfere with the religious affairs of the Mutt. Performance of religious practices is an integral part of the activities of the Mutt and the various poojas conducted to the presiding deities of the Mutt, are to be performed every day. All such activities will come to a standstill if the bank accounts stand frozen. The power of the police to freeze any account can be exercised only if there was any direct nexus between the crime and the said account. The freezing of accounts have been resorted to only in case of misappropriation and corruption.

7. The petitioner Mutt has approximately 183 accounts with various banks. The daily collections of the Mutt from the devotees are deposited in the bank accounts and the money is required to be drawn to meet the expenditure of the Mutt towards daily pooja, feeding the devotees, annadhanam at two places, feeding of the animals, including 100 cows maintained in the Go Shelter or for its salary of the staff, statutory dues like telephone charges, electricity charges, property tax, etc., will have to be made from the amounts in the accounts standing to the credit of the Mutt in various banks. As a result of the high-handed action of the Special Investigation Team, the petitioner religious denomination has no other alternative except to approach this Court.
8. In the first counter affidavit filed by the third respondent, the Chief Investigating Officer of the Special Investigation Team, the various contentions raised by the petitioner in support of the writ petition have been denied, while seeking leave to file a detailed counter affidavit. The allegation that the activities of the Mutt will come to a stand still by the freezing of the bank accounts was incorrect and untenable. The communication of the Special Investigation Team was not contrary to law nor beyond the powers vested with the police. The contention that great prejudice will be caused if an order of injunction was not granted is also untenable. By an interim order dated 18.1.2005, this Court permitted the petitioner to operate one savings bank account and one current account on condition that details of deposits and withdrawals should be furnished to the Chief Investigating Officer, daily. The petitioner has not properly complied with the conditional order and has furnished details only for a few days, and for the remaining days, though bank statement was furnished, details were not furnished. The said action has affected the further progress of the investigation. Therefore, the interim order was liable to be vacated.
9. Subsequently, a detailed counter affidavit has been filed by the respondents in the writ petition. It is stated that in the affidavit of the petitioner, it is not disclosed to be a registered body and that unless it was a registered body, the writ petition was not maintainable at the instance of the petitioner. The petitioner cannot seek relief in respect of the 183 bank accounts standing in the names of various institutions. The prayer in the writ petition was very vague. The petitioner has not made it clear as to what was his right to manage and administer the properties and bank accounts. The endowments and trusts which are alleged to have opened bank accounts will be juridical parties and the petitioner was not entitled to seek relief on behalf of those juridical parties. In the absence of specific mention of the accounts standing in the name of the petitioner, the writ petition was liable to be dismissed. The allegation that several innocent persons connected with the activities of the Mutt were harassed and taken into custody was also denied. The further allegation that when the junior Pontiff was arrested, the police had trespassed into the Mutt premises was also denied as incorrect. There was no basis for the allegation that the religious sentiments of the devotees were not cared. The further contentions that the employees of the Mutt were cooperating with the investigation team and

that the police were creating a terror in the minds of the devotees were also incorrect. The further contention that there was a witch-hunt by the Special Investigation Team and that the aim of the police was to tarnish the sacred image of the Mutt was false. The allegation that statements made by persons in the custody had been leaked to the press was also false. The Investigation Team was in no way responsible for the display of video clippings in the T.V. Channels. It was the Mutt which was responsible for the conduct of trial by the Press by giving costly advertisements in the newspapers. The Special Investigation Team has jurisdiction under the provisions of the Criminal Procedure Code to freeze the accounts and the contention that freezing of accounts had rendered the performance of religious duties impossible is also incorrect. The action of the police was authorised under Section 102 of the Criminal Procedure Code. The allegation that the action of the police in freezing of the accounts was mala fide and intended to create terror and to bring the activities of the Mutt to a standstill was incorrect and untenable. The further contention that money was required to be drawn to meet the expenditure of the Mutt towards daily poojas, etc., was also incorrect. Large amounts running to crores were put in various accounts numbering more than 108 at Kancheepuram alone and large amounts are being withdrawn from various accounts in cash and being utilised for non-religious purposes. The investigation reveals that there was no differentiation made in the various accounts of the Mutt towards the Trusts, Endowments, etc. It also reveals various transactions without proper accounts. No accounts were maintained regarding the cash receipts and the cash withdrawal of several lakhs of rupees. Investigation further revealed that large amounts running to lakhs of rupees were utilised for illegal purposes for perpetuating the heinous offence of murder and attempt to murder. Investigation reveals that Rs.75 lakhs was received in cash in lieu of the cheque on withdrawal of amounts from various accounts. The investigation conducted subsequent to the order of the Supreme Court in the bail application reveals that more than Rs.50 lakhs have been deposited into the bank and the challan did not contain the signature of the remitter and also the denomination of the currencies. Raghu, one of the coaccused, has drawn money from various banks without any authority for utilising the same, for illegal purposes. It is also seen that substantial amounts have been withdrawn not only for the commission of the offences, but also for tampering with the evidence. The accounts in the various banks are tainted with illegality, since funds of various religious and charitable trusts have been transferred to other accounts and are withdrawn for illegal purposes. Offences of criminal breach of trust have also been committed with reference to various accounts, which are being investigated. Several pages of the Books are removed at the instance of the petitioner. The investigation into the other offences namely, attempt to commit murder and tampering of evidence are also under investigation. Therefore, the freezing of the accounts in various banks at this juncture was not only justified, but absolutely essential. There are materials to disclose that the amount already withdrawn was utilised by the petitioner for tampering with the investigation. The investigation into the remaining cases were under way. Even though final reports were submitted in Crime No.914 of 2004, the trial was yet to commence. If the petitioner was allowed to operate the accounts, he will draw huge amounts of money and utilise the same for tampering with the evidence. Unless investigation was completed in the remaining cases, it will not be possible to ascertain the manner and the extent to which the funds were utilised for illegal purposes. Therefore, freezing the accounts was absolutely essential to unearth the truth. The claim that the petitioner was a religious denomination and that the police was interfering with their activities was also untenable. There was no basis for the allegations of mala

rides or vindictiveness or the action being aimed at tarnishing the image or to create a reign of terror in the Mutt. The contention that the bank accounts represented substantial endowments and intended for the purpose of poojas in the Mutt was also denied. Special Investigation Team has acted within its power. There is no basis for the claim that the Mutt should have been granted opportunity before the amounts were sought to be frozen. The police have not interfered with the religious activities of the Mutt and the steps taken by the police are restricted to the criminal activities of the persons connecting with the Mutt as conspirators. The day-to-day activities and the poojas of the Mutt are, in no way affected by freezing the other accounts, considering that this Court had already permitted the petitioner to operate two of the accounts. Therefore, the writ petition was liable to be dismissed.

10. Mr.T.R.Rajagopalan, learned senior counsel for the petitioner, contends that from the beginning, the prosecution has been indulging only in mud-slinging campaign as against the Mutt and the Head of the Mutt, terrorising the hierarchy of the Mutt and its devotees and freezing the bank accounts, which have no nexus to the criminal case, all with a hidden motive to destroy the Mutt.
11. Section 102 of Cr.P.C., which is now invoked by the police, does not justify their action. The provision as well as the interpretation of the provision by the Supreme Court clearly indicates that it can relate only to property, assets or funds, which are directly referable to the crime and not otherwise. All facts and evidence have been collected already by the investigation team and a charge sheet has also been filed in the murder case. Evidence against the accused persons can, at best, relate only to the past events and evidence of accounts and transactions. The Special Investigation Team already had access to all such materials and several accounts have been taken by them. Freezing of bank accounts and the activities of the Mutt can have absolutely no relevance to the investigation into the offences, which relate to the past, against the Head of the Mutt. Therefore, the impugned action can be only either to force closing down the activities of the Mutt or to gain control of the assets and income of the property of the Mutt in some pretext or the other, with oblique motives. Learned senior counsel further contends that the property and assets of the Mutt comprise of donations and endowments for specific purposes, poojas, etc., which cannot be stalled by the police on the excuse that they are investigating and dealing with a murder case against the Head of the Mutt. The Matadhipathi does not hold the property as his own or for his personal use. Therefore, the interest of the innumerable devotees and donors who have given money for the conduct of the specific endowments, should not be adversely affected. The Mutt as well as its devotees have a fundamental right to conduct the day-to-day activities without any hindrance from the State and their rights should be protected under Article 26 of the Constitution. Learned senior counsel also relies on the judgment of the Supreme Court in THE COMMISSIONER, HINDU RELIGIOUS ENDOWMENTS Vs. SRI LAKSHMINDRA THIRTHA SWAMIAR OF SRI SHIRUR MUTT (Shirur Mutt Case) (1954 Supreme Court Reports 1005).
12. As regards the scope of Section 102 of Cr.P.C., learned senior counsel contends that though deposits in banks would also be covered under the said provision, such an order could be passed only in respect of money which is actually involved in the offence.
13. Reference is made to the judgment of the Supreme Court in STATE OF MAHARASHTRA Vs. TAPAS D. NEOGY ((1999) 7 SCC 685). Reliance is placed on the observation that the Police Officer could issue prohibitory orders from operating the bank account only when the police officer reaches the conclusion that the amount in the bank was the outcome of commission of the offence by the accused.

14. As regards the amounts said to have been utilised for paying the hirelings to carry out the murder, the prosecution has been taking contradictory stands. Before the High Court (bail petition), it was stated that an amount of Rs.50 lakhs was withdrawn from the account of the Mutt maintained at ICICI Bank. But, before the Supreme Court, a different stand was taken, namely, that pursuant to an agreement of sale of 50 acres belonging to Kanchi Mutt, an advance of Rs.50 lakhs was received in cash on 30.4.2004 and that it was the said amount which was utilised to pay to the hirelings. The Supreme Court refused to accept this story, as the petitioner was able to produce materials to show that the amount was received as advance towards sale agreement and the said amount has also been deposited in the Indian Bank. Learned senior counsel further contends that the interest which is shown by the police over the accounts and assets of the Mutt appears to be more than for the purpose of investigation of the murder case, which is rather strange.
15. Learned Public Prosecutor, while opposing the petition, contends that the writ petition was filed by the "Samasthanam" and not by the Mutt and therefore, the petitioner is not entitled to maintain the writ petition. Even though the learned counsel for the petitioner was requested to furnish information regarding whether the Mutt was a registered establishment or not, no particulars have been furnished. Therefore, as the writ petition has been filed by an unidentified body, the same is not maintainable. On verification, it is found that the Samasthanam has only one account in S.B.No.8030, Indian Bank. All the other accounts are either in the name of the Mutt or the various Trusts. The Samasthanam cannot pray for any relief in respect of the accounts/deposits in relation to the other Trusts or Endowments. The Head of the Mutt cannot claim to have any control over the assets of the other bodies/institutions. But he appears to have full control over all the accounts, while, legally, he has no right to operate the other accounts. He is exercising full control of the entire assets, however, without any legal rights. There is strong evidence to show that the hirelings have been paid heftily from and out of the income of the Mutt and therefore, it has become essential to freeze the accounts. The prosecution has to monitor the accounts closely, especially the spendings by the Mutt, in order to have a close watch on the possible misuse of funds for tampering the evidence. The Mutt and the supporters are resourceful people, enjoying higher power and money and if there is no proper check of their activities, the funds are bound to be used for illegal purposes for tampering the witnesses. There is already an instance of a witness having retracted his earlier statement. The police has also filed a complaint against the Accountant and the Manager in Crime No.10 of 2005, alleging cheating and forgery in respect of the funds and they stand charged under Sections 420, 463, 465, etc., of I.P.C. They are charged for having tampered with the accounts.
16. Learned Public Prosecutor would also submit that the financial transactions of the Mutt were handled in an illegal manner and would particularly refer to transaction relating to the sale of a land at Kancheepuram by Sree Kanchi Jana Kalyan Trust, whereby, a total advance of Rs.75 lakhs had been received. Though, originally, a cheque had been issued earlier, later, cash was received in lieu of the cheque, which reveals ulterior purposes. The amount also appears to have been deposited in some other account. This is not properly explained. Before the Supreme Court, when the issue of payment to the hirelings was heard on the contention of the Mutt that a sum of Rs.50 lakhs had been received at the Indian Bank, there was no time for the respondents to verify whether the statement on behalf of the Mutt was correct or not. Therefore, there are series of facts relating to the accounts and misuse of the funds for illegal activities, which have to be curtailed. One of the accused, Raghu, the

brother of the junior Pontiff, who has absolutely no official status in the Mutt, was allowed to operate the accounts and funds, and he was one of those instrumental in the commission of various offences now being dealt with by the Special Investigation Team. It was incorrect to say that no criminality was attached to the accounts. Section 102, Cr.P.C., is applicable not only to corruption cases or economic offences, but also to all offences, the assets having some nexus to the crime. Large amounts have been drawn for facilitating fake surrender of some other individuals, intended to deliberately misdirect the investigation. Therefore, permitting the accounts to be operated by the Mutt would only result in helping the accused and would adversely affect the proceedings. The present interim order permitting the Mutt to operate the specific accounts was sufficient to meet the requirements of the Mutt.

17. Learned Public Prosecutor also referred to rulings in support of his contention that even bank accounts would be property and within the scope of Section 102 of Cr.P.C., and directions can be issued, restricting the operation of the accounts.
18. Mr.T.R.Rajagopalan, learned senior counsel, in reply, contends that the stand that the Mutt being an unregistered body cannot file a writ petition, is unsustainable. It is an institution which has been in existence for several years and the Shirur Mutt case was also only by a religious entity, but unregistered. It is, therefore, a juridical person, which can sue and be sued and also enjoy the protection of Article 26 of the Constitution. Honourable Chief Minister herself has stated in the Assembly that the Mutt was several hundred years old.
19. Learned senior counsel also contends that the Public Prosecutor has not satisfactorily explained as to how the future transactions and activities of the Mutt can have any nexus to the crime of the past and the Special Investigation Team had already collected the materials relating to the occurrence and also subsequently till the filing of the charge sheet. Thus, the investigation having been completed, there was no further need to check on the accounts, much less freeze the activities of the Mutt. He would also deny the contention that the present operation of the two accounts by virtue of the interim order was very sufficient. Substantial amounts are required not only for performing the daily poojas and rituals, but also for paying salary to the staff. In view of the financial constraints, the Mutt was facing a very difficult situation and not being able even to pay the salary to its several employees and other regular philanthropic and religious commitments. The very idea of freezing the accounts was, therefore, aimed at destroying the Mutt in an indirect way.
20. I have considered the submissions of both sides.
21. Having regard to the scope of the prayer in the writ petition seeking for a Mandamus to forbear the respondents-1 to 3 (which include the Secretaries of the Home Department and H.R. & C.E. Department) from interfering with the right of the petitioner to manage and administer its affairs, property, including bank accounts, etc., I had pointed out to the learned senior counsel for the petitioner that the sweep of the prayer appears to include any action which the Government may be entitled to take against the Mutt under the provisions of the Hindu Religious Endowments Act, 1959, (hereinafter called "the Act") or any other legal provisions. The submissions were restricted only to the action initiated by the Special Investigation Team with reference to the bank accounts alone and the prayer in the interim petition was also restricted only to that extent. Learned senior counsel for the petitioner made it clear that the scope of the writ petition is restricted only to the action taken by the respondents under Section 102 of Cr.P.C. freezing the bank accounts and not as regards any other issue.
22. The relevant factual background which led to the impugned action by the respondents is simple, namely, that the Head of Sri Kanchi Kamakoti Mutt as well as the Junior Pontiff are arrayed

as accused, along with others, for having allegedly committed the murder of one Sankararaman. They were also stated to be involved in three cases, as detailed below. To appreciate the submissions of both sides, it is necessary to consider the nature of the charges against them and I had directed the respondents to file a statement of pending cases against the Head of the Mutt or the Administration of the Mutt. On 1.2.2005, learned Public Prosecutor has submitted the details of such cases, four in number, as follows:

(1) PATTINAPAKKAM P.S. CRIME NO.859/02:

Under Sections 452, 324, 323, 307, 120(b) & 201 I.P.C. read with 34, I.P.C.

(Under investigation)

Date of Offence : 20.09.2002

Date of report : 20.09.2002

Scene of occurrence : No.5/9, Norton Road
Mandaveli, Chennai.

Complainant : S.Radhakrishnan, Male,
aged 60 years,

S/o.Subramanian
No.5/9, Norton Road
Mandaveli, Chennai.

Accused : 1. Anandakumar
2. Lakshmanan
3. Boominathan
4. Chinnakumar
5. Kannan
6. Sundaram
7. Kadiravan
8. Appu
9. Ravisubramaniam
10. Jayenthirar
11. Sundaresan

All the above accused were arrested and remanded.

(2) B-2 VISHNU KANCHI P.S. CRIME NO.914/04:

Under Sections 120(b, 302, 449, 213, 214, 201, I.P.C. read with Section 109 and 34, I.P.C.

(FINAL REPORT FILED)

Date of Offence : 03.09.2004 at 17:45 Hours

Date of report : 03.09.2004 at 19:00 Hours

Scene of occurrence : Varadharaja Perumal
Temple Office Kanchipuram.

Complainant : N.S.Ganesh

S/o.Shanmugam.

Accused : 1. Jayenthira Saraswathi
& 22 others.

All the above accused were arrested and remanded.

(3) F-4 THOUSAND LIGHTS P.S. CRIME NO.1670/04:

Under Sections 324 & 307 I.P.C.

(Under Investigation)

Date of Offence : 03.08.2004

Date of report : 03.11.2004

Scene of occurrence : Greams Road Thousand Lights Chennai.

Complainant : Thirukottiyur Madhavan

Accused : Not yet known

None was arrested.

(4) SIVA KANCHI P.S. CRIME NO.10/2005:

Under Sections 420, 463, 465, 468, 471 & 474, I.P.C.

(Under Investigation)

Date of Offence : Before 4.1.2005

Date of report : 04.01.2005

Scene of occurrence : Sankara Mutt
No.1, Salai Street

Kanchipuram.

Complainant : Dhakshinamurthy
Sub Inspector of Police
Special Branch
Kanchipuram.

Accused : 1. Kaladi Viswanathan
(Accountant of the Mutt)

2. Sundaresa Iyer
(Manager of the Mutt)

The above two accused were arrested and remanded.

23. The crux of the issue which is raised for consideration is whether in the background of the above charges, the Special Investigation Team is justified in ordering the freezing of the bank accounts of the Mutt in exercising the power under Section 102 of Cr.P.C.
24. I would first deal with the preliminary objection of the learned Public Prosecutor that the writ petition at the instance of the Samasthanam, as shown in the cause title, is not a registered body and hence, the writ petition is not maintainable. The Samasthanam had only one account. The Samasthanam is not a juridical person and hence, cannot initiate any legal proceedings.
25. I am unable to sustain the said objection. It is not disputed that the Mutt is an ancient religious Institution in existence for more than several hundreds of years. The Institution, though it is popularly known as "Kanchi Mutt" in common parlance, appears to bear a traditional name as "Srimatam Samasthanam". It is stated to be headed by Sri Kanchi Kamakoti Peetadhipathi. The Mutt is, therefore, a religious institution, entitled to constitutional protection, as envisaged under Article 26 of the Constitution. "Religious institution" is defined under Section 6(18) of the Act as math, temple or specific endowment. "Math" is defined under Section 6(13) as a Hindu Religious Institution with properties attached thereto and is presided over by a person, the succession to whose office devolves in accordance with the directions of the Founder of the Math.
26. Such institutions, in view of their antiquity and acceptance by a large section of the members of the society as representing their faith, are also accepted as institutions/juridical persons and they are entitled to sue or liable to be sued, and such rights have never been disputed or questioned. The same conclusion would apply to other ancient institutions belonging to other religions also, such as, Christianity and Islam. There are several ancient institutions subscribing to Christian faith, churches, mosques, wakfs, functioning and recognised as legal entities, without registration under any Act. There were several unregistered wakfs which were governed by the provisions of the earlier Wakf Acts and it is only under the Wakf Act, 1995, registration of the wakfs have been made compulsory, and that too, only with the Wakf Board and not under any general statutes or authorities relating to registration of companies, societies or other organisations. Registration of such religious institutions may not also be possible in terms of such general statutes under which any institution, society or a company would be usually registered. There is no possibility of such institutions conforming to the various statutory requirements of having various offices like President, Vice President, Secretary, etc., much less elections to such offices in the case of a religious institution like Mutt. Further, unlike Wakf Act, 1995, there is no corresponding provision under the Tamil Nadu Act 22 of 1959, requiring compulsory registration at least under that Act.
27. It is only in the said background, such institutions have always been recognized by the Courts and other authorities as juridical persons who can sue or be sued even though they are not registered under any of the modern statutes. As pointed out by the learned senior counsel for the petitioner, there are several examples of Court proceedings including writ petitions where

such institutions have been parties, one such example being the Shirur Mutt case which went up to the Supreme Court. Therefore, it follows that the petitioner Mutt or Samasthanam, in whatever name it is called, being a Mutt and religious institution as defined under Section 6(13) and Section 6(18) of Act 22 of 1989, can maintain a writ petition.

28. Now, coming to the scope of Section 102 of Cr.P.C., which is, admittedly, the provision which has been invoked by the Special Investigation Team to freeze the bank accounts, it relates to "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". It would be appropriate to extract Section 102 of Cr.P.C., which is 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. " (Emphasis supplied)
29. Though "bank accounts" is not explicitly mentioned under the said provision, the Supreme Court and High Courts have consistently taken the view that the word "property" would include bank accounts also. Learned senior counsel for the petitioner does not dispute this position, and it therefore follows that the power under Section 102 of Cr.P.C., could be extended to bank deposits/accounts also and the competent authority can take steps to freeze the accounts, if the other requirements are satisfied.
30. A reading of the provision clearly indicates the scope of the power under the provision and that it is an exhaustive provision. Only two categories of properties are mentioned, namely, (1) alleged or suspected to have been stolen, or (2) which may be found under circumstances which create suspicion of the commission of any offence. No other categories can be included or deemed to be included as may otherwise be possible in an expansive definition by using certain other expressions in addition such as "as the case may be", "as the authorities deem fit and necessary", etc. , which may render the provision an inclusive and illustrative one and not an exhaustive one. The language of Section 102 of Cr.P.C., is very clear and it is clearly an exhaustive provision, as it should be. Otherwise, the provision would be arbitrary and unconnected to the offence and would be liable to be misused for ulterior purposes. Therefore, designedly, the Parliament has restricted the power under Section 102 of Cr.P.C. to specific and narrow limits.
31. In STATE OF MAHARASHTRA Vs. TAPAS D. NEOGY ((1999) 7 SCC 685), the Supreme Court had occasion to consider the scope of Section 102 of Cr.P.C., vis-a-vis, what constitutes "property". While holding that bank account would also fall under the provision, the Supreme Court also held that the amount has to be the outcome of commission of offence by the accused, if such assets have direct links with the commission of the offence for which the Police officer is investigating into.

32. The legal position for invoking Section 102 of Cr.P.C. is thus very clear, namely, that bank deposits can also be brought under the provision, provided, the deposits represent either stolen money or should be connected with the commission of any offence. In short, there must be nexus to the crime alleged and the money to be seized. The charge in this case is not of theft, and therefore, the first alternative, which is specific, is not satisfied. The second alternative, which is general in nature, has to be examined in the light of the factual background of this case.
33. The Head of the Mutt is suspected of being involved in the murder of one Sankararaman. The investigation into the murder case, according to the prosecution, revealed his involvement in two other cases, namely, Crime No.859 of 2002 relating to assault on one Radhakrishnan and attempt to murder and Crime No.1670 of 2004 of having caused injury and attempted to murder one Madhavan. We may deal with the last case (Crime No.10 of 2005) separately.
34. In all these three cases, the allegations relate to offences affecting human body (Chapter XVI of I.P.C.) and the related offences are Section 120-B, I.P.C. (conspiracy) and Section 201, I.P.C. (suppression of evidence and giving false information). They do not relate to any money transaction except to the extent of the allegation of having allegedly paid money to the hirelings who are said to have been engaged by the accused to carry out the crime. It is true, all the reported cases arising under Section 102, Cr.P.C. pertain to economic offences and cases of corruption and cheating, etc. But the contention of the learned senior counsel for the petitioner that Section 102, Cr.P.C. has to be specifically restricted to economic offences alone cannot be accepted. There could be certain other category of cases wherever money or property is involved, intrinsically connected with the offences. In these cases, the connecting link with Section 102, Cr.P.C. is prima-facie available, namely, one part of the conspiracy being the money paid to the hirelings. There could be no doubt about the position that if the money or consideration in any form paid to the hirelings are now available with anyone, the police can certainly invoke Section 102, Cr.P.C. and seize the same. The police can also collect all evidence regarding the payment of money or consideration in any other form and evidence relating to the same such as bank accounts, which may reflect the payment of such amounts, evidence of deposits or withdrawals which may have relevance to such payment to the hirelings. To that extent, the police would be definitely justified in seizing the account books of the Mutt, calling upon the Mutt as well as their bankers to furnish all information and records pertaining to a reasonable period, immediately before and after the commission of the offence. However, the offence having been completed long back, the checking of the accounts in relation to the aforementioned three cases can be only as regards past events and accounts. Any checking would be relevant only with reference to past transactions. Section 102, Cr.P.c., cannot have any nexus to the future transactions or the regular activities of the Mutt. The day-to-day activities of the Mutt and the money which they receive or spend for such day-to-day activities can have absolutely no relevance to the offences alleged to have been committed earlier by the Head of the Mutt or for the investigation into those offences. The money or the assets of the Mutt in relation to their future activities, cannot, by any stretch of imagination, be brought under Section 102, Cr.P.C. It is not the case of the prosecution that the Mutt is, as on date, possessed of any money which can be treated as anything to do with the commission of the offence. Even if it be available, the police can seize only that money or consideration, in whatever form, if available with the Mutt or any of the accused. But, having regard to the nature of the charges against the accused in this case and the charges being

relatable only to past events and period, I am unable to comprehend any possibility or justification to invoke Section 102, Cr.P.C. as regards future activities of the Mutt.

35. During the hearing itself, I had made it clear to the learned Public Prosecutor that the Special Investigation Team would be entitled to seize and retain all account books of the past period, if required for investigation relating to the charge of payment of money to the hirelings and also to call upon all the banks to furnish the necessary information regarding such past transactions. Learned Public prosecutor has not been able to point out any single reason for freezing of accounts in the context of Section 102, Cr.P.C., except for expressing apprehension that the Mutt may use the funds for gagging or tampering with the witness. Certainly Section 102, Cr.P.C. is not intended or visualised for such a contingency. Such activities can have no relevance to the "commission of any offence" which is the essential ingredient of Section 102, Cr.P.C., and in this case, the commission of offence, either murder or paying money to hirelings are all past events. Therefore, the apprehension or the possibility of an accused making use of the funds for influencing or tampering the witness in future cannot be brought under the scope of Section 102, Cr.P.C., much less can it be an excuse to stifle the activities of the Mutt. If that be so, in every prosecution under I.P.C. offences, Section 102 of Cr.P.C. can be invoked.
36. Even so, in this case, the police can be permitted to oversee the accounts of the Mutt, their deposits and withdrawals in the bank by asking the Mutt to furnish statement of accounts periodically. In fact, learned senior counsel for the petitioner also agreed to comply with any such direction which the Court may issue. Strictly speaking, in terms of Section 102, Cr.P.C., even the said direction cannot be justified or sought for by the police. However, having regard to the apprehensions expressed by the police and the agreeability of the petitioner to furnish statement of accounts, such direction can be issued so that the police would be able to oversee the accounts for some reasonable time, even though it is wholly unwarranted. I do not think that the prosecution can point out any single instance of such a direction being given in their favour in the context of Section 102, Cr.P.C., vis-a-vis the apprehension of the police that the accused may use the funds for tampering of witnesses.
37. In this case, another perspective which renders Section 102, Cr.P.C. inapplicable to freeze the accounts of the Mutt, is that the Mutt is not the accused. It is the Head of the Mutt who is the accused. If there is any personal or individual account of the accused, the police could very well invoke Section 102, Cr.P.C. as against the said account. The Mutt or the Trust is an independent body by itself and can have nothing to do with the commissions and omissions of the Head of the Mutt in his personal capacity. Though, strictly speaking, the Head of the Mutt cannot be equated to a Trustee or Manager, his relationship with the Mutt is only in a fiduciary capacity. The property, assets and income of the Mutt belongs to the Mutt and does not belong to the Head of the Mutt. He has no proprietary or individual rights or interest over the property. In fact, even the "Paadha Kaanikkai" given to him in the capacity of Head of the Mutt would also belong only to the Mutt and accountable vide Section 62 of Act 22 of 1959. Therefore, for the offences alleged against the Head of the Mutt, Section 102, Cr.P.C. cannot be invoked as against the property, assets and income of the Mutt, which is a separate organisation and legal entity by itself. To hold otherwise, would lead to unreasonable and shocking situations.
38. I ask myself a question as to whether the accounts of a company could be frozen if the Managing Director is charged with murder. If so, it could happen to any Organisation, Institutions registered under the Societies Registration Act, Clubs, Political Parties, Social

Organisations, etc. Once the Head of the Institution is apprehended of any offence under I.P.C., the Institution can be brought to a grinding halt, and the police can, at the stroke of a pen, freeze bank accounts and consequently, freeze and paralyse the activities of the institution. That certainly is not the scope of Section 102, Cr.P.C. Learned Public Prosecutor contended that the Head of the Mutt has the overall control of the administration of the Mutt. This is true, with respect to all the organisations as aforesaid, and that is no justification for invoking Section 102, Cr.P.C. I agree that the nature of administration of a Mutt cannot be compared with a Corporate entity. But the fact remains that all these institutions, including the Mutt, are separate entities and cannot be bound or affected by the commissions and omissions of the Head of the Institution. In fact, at least in the case of a company, the Managing Director may have proprietary or ownership interest over the assets and properties to the extent of his share. But in the case of a Mutt, the Head of the Mutt has no personal rights over the assets and income which belong only to the institution. The petitioner institution is not one of the mushroom mutts or religious outfits of recent origin most of which are established with ulterior motives. The ancient mutts like the petitioner, Thiruvavaduthurai, Thirupanandal, Ahobilam Mutt, Madurai Adheenam, etc., were established by great saints. The Head of the mutt today may or may not be involved in a crime. But that is no reason to subject the mutt to such action which would paralyse the mutt. Heads of mutts will come and go, but the mutt should be allowed to function normally.

39. To repeat what has already been stated, the reasons to invoke Section 102, Cr.P.C. in this case is two fold. Firstly, the money of the Mutt having been paid to the killers/hirelings. Secondly, the police has an apprehension that the money could be used for tampering the witnesses. The first ground relates to past events and has no relevance to the future functioning of the Mutt. The second one, an apprehension of a future event, can never be a reason for invoking Section 102, Cr.P.C. It is true that the future possibility can also be a relevant factor in the sense, such as the need to "safeguard" the asset being the product or outcome of the illegal activities, illegal gratification, etc., which asset or money would have had direct link with the offence committed by the accused as a public officer vide STATE OF MAHARASHTRA Vs. TAPAS D. NEOGY ((1999) 7 SCC 685) supra. This is not a case of corruption or illegal gratification in which case the asset has to be "safeguarded". In addition, the properties and assets belong to the Mutt and not to the Head of the Mutt.
40. I am also unable to sustain the contention of the learned Public Prosecutor that the Head of the Mutt in the present case can have no control over the other Endowments, Trusts, etc., but that in fact, he was exercising control over all the institutions in an improper manner. Apart from such a statement, no material or further submissions are made to substantiate the said contention. This contention on behalf of the respondent is really a double edged weapon. If the Accused has no legal rights and control over the Trusts and Endowments, it will not be possible for the police to invoke Section 102, Cr.P.C. with reference to the accounts relating to the other Trusts, Endowments, etc. Learned senior counsel for the petitioner positively states that all the trusts, endowments are attached to the mutt. This statement is not controverted by production of any material to the contra.
41. Now, we may consider the fourth and last case against the accused. The charges relate to the accounts of the Mutt and the Accountant and the Manager of the Mutt have been arrayed as accused. As on the date when the accounts were frozen, the Head of the Mutt has not been shown as an accused. Now a new Manager has been appointed against whom there are no charges, as pointed out by learned senior counsel for petitioner. Even so, we may assume for

the sake of discussion that the Head of the Mutt is also arrayed as one of the accused. The accused stand charged with the offences of cheating, forgery, using forged documents as genuine, etc. All these allegations relate to the alleged manipulation of accounts only in the context of other charges of murder, assault, etc. Learned Public Prosecutor fairly agreed that the fourth case is also the outcome of and inter-connected with the cases of murder and assault and how the funds and accounts have been manipulated for the purpose of payment to the hirelings and for suppression of evidence. To my specific question as to whether the police are trying to probe into the general administration of the Mutt, learned Public Prosecutor has stated that the police was not concerned with the administration and management of the Mutt and that the fourth case related only to manipulation of accounts, vis-a-vis, the commission of the crime of murder and assault and the payments made to the hirelings. If so, the very reasons as aforesaid for the other three cases, would apply to the fourth case also, namely, the allegations pertain to past events and accounts and the police is certainly entitled to collect all evidence relating to past activities, but cannot interfere with the administration of the Mutt and the accounts relating to future activities.

42. A perusal of the communication from the Chief Investigating Officer to the various banks discloses that the reason for direction to freeze the accounts pertains only to the past events, and that too, only in the context of the murder case (Crime No.914 of 2004) as shown in the reference column. Three sample letters of different dates to different banks have been produced before the Court by the police. The text of the letters are verbatim the same, and the reference is made only to Crime No.914 of 2004. The text of the letter is as follows: " During the course of investigation there are reasonable suspicion to indicate certain irregularities had crept in by way of money transactions to certain agencies through your bank till today. Hence it is expedient and necessary to stop all further transaction if any through your bank in future. Therefore, I request that necessary steps may be taken immediately to freeze the account in the above reference No.1 on the file of your bank. "
43. It is true that the letter to the bank need not spell out any specific reason except to indicate involvement in a criminal case. But, it is not known as to how "further transaction if any through the bank in future" would have any relevance to the murder case.
44. The scope and applicability of Section 102, Cr.P.C. is under rare and exceptional circumstances and is to be applied only to the assets of the accused, which are the direct outcome of the crime and not to stifle the activities of the Mutt which is an institution unconnected with the offence. The power which is vested for a particular purpose cannot be stretched to irrelevant matters and to extremes and to a breaking point, in the event of which, the Court is compelled to interfere. Discretion to use the power should be used and exercised cautiously, failing which, it becomes misuse of discretion and tainted with arbitrariness.
45. Prof.Wade, in his magnum opus "ADMINISTRATIVE LAW", (9th Edition - Page 343), observes as follows, while dealing with "Restriction of Discretion": " The first requirement is the recognition that all power has legal limits. The next requirement, no less vital, is that the courts should draw those limits in a way which strikes the most suitable balance between executive efficiency and legal protection of the citizen. Parliament constantly confers upon public authorities powers which on their face might seem absolute and arbitrary. But arbitrary power and unfettered discretion are what the courts refuse to countenance. They have woven a network of restrictive principles which require statutory

powers to be exercised reasonably and in good faith, for proper purposes only, and in accordance with the spirit as well as the letter of the empowering Act. "

46. The Mutt is an organisation of religious faith of innumerable people. So also is the Church, Mosque, Wakf, etc. There are several Endowments, Trusts and philanthropic activities attached to these organisations over which several devotees have personal interest, faith and sentimental devotion. One may or may not agree with the respective faith or belief of others. But they have a right to establish and maintain institutions for religious and charitable purposes within the framework of law and such right is granted as a fundamental right under the Constitution vide Article 26. Such an organisation cannot be paralysed or closed down virtually by sending a letter purporting to act under Section 102, Cr.P.C., only for the reason that the Head of the Mutt and few office bearers are alleged to be involved in some offences. A word of caution to the Special Investigation Team: By all means, take action in the criminal cases against the indicted individuals with a single-minded determination if you feel convinced about their guilt. No one is above the law. But if you divert and deviate from that direction unmindful of the rights of innocent devotees of the Mutt, it would result not only in diluting the prosecution, but also cast a deep shadow on it. If there is anything wrong with the administration of the Mutt, it is for the H.R. & C.E. Department which has to comply with the procedure under the Act and to look after the said issues in terms of the provisions of the Act and it is not for the police to interfere with the functions of the Mutt while investigating a case of murder or assault. Even if any commission or omission amounting to a criminal misconduct is brought to light in so far as the administration of the Mutt is concerned in the opinion of the H.R. & C.E. Department, it may be open to the H.R. & CE. Department to file a complaint before the police for appropriate action against the individuals concerned. It is not for the Special Investigation Team dealing with a murder and assault case to plunge into the accounts of the mutt, and paralyse its functions by invoking Section 102, Cr. P.C. With the result, I am inclined to hold that the impugned action of the third respondent in invoking Section 102, Cr.P.C. for freezing of the accounts of the Mutt is ultra vires the said provision, illegal and liable to be set aside. The above order is, however, subject to the direction to the petitioner that they shall submit a statement of accounts pertaining to all Bank deposits to the third respondent once in a month till the completion of the trial in Crime No.914 of 2004. The writ petition is allowed only to the extent of the third respondent having invoked Section 102 of Cr.P.C. No costs. Connected W.P.M.P.No.1173 of 2005 is closed.

Index: Yes

Internet: Yes

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