

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P Nos.7351, 7364, 7423, 7424, 7485, 7486, 7490, 7492, 7510, 7511, 7512, 7516, 7518, 7520, 7552, 7549, 7493 & 7559 of 2018

COMMON ORDER:

1) All these petitions are filed by the 3rd parties in Crime No.248 of 2013 pending on the file of Economic Offences Wing (hereinafter referred as EOW),CID, Hyderabad.

2) The petitioners are the companies represented by the authorized signatories Mr.Anil Agrawal and others whose deposits were freezed by the Investigating Agency during investigation in the said Crime No.248 of 2013 for the offences punishable under Sections 406, 420, 447, 385, 467, 468, 469, 471, 120B r/w 34 of IPC.

3) All the petitions are filed for the relief of quashing the order passed under Section 102 Cr.P.C freezing the bank accounts/demat accounts of the companies and individuals by the Investigating Officer.

4) In all the petitions, the accused and defacto complainant are one and the same, and the relief claimed is also the same. Therefore, I find it expedient to decide all the petitions by common order.

5) The details of the reliefs claimed by different persons are mentioned hereunder in a table:

Sl. No.	Crl.P.Nos.	Parties	Relief
1.	7351 of 2018	M/S.Comfort Fincap Ltd Anil Agrawal (Director)	To quash and set aside the proceeding dated 27.04.2017 for freezing of the Demat accounts bearing Nos:1205370000016984 and 1205370000039858
2.	7364 of 2018	M/s. First Financial Services Ltd.	To quash and set aside the proceedings dated 27.04.2017 for freezing of the Demat accounts bearing No.1205370000039877 and 1205370000015830
3.	7423 of 2018	M/s.Comfort Securities Ltd. Anil Agrawal (Director)	Quash and set aside the proceedings dated 27.04.2017 by 1st respondent freezing of demat accounts bearing Nos.1205370000002103 , 1205370000039843, 1205370000020061, 1205370000023645 and 1203660000032911
4.	7424 of 2018	M/s. Comfort Securities Ltd. Anil Agrawal (Director)	Quash and set aside the proceedings of 1st respondent dated 04.04.2017 4882/C-9/EOW/CID/TS/2016 ii.freezing of bank account bearing No.910020039136606
5.	7485 of 2018	MM/s. Comfort Intech Ltd. Anil Agrawal (Director)	Quash and set aside the proceedings dated 27.04.2017 for freezing of demat account viz: Client ID No.10503314
6.	7486 of 2018	M/s.Comfort Intech Ltd. Anil Agrawal (Director)	Quash and set aside the proceedings dated 27.04.2017 for freezing of demat accounts by 1st respondent bearing Nos.1205370000039862 , 1205370000001585 and 1203660000024288
7.	7490 of 2018	Anil agarwal and Ankur Garwal	Quash and set aside the proceedings dated 27.04.2017 for freezing of demat accounts bearing No.1205370000000028, 1205370000000032 and 1205370000005805
8.	7492 of 2018	M/s. Comfort Intech Ltd.	Quash and set aside the order dated 02.02.2015 passed by 1st respondent for freezing of 23,66,000 shares lying in the demat account bearing

			No.1205370000001585
9.	7510 of 2018	M/s.First Financial Services Ltd. Anil Agrawal is closely connected	Quash and set aside the order dated 02.02.2015 for freezing of shares lying in demat account bearing No.120537000000158320
10	7511 of 2018	M/s. Syncom Formulations India Ltd Anil Agrawal is share holder by SEBI investigation	To quash and set aside the proceedings dated 02.02.2015, for freezing of 511000 shares of the petitioner lying in demat account bearing No.12053700000015300
11.	7512 of 2018	M/s.Syncom Formulations India Ltd (Mr.Vijay S.Bankoda) Anil Agrawal Co.Comfort is share holder	Quash and set aside the proceedings dated 27.04.2017 for freezing of demat account vide Client ID.No.10503785
12	7516 of 2018	M/s. Comfort Securities Ltd. Anil Agrawal (Director)	Quash and set aside the proceedings dated 27.04.2017 issued by 1 st respondent for freezing of demat account vide client ID:10503306
13	7518 of 2018	M/s.Comfort Intech Limited Anil Agrawal (Director)	Quash and set aside the proceedings dated 27.04.2017 and freezing of demat accounts viz: client ID No.10503363
14.	7520 of 2018	M/s.Comfort Intech Limited Anil Agrawal (Director)	To quash and set aside the proceedings vide 4882/C-9/EOW/ CID/TS/2016 dated 04.04.2017 in freezing of bank accounts bearing No.318001010036897, 318001010036374 and 318001010036373
15	7552 of 2018	M/s. First Financial Services Ltd. Anil Agrawal is closely connected to SEBI investigation	To quash the proceedings of 1 st respondent dated 27.04.2017 for freezing of demat accounts viz., Client ID.No.10503494
16	7549 of 2018	M/s.Padma Impex Private Limited	To quash and set aside the order dated 02.02.2015 issued by the 1st respondent in freezing the shares lying in the petitioner's demat account.
17.	7493 of 2018	M/s. Comfort Intech Limited	To set aside the proceedings of the 1st respondent dated 27.04.2017 for freezing of demat accounts bearing No.12053700000039877 and 12053700000015830
18	7559 of 2018	M/s.Hoogly Ship Breakers Ltd	To quash and set aside the proceedings vide

			4882/C-9/EOW/CID/TS/2016, dated 04.04.2017 issued by 1st respondent for freezing of demat account bearing No.016902000002872
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6) As the reliefs claimed in all petitions filed under Section 482 Cr.P.C and the grounds urged are one and the same, the allegations made in CrI.P.No.7351 of 2018 are taken into consideration for proper adjudication to avoid repetition of contents in various petitions.

7) The 2nd respondent Mr.K.Ravikumar, Kuber Towers, Himayatnagar, Hyderabad is the defacto complainant and the 3rd respondent in all the petitions is the company/bank with whom the accounts were maintained by the petitioners both demat and bank accounts and they were freezed by the Investigating Agency in the above said crime.

8) The defacto complainant is carrying on business in the name and style of M/s Liquors India Limited as well as in the form of M/s. Ravi Kumar Distilleries Limited (RKDL). For the purpose of generating necessary funds for expansion of their business, the companies came up with public issue and for the purpose of bringing public issue, M/s.Ravi Kumar Distilleries Limited (RKDL), the defacto compliant contacted one Mr.Anil Agrawal, Director of the Company M/s. Comfort Securities Limited and arrived at an agreement to take out necessary steps for public issue on behalf of M/s.Ravi Kumar Distilleries

Limited. For the purpose of bringing public issue, the defacto complaint was made to open an account with the 3rd respondent herein/Central Depository Services (India) Limited and alleged to have made to sign by the 2nd respondent on the blank cheques and blank stamp papers and handed over the same to the Anil Agrawal. It is also alleged that Anil Agrawal has also rendered necessary financial assistance to the defacto complainant by making necessary payments during the relevant period and it was successful public issue and the entire amount in respect of the said public issue was received by the defacto complainant through the respondent/bank.

9) It is alleged that Mr. Anil Agrawal misused the cheques of the defacto complainant which were handed over to him, by transferring the amount into fictitious accounts by transfer in the name of close associates of Mr. Anil Agrawal and in turn he pocketed the said amounts. The accounts of said Anil Agrawal and other accounts maintained by other petitioners are shown in the table. Thus, under the guise of giving necessary financial assistance Anil Agrawal got necessary shares of the said company mortgaged and sold some shares for recovery of amount advanced and said Mr. Anil Agrawal got M/s. Liquors India Limited in his favour and/or in favour of his close associates by taking forcible possession of those documents.

10) On the basis of allegations made by the 2nd respondent in the written report, the crime was registered for various offences referred supra.

11) It is alleged that the 1st respondent under influence of 2nd respondent/defacto complaint resorted to various illegal and high handed acts under the guise of investigation of the alleged crime. The 1st respondent freezed the demat accounts of petitioners and others with the 3rd respondent who have nothing to do with the activities of the complainant. The freezing of accounts is only because Mr.Anil Agrawal happened to be one of the Directors of the companies though he has nothing to do with the activities of the companies.

12) As a part of investigation, the 1st respondent addressed letters to the 3rd respondent herein for freezing demat accounts of petitioners along with few others based on a complaint dated 23.08.2013 under the guise of investigation into the allegations made in the FIR referred above. Accordingly the petitioners demat account Nos.1205370000016984 and 1205370000001585 and the other accounts were freezed in view of the various letters addressed by the 1st respondent to the 3rd respondent in all the petitions which are shown in column No.3 of table.

13) The freezing of demat accounts and other accounts with the 3rd respondent in all these petitions, by exercising power under Section 102 Cr.P.C., without issuing prior notice or intimation by the 1st respondent is a serious illegality.

14) The petitioners only came to know about the freezing of accounts with the 3rd respondent on 03.05.2017 simultaneously on other days when disclosed attachment proceedings issued by the 1st respondent for freezing of the accounts. Thus, the alleged freezing of demat accounts and other accounts without affording an opportunity is against the principles of natural justice.

15) It is contended that these petitioners have nothing to do with the alleged fraud attributed to Anil Agrawal by the 2nd respondent in the above crime. The act of the 1st respondent in freezing of demat accounts and other accounts with the 3rd respondent is high handed and illegal. Therefore, the petitioners were constrained to approach this Court under Section 482 Cr.P.C having no other alternative.

16) The petitioners' main contention is that the proceedings dated 27.04.2017 purportedly in exercise of power under Section 102 Cr.P.C and issuing direction to the 3rd respondent in other petitions is without authority and ultravires to the power conferred on 1st respondent. The transactions referred in the said proceedings are the business transactions related to other companies, body corporate and petitioners have nothing to do with the said transactions. However, the Investigating Officer acting under the pressure of 2nd respondent is trying to harass the petitioners and others by

selectively referring to the transactions in the books of accounts. Thus, the act of 1st respondent is highly depreciable.

17) It is further contended that on account of freezing of demat accounts, the petitioners are put to serious loss and thereby they filed W.P.No.1845 of 2017 and batch before Mumbai High Court. But the batch of petitions were dismissed on the ground of lack of jurisdiction, as the transactions took place within the jurisdictional limits of Hyderabad.

18) They contended that the action of 1st respondent in freezing of demat accounts of the petitioners with the 3rd respondent and other various accounts mentioned in Column No.3 of Table mentioned above is illegal and prayed for quashing the order passed by the 1st respondent, de-freeze various accounts mentioned in Column.No.3 of above table.

19) The 2nd respondent filed counter only in criminal petition No.7351 of 2018, denying material allegations inter alia contending that petitions filed under Section 482 Cr.P.C are not maintainable and allegations made in the petitions are all untenable and illegal.

20) The petitioner herein is a company by name Comfort Fincap Limited, and one of the accused in Cr.No.248 of 2013 dated 23.08.2013 i.e., Mr.Anil Agrawal, utilized the amount of the 2nd respondent to the petitioner companies. The

investigation is under progress and there is nexus between the petitioner and the said accused in the crime. The proceedings issued by the 1st respondent is as a measure to see that the petitioners and other connected persons should not tamper with the evidence and the financial implications involved in the present case. It is further contended that not only demat accounts of the petitioners but also the accounts of all other persons and companies have been under scan and freezed.

21) The 2nd respondent denied the allegations made in the petitions by simple traversal and that the investigation is under progress, substantiated bank statements of petitioner and others found that an amount of Rs.29.10 cr of RKDL IPO funds squandered by Anil Agrawal from Ravi Kumar Distilleries Ltd. (RKDL) was laundered through the demat account Nos. 1205370000016984 and 1205370000039858 of the petitioner and other associate/benami/shell companies to reach the hands of Mr.Anil Agrawal in the form of RKDL shares and other companies shares and cash, apart from grabbing M/s.Liquors India Limited, Hyderabad. Investigation so far done by 1st respondent authorities found that no cheque for Rs.7,49,08,025/- was presented in Axis Bank Ltd, Malad Branch, Mumbai and the cheque return memo was fabricated and forged. The letter issued by Axis Bank Limited, Malad Branch, Mumbai to Inspector of Police, Nacharam, Cyberabad, Hyderabad which is filed along with the counter states that

“We hereby confirm that we are unable to provide any evidence in the presentment of cheque no.515722 dated 15.12.2011 Amount Rs.7,49,08,025 in favour of M/s.Comfort Intech Ltd from the account of M/s.Ravikumar Distilleries Ltd. Also the Cheque Return Memo shown to us is also not the regular format used by our branch. We are also not able to find any register for the entry of cheque return. However we also confirm that there was no available balance upto the amount of Rs.7,49,08,025 maintained in the account of M/s.Ravikumar Distilleries Ltd. Also we are unable to identify the signature of the staff which is done on the cheque return memo.”

22) Thus, the petitioner manipulated the cheque and cheque return memo etc to transfer the funds of RKDL. RKDL/2nd respondent neither availed any loan of Rs.6.82 crores from M/s.Comfort Intech Limited, sister company of petitioner, nor issued a cheque for Rs.7,49,08,025/- in favour of Comfort Intech Limited, the petitioner herein. The fact as stated supra Mr.Anil Agrawal mis-utilized one such cheque bearing No.515722 and filled the columns of cheque in favour of M/s.Comfort Intech Limited, a sister company of petitioner for Rs.7,49,08,025/- to play fraud against RKDL.

23) The Investigation authorities have demanded the petitioner M/s.Comfort Intech Limited and Anil Agrawal director of 1st respondent to produce documentary evidence pertaining to loan agreement and other documents pertaining to the purported loan of Rs.6.82 cr. But the petitioner failed to produce any such document, though it is a sister company of the petitioner which was registered as Non Banking Financial Company (NBFC) with Reserve Bank of India (RBI) and as per the banking regulations M/s.Comfort Intech Limited cannot

extend any loan, without loan agreement and related documents.

24) The Securities and Exchange Board of India (SEBI) regulation 26 and 39 do not permit Merchant Banker and Reserve Bank of India registered as NBFC to acquire shares of company whose public issue is handled by them and to take promoters shares or pledge respectively. Relevant regulations are filed as annexures along with this counter. The 2nd respondent/RKDL has complained to SEBI and SEBI is investigating the matter.

25) M/s. Comfort Securities Limited, a sister company of petitioner has admitted to SEBI as follows:

“As regards the regulation 39 of SEBI (ICDR) Regulations, 2009 is concerned, it states that Specified securities held by promoters and lock-in may be pledged with any scheduled commercial bank or public financial institutions collateral security for loan granted by such bank or institution. In this reference we would like to clarify the fact that Comfor Intech Limited is a Reserve Bank of India registered NBFC however doesn't fall under the definition of scheduled commercial bank or public financial institution hence, in out opinion regulation 39 of SEBI (ICDR) Regulation, 2009 has not been complied with regard to pledge of shares of Ravi Kumar Distilleries Limited.”

26) EOW, CID Hyderabad while investigation is in progress collected material and was satisfied that an amount of Rs.29.10 cr of RKDL IPO funds squandered from RKDL was laundered through the demat account Nos.1205370000016984 and 1205370000039858 of petitioner and other associate/benami/shell companies to reach the hands of Mr.Anil Agrawal

in the form of RKDL shares, other companies shares and cash apart from grabbing M/s.Liquors India Limited, Hyderabad.

27) The main contention is that the 1st respondent during investigation found that the amount in the demat accounts, pertaining to the crime which are laundered by Mr.Anil Agrawal are of the petitioners and its sister company which are shell companies. Therefore, issued a direction to 3rd respondent in all the petitions referred in Column No.3 of the table mentioned above for freezing of accounts both demat and other bank accounts etc.

28) The petitioners made unsuccessful move in Mumbai High Court and having failed in obtaining the order, the present petitions are filed before this Court.

29) When the investigation is in progress, this Court by exercising power under Section 482 Cr.P.C cannot quash the orders in view of the law laid down by the Apex Court in ***Teesta Atul Setalvad versus State of Gujarat***¹. It is also brought to the notice of this Court that having failed in their attempt by the petitioners in all the petitions before the Mumbai High Court, the matter was taken to Hon'ble Supreme Court and Hon'ble Apex Court dismissed the appeal filed by the petitioners. Therefore, the order of freezing both demat and other accounts

¹ (2018) 2 SCC 372

of petitioner referred in Column No.3 of the table referred above cannot be set aside and prayed for dismissal of the petitions.

30) During hearing Mr.P.V.A Padmanabham and N.V.Anatha Krishna, counsel for the petitioner raised the following contentions to set aside the order of freezing demat accounts and other accounts.

31) The main grounds urged are extracted hereunder:

- “(i) The power to seize and or to freeze shall be exercised strictly in accordance with the provisions of Sec 102 of the Cr.P.C and the said mandatory provisions are not satisfied in this cases.*
- (ii) though a crime is registered on 23.08.2013 the orders u/Sec 102 issued much subsequently there after does not indicate any reasonable circumtaces leading to suspicion except reproducing /narrating the complaint averments.*
- (iii) Sec 102(3) is mandatory and no such intimation is given to Magistrate hence the orders are bad.*
- (iv) These are all transactions in the ordinary course of business through negotiable instruments and the presumption U/Sec 118 of Negotiable Instruments Act to entertain a suspicion to invoke Sec 102 of Cr.P.C the order must indicate a compelling reason dispelling/disturbing the presumption U/Sec 118 of NI Act.*
- (v) The petitioners are corporate entities and there is no corporate vicarious criminal liability for the offences alleged under I.P.C-unlike under NI Act. Hence, based on averments in the complaint the just because Mr.Anil Agarwal happened to be.”*

32) Written submissions also filed raising the above grounds to set aside the order of freezing both demat and other accounts of petitioners in Column No.3 of the table mentioned above.

33) During hearing, Sri P.V.A Padmanabham and Sri Anatha Krishna submitted that freezing of accounts of these

petitioners have nothing to do with the transactions of the 1st respondent and Anil Agrawal.

34) Freezing of accounts of the petitioners (bank accounts and demat accounts) is a serious illegality. When the 1st respondent proposes to freeze the accounts or seize the property of the petitioners they would have issued a prior notice or intimation to petitioners. Therefore, the seizure of the property and freezing of the demat accounts and other accounts of petitioners is against the principles of natural justice.

35) The Investigation Officer did not record any reasons to his satisfaction as to the amount that is lying to the credit of accounts mentioned in the Column No.3 of the table referred above pertaining to transactions in dispute between the Anil Agrawal and 2nd respondent. In the absence of recording such reasons, in compliance of Section 102(1) Cr.P.C freezing of accounts is a grave illegality.

36) The 3rd contention of the petitioners is that noncompliance of Section 102(3) Cr.P.C vitiates entire proceedings i.e., freezing of accounts of these petitioners shown at Column No.3 of the table mentioned above, as the Investigating Officer failed to give intimation in writing to the Magistrate concerned soon after the seizure or freezing of the accounts. Therefore, in view of the serious irregularity, the

order passed by the 1st respondent is liable to be set aside and prayed to set aside the order.

37) Whereas, Sri Raghava Charyulu, counsel for the 2nd respondent contended that the Investigating Agency in the letters addressed to the 3rd respondent in all the petitions recorded about its satisfaction that the amounts lying to the credit of accounts pertain to transactions between Anil Agrawal and the 2nd respondent and are strictly adhered to the requirements of Section 102 (1) of Cr.P.C.

38) He also contended that though intimation is given under Section 102 (3) of Cr.P.C to the Magistrate of the jurisdiction but no material is produced by the Public Prosecutor, as the material is available with the Public Prosecutor of Telangana State. However, non-compliance of Section 102(3) Cr.P.C does not vitiate freezing of accounts of the petitioners mentioned in Column No.3 of the table mentioned above. Therefore, none of the grounds urged by these petitioners are sufficient to quash the proceedings.

39) Finally it is contended that the petitions under Section 482 Cr.P.C to quash the orders passed under Section 102 of Cr.P.C is not maintainable. He placed reliance on several judgments which will be dealt with, at appropriate stage of this order. He also requested the Court to dismiss the petitions.

40) Whereas the Public Prosecutor for the State of Telangana contended that the Investigating Agency addressed a letter to Magistrate giving information about freezing of accounts but with certain delay, the delay itself is not a ground to quash the proceedings. Having failed in their attempts to set aside the orders before Mumbai High Court and the trial Court, the proceedings under Section 102 Cr.P.C, freezing both demat accounts and other accounts of petitioners in Column No.3 cannot be set aside while exercising power under Section 482 Cr.P.C and also prayed for dismissal of the petitions.

41) In view of the rival contentions and considering the grounds urged in the petitions as well as written submissions of both the counsel, the points that arise for consideration are as follows:

- (1) ***Whether the petitions under Section 482 Cr.P.C questioning the proceedings under Section 102 Cr.P.C is maintainable in view of the alternative remedy available under the provisions of Cr.P.C.?***
- (2) ***Whether the non compliance of recording satisfaction under Section 102(1) Cr.P.C of alleged non compliance of Section 102(3) of Cr.P.C vitiates the entire proceedings of freezing of demat accounts and other accounts mentioned in Column No.3 of table mentioned above? If so, whether the orders passed by the 3rd respondent is liable to be set aside?***

POINT NO.1:

42) The first and foremost contention raised by the 2nd respondent's counsel, Sri K.Raghava Charyulu, is that this

Court cannot entertain a petition under Section 482 Cr.P.C when alternative remedy under Sections 451 and 457 of Cr.P.C is available to the petitioners. They can avail remedy under Section 457 Cr.P.C during the pendency of investigation or under Section 451 Cr.P.C if the investigation is completed and Calendar Case is pending for trial. Instead of availing such remedies available under statute, the petitioners approached this Court invoking the inherent jurisdiction of this Court under Section 482 Cr.P.C to quash the order. On this ground alone, the petitions are liable to be dismissed.

43) Whereas Mr.P.V.A Padmanabhma and Mr.Anantha Krishna contended that power conferred on the Court under Section 482 Cr.P.C is inherent and language used in Section 482 Cr.P.C is clear that any of the provisions of Cr.P.C shall not limit the jurisdiction of High Court and the High Court can pass any orders exercising inherent power and that no specific plea regarding the maintainability of petitions under Section 482 Cr.P.C against the orders passed under Section 102 Cr.P.C was raised in the counter. But for the first time, the said question was raised during the argument and in the absence of any plea in the counter, the petitions cannot be dismissed on the sole ground.

44) The law is settled on the powers of High Court and as to when such inherent power under Section 482 Cr.P.C. can be exercised and cannot be exercised in various long line of

perspective pronouncements of the Apex Court. The leading case on this aspect is ***State of Haryana Vs. Bhajanlal***², wherein the Apex Court laid down the following seven guidelines:

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

² 1992 Supp.(1) SCC 335

(7) Where a criminal proceeding is manifestly attended with *mala fide* and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

45. In ***R.P. Kapur Vs. State of Punjab***³, this Court laid down the following principles:

- (i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
- (ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;
- (iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and
- (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

46. In ***(Mrs.) Dhanalakshmi Vs. R. Prasanna Kumar and others***⁴, the Apex Court dealt with the scope of Section 482 of Cr.P.C and it reads as under:

“Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent

³ AIR 1960 SC 866

⁴ AIR 1990 SC 494

powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is *mala fide*, frivolous or vexatious. in that event there would be no justification for interference by the High Court.

47. In ***State of Karnataka Vs. L. Muniswamy and Others***⁵, the Apex Court while considering scope and jurisdiction of the High Courts, under Section 482 Cr.P.C, held as under:

“In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction.”

⁵ AIR 1977 SC 1489

48) In view of the rival contentions raised before the Court it is appropriate to extract the scope of jurisdiction of this Court under Section 482 Cr.P.C.

- (1) “Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious”.

49) In view of the law laid down by Apex Court, the High Court can exercise power under Section 482 Cr.P.C to prevent abuse of power of law or Court as to secure ends of justice.

50) The main contention raised by Mr.P.V.A. Padmanabham is that in the absence of any plea in the counter affidavit about the maintainability of these petitions under Section 482 Cr.P.C, this Court cannot dismiss the petitions.

51) Undoubtedly, in the counter, no such specific plea was raised except making an allegation in the 1st para of the counter filed by the 2nd respondent that the criminal petitions as filed are not maintainable and averments made in

the petitions are untenable and illegal. But the specific averments in the 1st para of the counter not specifically pointed out the maintainability of the petitions under Section 482 Cr.P.C against the order filed under Section 102 of Cr.P.C. It is only general denial.

52) The contention raised by the counsel for the 2nd respondent is jurisdictional fact. When the said contention is raised about the very maintainability of petitions under section 482 Cr.P.C invoking the inherent jurisdiction of this Court the said jurisdictional fact or question can be decided by the Court even in the absence of any plea in the counter, since it goes to the root of jurisdiction of this Court under Section 482 Cr.P.C.

53) The difference is a lot between jurisdictional fact /question and adjudicatory fact/question. But when a question as to the jurisdictional fact/question is raised, this Court is bound to decide the jurisdictional fact before deciding other contentions. Therefore, even in the absence of any such plea in the counter, when such jurisdictional question is raised before this Court, this Court is bound to decide such jurisdictional question.

54) The Investigating Agency freezed the demat accounts and other accounts of the petitioners by addressing letters to the 3rd respondent in all the petitions, it is the procedure followed

by investigating agency as a part of investigation. Therefore, demat or any other accounts maintained by the petitioners and freezing of the same is nothing but seizure of the property, since the accounts of the petitioners are considered as property for the purpose of Sec 102 Cr.P.C.

55) Same question came up before the Apex Court in a judgment reported in ***State of Maharashtra vs. Tapas D.Neogy*** ⁶.

56) In the facts of the above judgment, a crime was registered against the respondents for various offences punishable under Sections 120-B, 467, 468, 471 and 420 IPC Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988. During investigation, the bank accounts of the respondents were freezed by exercising power under Section 102 Cr.P.C and one of the contentions urged before the Court is that the account is not property of the petitioner but Section 102(1) Cr.P.C. permits the seizure of any property pertaining to any offence. Apex Court held that the account is the “property” of the 2nd respondent therein referring to various judgments and concluded that the accounts of respondent is the “property” within the meaning of Section 102 Cr.P.C. and the police officer in the course of investigation can seize or prohibit the operation of the said account if such assets have direct links

⁶ (1997) 7 SCC 685

with the commission of offence, which the police officer is investigating into.

57) In view of the interpretation given by the Apex Court to the word “property” under Section 102 of Cr.P.C, this Court can conclude without any hesitation that the accounts of the petitioners freezed by respondent No.1 is property within the meaning of Section 102 of Cr.P.C.

58) The accounts of the petitioners were freezed by a prohibitory order restraining the petitioners from operating their accounts with the 3rd respondent by exercising power under Section 102 Cr.P.C by investigating agency. The remedy open to the petitioners is under Section 457 Cr.P.C, if the case is at the stage of investigation or under Section 451 pending trial.

59) Section 457 deals with the procedure by police upon seizure of property and it reads as follows:

- 1) “Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.
- 2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

60) In view of Section 457 Cr.P.C for claiming custody of the property or release of the property attached or operation of it is prohibited, the petitioners can approach the presiding officer of the Court where the proceedings are pending, for release of the property, during the pendency of the investigation, by way of interim custody to the petitioners. In the present case, it is the contention of the petitioners that no intimation is given to the jurisdictional Magistrate in compliance of Section 102 (3) of Cr.P.C soon after the seizure of the property. By letter dated 27.04.2017, the investigating officer i.e., Deputy Superintendent of Police EOW, CID TS addressed a letter to the 3rd respondent to freeze the demat accounts of these petitioners, while marking notice to National Stock Exchange and Department of Corporate Services. On 19.07.2017, an intimation was given to the 2nd respondent by the Metropolitan Magistrate, Cyberabad, L.B.Nagar about the seizure of the accounts in Cr.No.248 of 2013. This intimation is in compliance of Section 102 (3) of Cr.P.C. This freezing of the property was intimated to the Magistrate in compliance of 102(3) Cr.P.C prima facie but belatedly. However, petitioners approached this Court after lapse of more than a year by filing these petitions under Section 482 Cr.P.C. and by the date of approaching this Court, the respondent No.1 complied with the requirements of Section 102(3) of Cr.P.C. Therefore, when the property was seized, the same was intimated to the Magistrate showing that the amounts lying to the credit of the demat accounts of the petitioners and

other accounts with the 3rd respondent which cannot be produced before the magistrate in compliance of Section 451 or 457 of Cr.P.C. When the accounts of the petitioners were freezed, which is property and hand over to the Magistrate, the remedy available to these petitioners is only under Section 457 Cr.P.C to release the property or to give interim custody, subject to conditions if any imposed by the Magistrate. Instead of approaching jurisdictional Magistrate by filing a petition under Section 457 Cr.P.C, the petitioners approached this Court invoking inherent jurisdiction.

61) When a similar question came up for consideration before the Mumbai High court in Criminal Application No.483 of 2013 in ***National Securities Clearing Corporation Ltd vs. State of Maharashtra and Ors***, the Single Judge of Mumbai High Court considered the scope of Sections 102, 482 and 457 Cr.P.C., from para 23 onwards referring to various judgments of the privy counsel, the Supreme Court and other High Courts and concluded that a petition under Section 482 Cr.P.C is not maintainable when a remedy under Sections 457 and 451 Cr.P.C is available against the order passed under Section 102 Cr.P.C and held that conspectus of facts illustrates that the applicants had exhausted alternate remedy under Sections 451 and 457 of Cr.P.C before the Magistrate wherein evidence was permissible to be recorded to stake its claims or to convince it to hold shares but by-passing that remedy, Section 482 Cr.P.C is invoked. There are no grounds to exercise inherent jurisdiction. It

primarily also cannot be said that police have been used as lever for settling dispute with either the applicants or between respondents. Hence, applicants have efficacious alternate remedy under the statute, consequently the applications under Section 482 Cr.P.C are not maintainable.

62) If the principle laid down by Mumbai high Court is applied to the present facts of the case, a criminal petition under Section 482 Cr.P.C is not maintainable.

63) In another judgment, ***Bharath Overseas Bank v. Minu Publication***⁷, Madras High Court considered the question as to the maintainability of the petition under Section 482 Cr.P.C against the order passed under Section 102 Cr.P.C and concluded that the expression **property** would include the money in the bank account of the **accused** and there cannot be any fetter on the power of the police officer in issuing prohibitory orders from operating the bank account of the accused when the police officer reaches the conclusion that the amount in the bank is the outcome of commission of offence by the accused. The Court considered the fact as to how in modern days, commission of white-collar crimes and bank frauds are very much increased and, therefore the expression "property" may not be interpreted in a manner so as to exclude the money in a bank which in turn would have the effect of placing legal hurdles, in the process of investigation into the crimes.

⁷ (2002 (2) ALT CrL419

According to the learned Judge, such literal interpretation of the expression "property" could not have been the intent of the framers of the Criminal Procedure Code. In para 11 of the said judgment, the learned Judge referred to the object behind entrusting the police with powers of seizure. It will be appropriate to extract the same in extenso. It would now be useful to refer to the object behind investing the police with powers of seizure. Seizure and production in court of any property, including those regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence or any other property will have a two-fold effect. Production of the above property may be necessary as evidence of the commission of the crime. Seizure may also have to be necessary, in order to preserve the property, for the purpose of enabling the Court, to pass suitable orders under S.452 of the Criminal Procedure Code at the conclusion of the trial. This order would include destruction of the property, confiscation of the property or delivery of the property to any person claiming to be entitled to possession thereto. It cannot be contended that the concept of restitution of property to the victim of a crime, is totally alien to the Criminal Procedure Code. No doubt, the primary object of prosecution is punitive. However, Criminal Procedure Code, does contain several provisions, which seek to reimburse or compensate victims of crime, or bring about restoration of property or its restitution. As S.452, Crl.P.C. itself indicates, one of the modes of disposing of property at the conclusion of the trial, is ordering their return to

the person entitled to possession thereto. Even interim custody of property under Ss.451 and 457, Crl.P.C., recognises the rights of the person entitled to the possession of the properties. An innocent purchaser for value is sought to be re-imbursed by S.453, Crl.P.C. Restoration of immovable property under certain circumstances, is dealt with under S.456, Crl.P.C. Even, monetary compensation to victims of crime or any bona fide purchaser of property, is provided for under S.357, Crl.P.C. Wherein when a Court while convicting the accused imposes fine, the whole or any part of the fine, if recovered, may be ordered to paid as compensation to any person, for any lose or injury, caused by the offence or to any bona fide purchaser of any property, after the property is restored to the possession of the person entitled thereto. This two fold object of investing the police with the powers of seizure, have to be borne in mind, while setting this legal issue.

64) Similarly, a Single Judge of the Punjab & Haryana High Court at Chandigarh in **Narottam Singh Dhillon and Anr vs State of Punjab**⁸, at para 16 and 17 discussed the scope of Section 102 (3) of Cr.P.C and remedy available to person aggrieved by the order passed under Section 102 Cr.P.C by relying on two other judgments which reads as follows:

“If the seizure of the property cannot be faulted, then its release has to be under some relevant provisions of the Code. Such a provision is available in the form of Section 457 Cr.P.C. In **Gangan Bihari Das vs. The State**⁹, it was held:

- 1) Coming to the facts of the present case it is clear that trial had not been conclude and , therefore, Section 452 Cr.P.C

⁸ MANU/PH/0006/2007

⁹ (2002 (4) RCR 423

with regard to disposal of property is not applicable and Section 457 (2) Cr.P.C shall be applicable. Another decision of Madhya Pradesh high Court in the case of **Ganeshi Lal Ranchhoddas Mahajan v. Satya Narain Tiwari**¹⁰ reported in dealing with old section 523 (Section 457 in the new code) observed as follows:

- 2) "Section 523 applies to property seized by the police of their own accord as distinct from property seized under a warrant issued by court and therefore will include even cases where the property was seized by Court and therefore will include even cases where the property was seized by the police during investigation. Therefore, where the property brought into the Court by the police in proceedings under Section 512 was seized by the police because it was suspected to be connected with the commission of a crime, Section 523 would apply to the case and the Court has jurisdiction to pass an order regarding the disposal of the property.
- 3) In view of the aforesaid decision, the only way to determine the entitlement of the present petitioners is to make an enquiry as envisaged under Section 457 (2) of Cr.P.C what is to be decided the Court in such an event has been explained by this court in the case of **Prabhat Kumar Das v. Bijoy Prasad Das**¹¹ by this Court in the case of **Mahommed Zariff v. Sk.Zinaullah**¹². The observations made by the Court in both the decisions are quoted below:
- 4) The Scope of Section 457 of the Cr.P.C has been the subject matter of judicial discussion from time to time. The law, however, is settled so far as this Court is concerned by a decision of P.K.Mohanti, J. (as he then was) in **Prabhat Kumar Das v. Bijoy Prasad Das** (1980) CLT 415. The law was stated in these terms:
- 5) Under the provisions of Section 457 Cr.P.C if the magistrate orders delivery of the property he has to deliver it to the person entitled to the possession thereof. He has to satisfy himself from the records and materials available before him that the person to whom the delivery is ordered is entitled to possession. If the materials are not sufficient, he can make an enquiry into the matter by giving opportunity to the claimants before passing the order. In doing so, the magistrate should confine himself only to find out as to who is entitled to possession of the property but not the title or ownership thereof. A person may be in unlawful possession, at the time of seizure and in the circumstance, it cannot be said that he is entitled to possession. It must be a lawful possession. The test, therefore, is not the mere seizure, but as to who is entitled to lawful possession. The expression 'entitled to possession' is the sine qua non for the delivery of property under Section 457 Cr.P.C."

65) In view of the law declared by various Courts including a judgment of Supreme Court in **State of Gujarat v.**

¹⁰ MANU/MP/0020/1958

¹¹ (1980) CLT 415

¹² MANU/OR/0154/1987

Shyamlal Mohanlal Choksi¹³ the provision of reporting to the Magistrate would only be to ensure an order of the disposal of the property either on superdari or otherwise during the pendency of the case/investigations under Section 457 Cr.P.C. This purpose stood achieved when the petitioners themselves moved applications for release of their accounts and FDRs on the ground that these were needed for day to day affairs. This application was not moved under Section 457 Cr.P.C as the counsel for the petitioners could not disclose the provision under which the application was moved despite repeated queries.

66) The main reason which weighed by case of **Tapas D.Neogy's** case (2 supra) was that release of property may lead to utilization of the money by the accused and then it may not be available for confiscation or otherwise as can be ordered in such cases.

67) Therefore, from the law consistently laid down by various High Courts including **Shyamlal Mohanlal Choksi's case**, (9 supra) the remedy open to the petitioners is to approach the Court under Section 457 for release of the accounts from prohibitory orders passed by the investigating officer exercising power under Section 102 Cr.P.C. When direct remedy is available in the statute i.e., Cr.P.C the petitioners instead of availing said statutory remedy approached this Court invoking

¹³ AIR 1965 SC 1251.

inherent jurisdiction of this Court under Section 482 Cr.P.C. In such cases, the petitioners can be relegated to approach the Court under Section 457 Cr.P.C instead of exercising such inherent jurisdiction by this Court at this stage.

68) In ***Sudeep Kaur Sawhney vs. Union of India and Ors***¹⁴ the Division Bench of the Court had an occasion to consider a writ petition filed under Article 227 of Constitution of India to set aside the order passed under Section 102 Cr.P.C freezing the accounts. But the Court held that when the remedy under Punjab Money Laundering Act is available under Section 8(c), a Writ Petition cannot be entertained.

69) In view of my foregoing discussion and persuaded by law laid down by various High Courts, the criminal proceedings under Section 482 Cr.P.C is not maintainable, in view of the availability of a specific remedy under Section 457 Cr.P.C to these petitioners, while relegating them to approach concerned jurisdictional Magistrate for appropriate reliefs, i.e., for release of accounts of the petitioners from prohibitory order. Accordingly, the point is answered in favour of the respondents and against the petitioners.

POINT NO.2

70) The main contention of the counsel for petitioners in all the petitions is that the Deputy Superintendent of Police, EOW, CID did not record his satisfaction that these amounts

¹⁴ MANU/PH/1033/2015

lying to the credit of various accounts mentioned in Column No.3 of table mentioned above suspected to be related to the crime and thereby freezing of the accounts of 3rd parties causes much inconvenience or loss to the petitioners and they are not able to operate the accounts for day to day business transactions and non compliance of the requirement under Section 102 (3) of Cr.P.C vitiates proceedings.

71) But this contention cannot be accepted for the simple reason that in the letter dated 27.04.2017 in CrI.P.No.7351 of 2018 addressed to the 3rd respondent by Deputy Superintendent of Police, CID Telangana recorded his satisfaction that the amount of the 2nd respondent is misappropriated by Anil Agrawal, who is one the director of the company, and laundered in various companies and therefore, Deputy Superintendent of Police, EOW, CID Telangana State suspected that the amount lying to the credit of the accounts freezed represents the amount misappropriated by Anil Agarwal, strictly adhering to the requirements under Section 102(1) of Cr.P.C recorded his satisfaction, requested the 3rd respondent herein to freeze the accounts.

72) The main contention of the counsel for the petitioners is that no prior notice or intimation is issued before passing the prohibitory orders by exercising power under Section 102 (1) Cr.P.C.

73) A bare look at Section 102 Cr.P.C shows that no such prior notice or intimation is contemplated before passing prohibitory orders for freezing accounts.

74) Similar question came up before the Full Bench of Mumbai High Court in **Vinoskumar Ramachandran Valluvar and Ors. Vs. The State of Maharashtra and Ors**¹⁵ it held that no prior notice or intimation is required to be issued to a person before or simultaneously with the action of attaching his bank account during investigation. In **R.Chandrasekar v. Inspector of Police, Salem**¹⁶ the Full Bench of Mumbai High Court considered the same issue and finally concluded that no prior notice or simultaneous intimation be given to a person before passing an order under Section 102(1) of Cr.P.C and it is covered by judgment of Apex Court in State of **Maharashtra vs. Tapas D.Neogy** (supra 2).

75) Therefore, persuaded by the above referred judgments of High Courts and following the Apex Court judgment, I hold that no prior notice or intimation is required to be given to a person before passing an order under Section 102(1) of Cr.P.C. Accordingly, the contention of the counsel for petitioners is rejected.

76) Finally, the counsel for the petitioners contended that the Deputy Superintendent of Police EOW, CID, TS did not

¹⁵ 2011 CriLJ 2522

¹⁶ 2003 CRI LJ 294

comply with the requirements under Section 102(3) Cr.P.C whereas the respondents counsel contended that no such plea was raised in all the petitions and in the absence of any such plea of non-compliance of Section 102(3) of Cr.P.C, it is not open to the petitioners to raise such contention for the first time during arguments.

77) As discussed in earlier paragraphs, the question about the alleged non compliance of requirements under Section 102(3) Cr.P.C is not a jurisdictional fact/question. It is purely an adjudicatory fact or question. Since non compliance is a matter of evidence to be produced before the Court, Section 102(3) Cr.P.C obligates that every police officer under Section 102(1) of Cr.P.C shall forthwith report the seizure to the Magistrate having jurisdiction.

78) But in the present case, the amount lying to the credit of the petitioners with the 3rd respondent cannot be produced before the Magistrate. Therefore, mere intimation is sufficient and the reason behind this provision i.e., 102(3) Cr.P.C is only obligating the police officer to intimate the same to ensure an order for disposal of the property either on superdari or otherwise during the pendency of the case/investigations under Section 457 Cr.P.C.

79) This question came up before the Apex Court in **Shyamlal Mohanlal Choksi's** case (supra 9) wherein it is held

that the provision of reporting to the Magistrate would only be to ensure an order of the disposal of the property either on superdari or otherwise during the pendency of the case/investigations under Section 457 Cr.P.C. This purpose, stood achieved when the petitioners themselves moved applications for release of their accounts and FDRs on the ground that these are needed for day to day business transactions. This application was not moved under Section 457 Cr.P.C. Moreover in the facts of the present case, an intimation by letter dated 19.07.2017 was given in compliance of Section 102(3) of Cr.P.C in Crlp.No.7351 of 2018 but not in other petitions. Thus, assuming for a moment, Section 102(3) is not complied, it does not vitiate the entire proceedings, freezing the accounts. In fact these petitioners have not raised such plea which is an adjudicatory fact in the main petition but for the first time, it was urged before this Court at the time of arguments.

80) An identical situation came up before this Court in ***Mohd.Maqbool Ahmed v. The Dy.Commr. of Police Hyd., & Ors.***¹⁷ wherein the Division Bench of this Court in para 13 held that when there is no allegation in the affidavit filed in support of the writ petition that the requirement of sub-section (3) of Section 102 Cr.P.C was breached, but raised such contention for the first time in reply affidavit such contention cannot be entertained. Even assuming that there was non-compliance of

¹⁷ 1996 (2) A.P.L.J.97 (HC)

the requirement of Section 102(3) of Cr.P.C in that the police officer has not informed the jurisdictional magistrate about the factum of seizing of the bank accounts of the petitioners herein such a course of action would not invalidate the order passed under Section 102 (1) of Cr.P.C., freezing of bank accounts. However, the court made it clear it is always open to the Criminal court after a charge sheet is filed for appropriate orders as to the handling of bank accounts and the criminal court will pass suitable orders in the light of fact situation.

81) A Single Judge The Madras High Court in ***Subbulakshmi vs. The Commissioner of Police, Egmore, Chennai***¹⁸, took a contrary view while referring to the judgment in ***Aranganayagam v. State , by the Director of Vigilance and Anti Corruption Erode***¹⁹ holding the non-compliance of Section 102(3) of Cr.P.C vitiates the proceedings, but the view taken in ***B.Ranganathan v. State and others***²⁰ and view taken by another two, single judges is contrary to law laid down by single judge of Madras High Court. In both the judgments, failure on the part of the investigating agency i.e., forthwith report to the Magistrate having jurisdiction in compliance under Section 102(3) of Cr.P.C is only a irregularity and freezing of accounts is not vitiated.

¹⁸ 2013 (3) MWN (Cr.) 40

¹⁹ 2000 (1) MLJ 408 (Mad)

²⁰ 2003 CrLJ.2779

82) Earlier in **Aranganayagam's** case (supra 14) held that if an offence registered against the accused and passed an order under Section 102, freezing the accounts of the accused and the Court took a view that police under Section 102(3) of Cr.P.C shall forthwith report the seizure to the Magistrate having jurisdiction. Simply because the police officer failed to comply with Section 102(3) Cr.P.C the entire freezing of accounts is not vitiated. Therefore, the law laid down by the Courts consistently including Division Bench of this Court and other judgments of Apex Court in **State of Gujarat v. Shyamlal Mohanlal Choksi** (supra 9), keeping in view the purpose of compliance of Section 102(3) of Cr.P.C, it is difficult to hold that non-compliance of Section 102(3) vitiates entire freezing of accounts. Moreover, in the case on hand, intimation was given in CrI.P.No.7351 of 2018 but at belated stage. The purpose of intimation is only to enable the jurisdictional Magistrate to dispose of the property during the pendency of enquiry or investigation under Section 457 Cr.P.C. The petitioners themselves may approach the jurisdictional Magistrate for appropriate relief, to release the accounts from prohibitory orders under Section 457 Cr.P.C which can be granted by the Magistrate in exercise of jurisdiction under the provisions of Section 457 Cr.P.C. Therefore, non compliance of Section 102(3) Cr.P.C is not a ground to quash the proceedings at this stage.

83) Learned counsel for the 2nd respondent would contend that when the investigation is pending or not

completed, the Court cannot defreeze the accounts, freezed by the investigating agency by exercising power under Section 482 Cr.P.C and it seriously affects the investigation process. He placed reliance on judgement of Apex Court in ***Teesta Atul Setalvad's*** case (supra 1) wherein the Apex Court held that the sweep and applicability of Section 102 Cr.P.C is no more res integra. The question has been directly considered and answered ***in State of Maharashtra vs. Tapas D.Neogy's*** case (supra 2) wherein the Court took the view that the bank account of the accused or any of his relation is 'property' within the meaning of Section 102 Cr.P.C and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence for which the police officer is investigating into. Therefore, the challenge to the action of seizure of bank account of any person which may be found under circumstances creating suspicion of the commission of any offence cannot be countenanced. The bank account need not only of the accused but it can be any account creating suspicion about the commission of an offence. As regards freezing of bank accounts, it is noticed that same has been followed by giving intimation to the magistrate as required under Section 102(3) Cr.P.C and there was nothing in sub-section 2 giving prior notice to the account holder.

84) As the investigating officer was in possession of material pointing out circumstances which create suspicion of

the commission of an offence, in particular, the one under investigation and he having exercised powers under Section 102 Cr.P.C which he could in law, therefore, he could legitimately seize the bank accounts of the petitioners after following the procedure prescribed in sub-section (2) and sub-section (3) of the same provision. The investigating officer after issuing instructions to seize the stated bank accounts of the appellants submitted report to the magistrate concerned and thus complied with the requirement of sub-section (3). Although both sides have adverted to statement of accounts and vouchers to rebut their respective submissions, but is neither necessary nor appropriate to analyze the same while considering the matter on hand which emanates from an application preferred by the appellants to defreeze the stated bank accounts pending investigation of the case. Indisputably, the investigation is still in progress. The appellants will have to explain their position to the investigating agency and after investigation is complete, the matter can proceed further depending on the material gathered during the investigation. The suspicion entertained by the investing agency as to how the appellants appropriated huge funds, which in fact were meant to be disbursed to the unfortunate victims of 2002 riots will have to be explained by the appellants. Further, once the investigation is complete and police report is submitted to the court concerned, it would be open to the appellants to apply for defreezing of the bank accounts and persuade the court concerned that the said bank accounts are no more necessary for the purpose of investigation,

as provided under Section 102(3) of Cr.P.C. It will be open to the Court concerned to consider the request in accordance with law after hearing the investigating agency, including imposing conditions as may be warranted in the fact situation of the case. Such a course would meet the ends of justice. This is also because the explanation offered by the appellants in respect of the discrepancies in the accounts pointed out by the respondents, will be matter of defence of the appellants at an appropriate stage or upon completion of the investigation, and if the investigating officer is satisfied with the explanation offered by the appellants and is of the opinion that continuance of the seizure of the stated bank accounts or any one of them is not necessary, he will be well advised to issue instruction in that behalf.

85) Thus, the ratio laid down in the above judgments is that when there is prima facie material to satisfy the suspicion and the investigation discloses the link between the transactions and the crime is under investigation, not completed, no order can be passed. Only after the investigation, the parties are directed to approach the Court for release of the bank accounts.

86) In the present facts of the case, the Deputy Superintendent of Police, EOW, CID, Telangana State during the course of investigation suspected that the property i.e., the amount lying to the credit of the petitioners, is misappropriated by Anil Agarwal and this petitioner is one of the directors of all

the alleged shell companies and recording the satisfaction on suspicion is in compliance under Section 102(1) of Cr.P.C and intimated the seizure of the property by letter dated 19.07.2017 to the jurisdictional Magistrate in CrI.P.No.7351 of 2018 is suffice to dismiss the present petitions and other petitions, since, none of the grounds urged by petitioners are sufficient to exercise power under Section 482 Cr.P.C.

87) Since the investigation is not completed as on date, as admitted by both the parties, the petitioners are relegated to a remedy under Section 457 or 451 Cr.P.C and approach the concerned Magistrate and file appropriate applications after completion of investigation.

88) The Public Prosecutor for the State of Telangana contended that when no prejudice is caused to the petitioners, this Court cannot entertain the petitions under Section 482 Cr.P.C to set aside the order passed under Section 102 Cr.P.C, but the contention cannot be accepted, since freezing of accounts certainly causes prejudice, as they are deprived of operating the accounts in day to day business transactions.

89) To sum up, the Deputy Superintendent of Police, EOW CID Telangana State recorded his satisfaction as to the suspension of the amounts lying to the credit of various accounts is misappropriated by Mr.Anil Agarwal who is one of the director of these companies and other shell companies and

laundered the same into those companies in compliance of Section 102(1) of Cr.P.C. He also complied with the requirements under Section 102(3) of Cr.P.C by letter dated 19.07.2017 in CrI.P.No.7351 of 2018. Non compliance of Section 102(3) Cr.P.C does not vitiate the proceedings. No prior notice of intimation is required to be given before passing an order under Section 102 Cr.P.C.

90) When the investigation is not completed, at this stage, the proceedings and the order passed by the Deputy Superintendent of Police cannot be quashed while leaving it open to the petitioners to approach the Court under Section 457 Cr.P.C during pendency of the investigation or under Section 451 Cr.P.C after completion of investigation.

91) Applying the principles laid down in the judgments referred above to the present facts of the case, the alleged non compliance under Section 102 (3) Cr.P.C is not a ground to set aside the order of freezing accounts. Therefore, I find no ground to set aside the orders passed under Section 102 Cr.P.C by exercising power under Section 482 Cr.P.C.

92) In the result, all the petitions are dismissed leaving it open to the petitioners to approach the appropriate Court at appropriate stage keeping in view the law laid down by various Courts referred above. No order as to costs.

93) As a sequel, miscellaneous petitions, pending if any shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 27 -08-2018
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