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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.1072 of 2018

Shankar Das, son of Baliram Das, aged about 52 years, Forest Range Officer, resident of Pandripali, Police Station Narharpur, District Kanker, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through the Incharge, Anti Corruption Bureau, Raipur, Chhattisgarh

--- Respondent

For Applicant	:	Shri Goutam Khetrapal, Advocate
For Respondent	:	Shri Alok Nigam, Govt. Advocate and Shri K.K. Dewangan, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

29.3.2019

1. With the consent of Learned Counsel appearing for the parties, the revision is heard finally.

2. The instant revision has been preferred against the order dated 24.8.2018 passed by the Special Judge under the Prevention of Corruption Act, 1988 (henceforth 'the Act of 1988'), Durg in Criminal Case No.1 of 2018, whereby the Special Judge has rejected the application of the Applicant for custody of the seized property.

3. Facts of the case, in short, are that at the relevant time, the Applicant was posted as a Forest Range Officer at Dhamdha, District Durg. On the basis of information received from informant, after obtaining a search warrant, officials of the Anti Corruption

Bureau conducted a raid in the house of the Applicant and seized cash of Rs.8,00,000/- from the Applicant, various FDRs which were in the name of the present Applicant and his wife, some LIC Policy Bonds and also seized passbook of Bank Account No.11229347103 of the Applicant running in the State Bank of India at Kanker Branch, Chhattisgarh. On the date of raid, i.e., 15.11.2016, in the said bank account, amount of Rs.27,07,163/- were lying in deposit. After investigation and after obtaining required sanction for prosecution, a charge-sheet was filed against the Applicant for an offence punishable under Sections 13(1)(e) and 13(2) of the Act of 1988. Thereafter, the Applicant preferred an application for taking custody of the seized property and the amount of his bank account, which has been rejected by the Special Judge vide the impugned order dated 24.8.2018. Hence, this revision.

4. Learned Counsel appearing for the Applicant submits that in the instant revision he is only concerned with the amount of Rs.27,07,163/- which is kept in deposit in the bank account of the Applicant. He further submits that without any authority the Investigating Officer seized and froze the said bank account of the Applicant. The provision of Section 102 Cr.P.C. has not been complied with as after the seizure and freezing of the bank account of the Applicant, information thereof was not sent to the concerned Magistrate. Therefore, the whole procedure of seizing and freezing of the bank account of the Applicant is illegal. Relying upon the judgment delivered by a Learned Single Bench of the Madras High Court in **B. Ranganathan v. State, Manu/TN/0255/2003**, he further submits that a case of disproportionate wealth could only be proved from the entries effected in the books of accounts so as to trace the past bank dealings of the accused and of his near relatives during the check period, but not freezing the accounts unless the Investigating Officer is of the view that by permitting the accused or his relatives to continue to operate the accounts any damage would be caused to the entries already effected in the past which are relevant for the check period and, therefore, no purpose is also going to be served in the progress of investigation by freezing the accounts. He further submits that as per the submission of the Respondent/State, out of the sum of Rs.27,07,163/-, a sum of Rs.23,00,000/- has been kept on hold as per the direction of the Investigating Officer. Since charge-sheet has already been filed, trial is likely to take much time and the Applicant requires a part of the withheld amount of Rs.23,00,000/- for the purposes of his livelihood, he may be permitted to withdraw 50% of the withheld amount of Rs.23,00,000/- for his livelihood after obtaining an adequate surety from him.

5. Learned Counsel appearing for the Respondent/State opposed the arguments advanced on behalf of the Applicant and supported the impugned order passed by the Special Judge. It is further submitted that as per the direction issued by the Investigating Officer, out of the total deposited amount of Rs.27,07,163/-, an amount of Rs.23,00,000/- has been kept on hold. The amount of Rs.27,07,163/- relates to the disproportionate income of the Applicant/accused. Therefore, the Special Judge has rightly rejected the application of supurdnama.

6. I have heard Learned Counsel appearing for the parties and perused the case diary with due care.

7. While dealing with the issue in **State of Maharashtra v. Tapas D. Neogy, (1999) 7 SCC 685**, it was observed by the Supreme Court as under:

> "**12**. Having considered the divergent views taken by different High Courts with regard to the power of seizure under Section 102 of the Code of Criminal Procedure, and whether the bank account can be held to be "property" within the meaning of the said Section 102(1), we see no justification to give any narrow interpretation to the provisions of the Criminal Procedure Code. It is well known that corruption in public offices has become so rampant that it has become difficult to cope up with the same. Then again the time consumed by the courts in concluding the trials is another factor which should be borne in mind in interpreting the provisions of Section 102 of the Criminal Procedure Code and the underlying object engrafted therein, inasmuch as if there can be no order of seizure of the bank account of the accused then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdrawn by the accused and the courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer. We are, therefore, persuaded to take the view that the bank account of the accused or any of his relations is "property" within the meaning of Section 102 of the Criminal Procedure Code 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. The contrary view expressed by the Karnataka, Gauhati and Allahabad High Courts, does not represent the correct law. It may also be seen that under the Prevention of Corruption Act, 1988, in the matter of imposition of fine under sub-section (2) of Section 13, the legislatures have provided that the courts in fixing the amount of fine shall take into consideration the amount or the value of the property which the accused person has obtained by committing the offence or where the conviction is for an offence

> referred to in clause (e) of sub-section (1) of Section 13, the pecuniary resources or property for which the accused person is unable to account satisfactorily. The interpretation given by us in respect of the power of seizure under Section 102 of the Criminal Procedure Code is in accordance with the intention of the legislature engrafted in Section 16 of the Prevention of Corruption Act referred to above. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court of Bombay committed error in holding that the police officer could not have seized the bank account or could not have issued any direction to the bank officer, prohibiting the account of the accused from being operated upon. Though we have laid down the law, but so far as the present case is concerned, the order impugned has already been given effect to and the accused has been operating his account, and so, we do not interfere with the same."

8. From the above, it is well established that the bank account of the accused or any of his relative is "property" within the meaning of Section 102 Cr.P.C. and a police officer, in course of investigation, can seize or prohibit operation of the said bank account if such assets have direct links with the commission of the offence.

9. In **Teesta Atul Setalvad v. State of Gujarat, (2018) 2 SCC 372**, it was further observed by the Supreme Court as under:

> "**25**. Suffice it to observe that as the investigating officer was in possession of materials 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 of the Code, which he could, in law, therefore, could legitimately seize the bank accounts of the appellants after following the procedure prescribed in sub-section (2) and sub-section (3) of the same provision. As aforementioned, 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)."

10. In **B. Ranganathan case** (supra), the Learned Single Bench of the Madras High Court observed thus:

> "**19**. A case of disproportionate wealth could only be proved from the entries effected in the books of accounts so as to trace the past bank dealings of the accused and of his near relatives during the check period but not freezing the accounts unless the Investigating Officer is of the view that by permitting the accused or his relatives to continue to operate the accounts any damage would be caused to the entries already effected in the past which are relevant for the check period and therefore no purpose is also going to be served in the progress of investigation by freezing the accounts and obstructing the accused and his relatives from operating the accounts abruptly. The net result would be that the daily routine of personal life or business of the account holders would be paralysed with no scope for making any progress in the investigation by such of the acts of ordering to freeze the accounts. Therefore, at this juncture, the only conclusion that could be arrived at by this Court is that neither the first respondent is authorised to indulge in such acts of freezing the bank accounts of the petitioner and his family members as per the authorization made by the Superintendent of Police, dated 16.8.2002 nor could the first respondent assume such powers himself and therefore it is safe to conclude that the act perpetrated by the first respondent in freezing the accounts of the petitioner and others listed here before is without authorization and without jurisdiction and they could be termed only as illegal.
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> **21**. Yet another legal aspect pointed out on the part of the petitioner by his counsel is the procedure that is to be adopted on seizure of bank account. In case of seizure of a bank account, the police officer should do two things: he should inform the concerned Magistrate forthwith regarding the prohibitory order. He should also give notice of the seizure to the accused and allow him/her to operate the bank account subject to his/her executing a bond undertaking to produce the amounts in court as and when required or to hold them subject to such orders as the court may make regarding the disposal of the same. An order under Section 102, without doing so is liable to be set aside, as held in Ms. Swaran

> Sabharwal v. Commissioner of Police reported in 1988 Cri.L.J. 241 (Delhi) (extracted supra). This procedure that is to be followed and felt mandatory has also not been followed by the first respondent."

11. In the light of above discussion, in the case in hand also I find that no doubt the Investigating Officer was empowered to seize and freeze the bank account of the accused/Applicant and accordingly he issued direction for freezing of the bank account of the Applicant. But, there is nothing to show that after freezing of the bank account of the Applicant, the Investigating Officer informed about his prohibitory order to the concerned Magistrate forthwith.

12. Therefore, in the aforestated premises, I am of the considered opinion that ends of justice would be served if the Applicant is permitted to withdraw 50% of the withheld amount of Rs.23,00,000/- after obtaining an adequate surety from him to the satisfaction of the Special Judge. Ordered accordingly. The passbook of the concerned bank account of the Applicant shall also be returned to him after retaining a photo copy thereof. It is directed that the Applicant shall not cause any damage to the entries of the passbook which are already effected in the past and are relevant for the check period.

13. Consequently, the revision is disposed of in the aforesaid terms.

Sd/-

(**Arvind Singh Chandel**)
Judge

Gopal