

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2434 OF 2018

- | | | | |
|----|----------------------------------|---|----------------|
| 1. | Manish Khandelwal, |] | |
| | Adult, Indian inhabitant, |] | |
| | Proprietor of Reliance |] | |
| | Securities, residing At Flat No. |] | |
| | 1103, Phoenix tower B-Wing |] | |
| | Lower Parel, Mumbai 400 013 |] | |
| 2. | Sunil Khandelwal, |] | |
| | Adult, Indian inhabitant, |] | |
| | Proprietor of B.M. Securities, |] | |
| | Securities, residing at Flat No. |] | |
| | 1104, Phoenix tower B-Wing |] | |
| | Lower Parel, Mumbai – 400 013 |] | |
| 3. | B.M. Financial Services (I) |] | |
| | Pvt. Ltd., represented by its |] | |
| | Directors, Manish Khandelwal |] | |
| | and Sunil Khandelwal, having |] | |
| | its office at B/18, everest |] | |
| | Building, 3 rd Floor, |] | |
| | Opp. Tardeo Bus Depot, |] | |
| | Tardeo, Mumbai – 400 034. |] | ...PETITIONERS |

-Versus-

- | | | |
|----|-------------------------------------|---|
| 1. | The State of Maharashtra |] |
| | (through Economic offences |] |
| | Wing, Unit – III. - CR No. 68/2010) |] |
| 2. | ICICI Bank Limited, |] |
| | North Tower ICICI Bank |] |
| | Ranwar, Bandra-Kurla |] |
| | Complex, Bandra East, |] |

Mumbai – 400 051.]
3. HDFC Bank Limited]
Fort Branch, Maneckji Wadia]
Building, Mumbai - 400 051.] **...RESPONDENTS**

Mr. Subhash Jha a/w. Mr. Hare Krishna Mishra I/by. Law Global for Petitioners.

Mr. Vivek Patil I/by. Vivek Patil and Associates for Respondent No. 3.

Mr. Faisal Sayyed I/by. Manilal Kher Ambalal & Co. for Respondent No. 2

Mr. A.R. Patil, APP for Respondent No. 1 – State.

CORAM : S. S. SHINDE J.
RESERVED ON : 12th JULY 2019
PRONOUNCED ON : 30th JULY 2019

(JUDGMENT)

1. Rule. Rule made returnable forthwith, with the consent of counsel appearing for the parties petition is being heard finally.

2. This Petition takes an exception to the judgment and order dated 19th March 2018 passed by the learned Additional Sessions Judge, City Civil and Sessions Court at Mumbai in Revision Application No. 795 of 2016 thereby rejecting the Petitioners application for defreezing the account.

3. It is the case of the Petitioners that, Petitioners so also M/s. Reliance Securities, which is the proprietary concern of Petitioner No. 1 and

Petitioner No. 3, which is the proprietary concern of Petitioner No. 2, are in the business of trading in government securities and bonds. Petitioner No. 3 is a company incorporated under the Companies Act. Petitioners No. 1 and 2 are Promoters and Directors of Petitioner No. 3 Company and Vipul Desai who has been arraigned as accused no. 1 at the relevant time was the Secretary of four different ICICI Bank employees provident funds trusts.

4. It is the case of the petitioners that, between the period from 2004 to 31st March 2010 the Petitioners in collusion and connivance with the Directors of E2E Consultant Private Limited, of which Vipul Desai and his wife Aarti Desai are the directors, sold government securities and corporate bonds to four different ICICI Bank employees provident fund trusts, at a higher rate than the price at which the government securities/corporate bonds could have been purchased by the trusts, and in the process the Petitioners have committed the offence. In pursuance of the above alleged crimes, the First Information Report has been lodged against the present Petitioners and others bearing FIR No. 68/2010 which came to be registered at the instance of ICICI Bank Limited alleging criminal breach of trust / cheating in furtherance of a criminal conspiracy to the tune of Rs.

23.33 Crore in the process of dealing with Government Bonds / Securities between the period from April 2004 to 2010.

5. It is the case of the petitioners that, on 25.10.2010 in pursuance of the abovementioned FIR Economic Offences Wing, Unit-III directed ICICI Bank Limited and HDFC Bank limited to freeze the bank accounts of the petitioners with them, and accordingly four accounts of the Petitioners and their firms / companies i.e. B.M. Securities and B.M. Financial Services (India) Pvt. Ltd. Came to be frozen by the two banks. While a sum of Rs. 2,81,189/- is lying in HDFC Bank account of Reliance Securities, a sum of Rs. 1,50,814.22 is lying in the account of B.M. Securities with ICICI Bank limited and similarly a sum of Rs. 13,97,337.93 is lying in the account of B.M. Financial Services (India) Pvt. Ltd. With HDFC Bank Ltd. and a further sum of Rs. 1,51,694.13 is lying the account of the same company with ICICI Bank. On 25.10.2010 Economic Offences Wing, Unit-III issued notices under Sections 91 and 102 of the Criminal Procedure Code, 1973 and Section 4 of the Bankers Book of Evidence Act, 1891 to the Petitioners for freezzing of their respective bank account lying with the bank with reference to the abovementioned FIR.

6. It is the case of the petitioners that, petitioners preferred an application for defreezing their respective accounts before the learned Additional Chief Metropolitan Magistrate, 19th Court at Esplanade, Mumbai. On 11.07.2016 the learned Additional Chief Metropolitan Magistrate order below Notice Application No. 25/N/2011 rejected the petitioners application.

7. Being aggrieved by the order of the Learned Additional Chief Metropolitan Magistrate the petitioners preferred the Revision Application. On 19.03.2018 the learned Additional Sessions Judge, City Civil and Sessions Court, Mumbai rejected the Revision Application No. 795 of 2016 filed by the petitioners. Hence, this Writ Petition.

8. Learned counsel appearing for the Petitioners submit that, the learned Magistrate without analyzing the scope, ambit and purport of Section 102 of Cr.P.C., and in particular Sub-Section (3) of Section 102 Cr.P.C. being mandatory, and having flouted and / or violated by the Respondent No. 1 after embarking upon to freeze the bank accounts of the petitioners rendered the communication / notice dated 25.10.2010 issued by the Respondents illegal, bad in law and contrary to the mandate

contained u/Sec. 102(3) of Cr.P.C., and that being the case the impugned order dated 11.07.2016 passed by the learned Magistrate is also rendered illegal, bad in law, perverse and contrary to the settled principles of law. It is submitted that, the issue with regard to the power of police to seize certain property fell for consideration before the Apex Court in the matter of M.T. Enrica Lexie Vs. Doramma, and the apex Court interpreting the scope of the Section 102 of Cr.P.C. held, in no unclear terms that the police during the course of investigation can seize a property if such a property is alleged to be stolen or suspected to be stolen and if the object of crime is under investigation or has direct link with commission of offence for which the police officer is investigating into. Property not suspected of commission of offence which is being investigated into by the police officer cannot be seized u/s. 102 Cr.P.C. The Hon'ble Supreme Court further emphasized that under Section 102 of the Code, a police officer can seize such property which is covered by Section 102(1) of Cr.P.C. and no other property.

9. Learned counsel appearing for the petitioners further submitted that, there is absolutely no material brought on record which could even remotely indicate that, the amounts which were lying in the bank accounts

of the Petitioners, and which have been frozen and any 'direct' link with the alleged commission of offence, and for that matter even a reasonable connection and merely because an offence is alleged to have been committed and certain amount is lying in the bank account of a person named as accused in the FIR, the police can certainly not embark upon to exercise the purported powers u/S. 102 of Cr.P.C. Since the power of police u/s. 102 Cr.P.C has been grossly misused and abused, the same therefore, deserved to be remedied and the same be remedied accordingly in exercise of the powers vested with this Hon'ble Court u/S. 482 of the Cr.P.C.

10. It is submitted that, the petitioners cannot be deprived of their legitimate right to make use of money lying in their respective bank accounts merely because the Respondents without application of mind resorted to freeze the bank accounts of the Petitioners, and thereby depriving them of their legitimate right to make use of the funds lying in their accounts and similarly operate their bank accounts for legitimate business purpose. The entire prosecution case is based on assumption and presumption of an offence having been committed in as much as the government securities and corporate bonds are claimed to have been

purchased by the four different ICICI Bank employees provident fund trusts at a higher price than the price at which these securities / bonds ought to have been purchased. There is no data and / or any information available and / or brought on record during the course of investigation on the basis whereof it could be ascertained and / or inferred that these government securities and corporate bonds sold by the Petitioners to ICICI Bank employees provident fund trusts were indeed sold for a higher price than their actual price at the relevant time. An allegation is patently false as the Government securities / corporate bonds were sold to ICICI Bank employees provident fund trusts at the lowest price determined via open tender at which they were indeed to be sold, and were not sold at a higher price which is falsely claimed by the prosecution. Furthermore, at the same time when the petitioners sold government securities / corporate bonds to ICICI Bank employees provident fund trusts, other companies / firms / entities also sold these securities to ICICI Bank employees provident fund trusts either at the same price or even at a higher price but there is no complaint lodged by them and/ or suit filed by them as has been done in the instant case as against the petitioners. ICICI Bank employees provident funds trusts as well as the prosecution have resorted to pick and choose

while launching a frivolous and vexatious prosecution as against the Petitioners, and which led to the Respondents exercising their purported powers vested u/S. 102 of Cr. P.C. This important aspect of the matter has been completely glossed over by the learned Magistrate.

11. It is submitted that, the alleged offence cannot be said to have been continued in the absence of material to suggest existence of benchmark pricing in the entire charge sheet there is no material to even remotely suggest inflated pricing as has been alleged, and moreover in the absence of there being any material to indicate benchmark pricing, an inference of cheating / breach of trust even otherwise is not drawn and / or inferred. It is submitted that, after rejection of their application by the learned Magistrate and Learned Sessions Judge by a cryptic order was pleased to reject the application, without going into the legality, validity and / or propriety of the impugned order dated 11.07.2016 of the learned Magistrate and proceeding on the basis that the scope of revision is limited only to the extent of assessing legality and correctness of the order passed by the learned Magistrate. It is a classic case of gross misuse and abuse of the purported power vested with the Respondent No. 1. The impugned

order dated 11.07.2016 rendered by the Court of the learned Magistrate, ought to have been interfered by the Revisional Court with, even on the ground of gross violation of the mandate contained u/s. 102 (3) of the Cr.P.C. which provision after catena of decisions have been held to be mandatory in nature.

12. It is submitted that, the order passed by the learned Metropolitan Magistrate being perverse, illegal, bad in law and contrary to the well settled principles of law dealing with the scope, ambit and purport of Section 102 of the Code of Criminal Procedure ought to have been interfered with by the Learned Addl. Sessions Judge. However, the learned Addl. Sessions Judge as stated hereinabove, by the impugned order dated 19.03.2018 was pleased to reject the same. Even the order passed by the learned Addl. Sessions Judge is perverse, illegal, bad in law and contrary to the settled principles of law on the issue and therefore the same deserves interference by this Hon'ble Court.

13. Learned counsel appearing for the Petitioner in support of his aforesaid contentions relied upon the ratio laid down in following judgments. In the case of *Ms. Swaran Sabharwal Vs. Commissioner of*

Police¹, Lathifa Vs. State of Karnataka², B. Ranganathan Vs. State and Ors³, Padmini Vs. The Inspector of Police and Ors.⁴, Shashikant D. Karnik Vs. The State of Maharashtra⁵, Sri Jayendra Saraswathy Swamigal (II), T.N Vs. State of T.N. and Ors.⁶, M.T. Enrica Lexie and Anr. Vs. Doramma and Ors.⁷, S. Ganapathi Vs. State and Ors.⁸, T. Subhulakshmi Vs. The Commissioner of Police and Ors.⁹, Rajmani Vs. The Inspector of Police and Ors.¹⁰, R. Chandrasekar Vs Inspector of Police and Ors.¹¹, R. Sivaraj Vs. State of Tamil Nadu¹², A.K. Shokan Vs. State of Tamil Nadu¹³, Uma Maheshwari Vs. State of Tamil Nadu¹⁴. Shri. Vilas S/o. Prabhakar Dange Vs. State of Maharashtra (Criminal Writ Petition No. 1033/2017)

14. On the other hand, the learned APP appearing for the Respondent/State submits that accused No.1 by hatching conspiracy with

1 1987 SCC OnLine Del 221

2 ILR 2012 Kar. 2220

3 2003 Cr.L.J. 2779

4 2008 (3) CTC 657

5 2008 Cr.L.J 148

6 (2005) 8 SCC 771

7 (2012) 6 SCC 760

8 2014 SCC OnLine Mad 11728

9 2013 (3) MWN (Cr.) 40

10 2003 Cr.L.J. 2902

11 2003 Cr.L.j. 294

12 2013 (3) MWN (Cr.) 450

13 2013 SCC OnLine Mad. 2526

14 2013 SCC OnLine Mad 3829

the rest of the accused including the Petitioners misappropriated the amount of Bank and the accounts, which were freezed by the Investigating Agency/Officer during the course of investigation are being used for the alleged transactions. He further submitted that the amount lying with the freezed accounts of the Petitioners is misappropriated amount and is in connection with the alleged crime. He therefore submitted that the learned Magistrate has rightly rejected the application filed by the Petitioner for de-freezing of the accounts of the Petitioners. He further contended that as per Section 102 of Cr.PC. only in three situation stated in sub-Sectio (3) of Section 102 of Cr.P.C., the intimation has to be given to the Magistrate and, in so far as the present offence is concerned, intimation about the seizure of the accounts of the Petitioners by the Investigating Agency/Officer during investigation was not necessary to be given to the Magistrate. He also submitted that the action of the Investigating Agency/Officer in freezing the accounts of the Petitioners during the course of investigation without intimating the Magistrate is legal and proper. He lastly submitted that non-compliance of the procedure laid down under Section 102 of the Cr.PC. is only an irregularity and it will not vitiate the freezing of the bank account. He, therefore, submitted that the Petition may be rejected.

15. The learned counsel appearing for the Respondent Bank submitted that the amount lying in freezed accounts of the Petitioner is out of the misappropriated amount of the Banks and the employee of the ICICI Bank i.e. accused No.1 Vipul Desai had hatched conspiracy with rest of the accused and siphoned the amount from the accounts of the informant Bank.

16. Heard the learned counsel for the parties. I have given due consideration to the submissions of the learned counsel for the parties. With their able assistance, perused the material on record and reasons assigned by both the Courts below.

17. The question that arises for consideration in the present Writ Petition is whether freezing of the bank accounts of the Petitioners under Section 102 of the Cr.PC. by the Investigating Agency/Officer during the course of investigation without intimating the Magistrate is legally sustainable?

18. The main contention of the learned counsel for the Petitioners is that, it is mandatory for the investigating agency/officer to make

compliance of the mandate as required under sub-Section (3) of Section 102 of the Cr.PC, and since there is no compliance of the mandate contained under sub-Section (3) Section 102 of the Cr.PC., according to the learned counsel for the Petitioners, the proceedings of freezing of the accounts of the Petitioners are liable to be quashed. In the context of the aforesaid contention of the learned counsel for the Petitioners, it is necessary to see the provision of Section 102 of the Cr.PC which deals with the power of police officer to seize certain property. The provision of Section 102 of the Cr.PC. reads as under :-

“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.

Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of Sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.”

A careful reading of the aforesaid Section 102 shows that the police officer in course of investigation can seize any property under section 102 Cr.P.C., if such property is alleged suspected to have been stolen or which may be found under circumstances which create suspicion of the commission of any offence.

19. In so far as the contention of the learned APP that non-compliance of the procedure laid down under Section 102 of the Code, is only an irregularity and it will not vitiate the freezing of the bank account is concerned, I am not inclined to accept the said submission, since Section 102(3) of the Code mandates the report of the seizure of the property to the Magistrate.

20. Nothing is brought on record by the Respondents to suggest that report was given to the learned Magistrate as required under Section 102 of the Cr.PC. by concern police officer. Since it has been well settled by the catena of judgments, that in case where such mandatory provision has not been followed, it will entail the consequences of giving direction to defreez the bank account / accounts.

21. From the ratio laid down in the judgments cited by the learned counsel for the Petitioners, it is clear that the bank account is a property within the meaning of section 102 of the Code, and sub-section (3) of section 102 requires the reporting of seizure of the property to the concerned Magistrate forthwith, which is mandatory in nature. The Madras High Court in *T. Subbulakshmi's* case (supra) has taken a similar view. Paragraph 27 of the judgment is relevant and is reproduced herein under :-

“27 From the dictum laid down in the judgments relied on by the learned senior counsel for the petitioners it is clear that the bank account is a property within the meaning of Section 102 of Cr.P.C and sub-section (3) to Section 102 requires the reporting of seizure of the property to the concerned Magistrate forthwith, which is mandatory in nature. Moreover, the freezing of bank account is an act of the investigation and therefore, the duty is cast upon the Investigating Officer under Section 102(3) of Cr.P.C. to report the same to the Magistrate, since the freezure of the

bank account prevents the person from operating the bank account pursuant to an investigation by the Police in a criminal case registered against him. If there is any violation in following the procedures under Section 102 of Cr.P.C., the freezing of the bank account cannot be legally sustained. Since in the case on hand the 2nd respondent-Police has not reported the freezing of the bank accounts of the petitioners herein to the concerned Magistrate forthwith, which is mandatory under Section 102(3) of Cr.P.C., the proceedings of the 2nd respondent-Police in freezing of the bank accounts of the petitioners herein are not legally sustainable.

22. The Madras High Court in **R Sivaraj's** case (supra) has held that every seizure of shall be reported to the jurisdiction Magistrate. Paragraph 16 of the said judgment is relevant and is reproduced herein under for ready reference :-

“16 Section 102(1) describes the categories of properties to be seized.; When an officer subordinate to the SHO seized them, he must report his seizure to his superior. Section 102(3) mandates that every seizure of property under Section 102(1), Cr.PC. shall be reported to the jurisdiction Magistrate.

23. It was held by the Division Bench of this Court, in **Shashikant D Karnik** 's case (supra), that the seizure of the property under Section 102 of the CrPC has to be reported to the Magistrate. The Division Bench in paragraphs 17,18, 19 and 20 of the said judgment has observed as under :-

17. Re-reading of Section 102 of the Cr.P.C. shows that what is permitted to be done is the seizure of the property by the Police Officer. Now, as per the view of the Supreme Court, bank accounts can be seized under Section 102 of the Cr.P.C. There is no doubt about that, and, since they are bank accounts, the seizure means their attachment by the police and the attachment order of the bank accounts will have the effect of stopping the account holder from operating those bank accounts. But in any case when the powers are to be exercised by the police officer under Section 102 of the Cr.P.C. and they are so exercised, there is nothing like giving oral instructions of stopping the operation of the account or written instructions not to allow operations of the accounts. If such instructions are given either oral or in writing then they are to be regarded as attachment of the account. Therefore, what is stated in the aforesaid affidavit of Mr. Pardeshi, as quoted above, is an attempt to escape from the consequences of non compliance to the Section 102 of Cr.P.C. No other provision of the Cr.P.C. was shown to us by Mr. Mhaispurkar which empowers the police officer, firstly, to issue orders oral or written of stopping the operation of account before attachment or seizure and then pass second order of attachment of account. There is nothing like empowering the police officers to issue ad interim or temporary order of stopping the operation and then final order of attachment of the account. If they issue any order of stopping operation of the account, it has to be treated as action under Section 102 of the Cr.P.C. resulting in seizure i.e. attachment of the account, and, if that is so the compliance to all the three requirements, is a must.

18. So far as requirement under Section 102(1) is concerned, it is obligatory upon the police to show that the property which they want to attach or attaching is under circumstances which create suspicion of the commission of any offence. From paragraph 5 of the affidavit of Mr. Pardeshi, ACP attached to ACB, quoted above, and from the oral submissions made by Mr. Mhaispurkar, it is clear that

till this date the authority who attached the accounts of the petitioner have not been able to come to any conclusion, even prima facie case that the amount in the accounts has any connection with the offence of disproportionate income of the petitioner. In these circumstances, there is no option but to hold that any action taken in giving oral instructions of stopping the operation of the account or in issuing written directions of stopping the operation of account, is illegal per se. Section 102 of the Cr.P.C. does not permit any police officer to seize the property, viz. to attach the account in the first instance and then to decide whether the property has any connection with the commission of any offence. The attachment orders oral or written in this case are issued in 2002, we are in 2007, but till this date investigating agency has not been able to come to a conclusion, as stated in paragraph 5 of the affidavit reproduced above, that the amount lying in the bank accounts, is out of the disproportionate income of the petitioner. In these circumstances, the entire attachment under oral or written directions has to be struck down as has been illegal.

19. Second requirement of Section 102(2) of Cr.P.C. is that the officer seizing the account or attaching the account subordinate to the officer in charge of the police station has to forthwith report the seizure or attachment to his superior i.e. to the officer in charge of the police station. Even though the State has filed two affidavits of Mr. Pardeshi, ACP of Anti Corruption Bureau, not a word is uttered about this requirement of Sub section (2) of Section 102 of Cr.P.C. that the officer ordering attachment of the accounts oral or in writing whether was subordinate to the officer in charge of the police station, meaning thereby whether any superior officer was there in the Anti Corruption Bureau above him and there was any report by the said officer to his superior. What is stated in paragraph 6 of the first affidavit of Mr. Pardeshi is that "...on completion of the open enquiry, the Enquiry Officer on 23.8.2005 submitted his final report". This is not the compliance to Sub section

(2) of Section 102 of Cr.P.C. If the Officer giving instructions of stopping the operation of the account of the petitioner to a superior, then it was necessary for that officer to report this matter to his superior as required by Sub section (2) of Section 102.

20. Third requirement of Sub Section (3) of Section 102, lays down a mandate that every police officer acting under Sub-section (1) shall forthwith report the seizure or attachment of accounts to the Magistrate having jurisdiction. Admittedly, this is not done in the present case. Paragraph 5 of the second affidavit of Mr. Pardeshi, quoted above is very clear in this regard as well as the oral submission of Mr. Mhaispurkar. It will be therefore clear that there is absolutely no compliance to any of the provisions of Sub sections (1), (2) and (3) of Section 102 of Cr.P.C, in this matter. Consequently, the petition is required to be allowed and the orders are required to be quashed as prayed.

24. In the recent past, a learned Single Judge (**CORAM : REVATI MOHITE DERE, J.**) of the Bombay High Court Bench Nagpur of this Court in Criminal Writ Petition No.1033 of 2017 (Vilas Dange V/s. State of Maharashtra) also took a similar view. In the said case also, the Petitioner therein has sought action/enquiry against the Investigating Officer for failure to inform the Magistrate regarding freezing of the accounts. Whilst dealing with the said issue, a learned Single Judge this Court (**CORAM : REVATI MOHITE DERE, J.**) in paragraph 5 of the aforementioned case has observed as under :-

5. Perused the papers as well as the impugned order. An F.I.R. was lodged as against the petitioner's wife and daughter on 30.03.2017, with Hingna Police Station, Nagpur for the alleged offence punishable under Section 406 read with Section 34 of the I.P.C. Pursuant thereto, C.R. No.88/2017 was registered with the said police station as against the petitioner's wife and daughter. During investigation, on 06.11.2017, the police froze two bank accounts of the petitioner, one with the State Bank of India and the other with the Union Bank of India, i.e. after almost eight months of the registration of the offence. Admittedly, charge-sheet has not been filed in the said case till date, nor is the petitioner an accused in the said case. On 13.11.2017, the petitioner preferred an application before the learned Magistrate and sought de-freezing of the bank accounts maintained with the Union Bank of India and the State Bank of India. It appears from the affidavit filed by the State that there were cash deposits of Rs.1,30,000/- (Union Bank of India) and Rs.1,46,000/- (State Bank of India) in the accounts of the petitioner maintained with the Union Bank of India and the State Bank of India. Section 102 of Cr.P.C. stipulates that 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. It is pertinent to note that under Section 102(3) of Cr.P.C., every police officer acting under sub-section (1) of Section 102, shall forthwith report the seizure to the Magistrate having jurisdiction. It may be noted that the offence was registered in the said case on 30.03.2017; whereas, the petitioners two bank accounts came to be frozen on 06.11.2017. Admittedly, no report as contemplated under Section 102(3) of Cr.P.C. was forwarded to the Magistrate till the filing of this petition and till notice was issued by this Court on 13.11.2017. It appears that the report was filed only on 27.11.2017, i.e. much later. It is, therefore, evident that there is non-compliance of sub-section 3 of Section 102 of Cr.P.C., inasmuch as, no report was forwarded forthwith to the learned Magistrate, informing the action taken under

Section 102 of Cr.P.C. Even otherwise, there are no allegations as against the petitioner and that the F.I.R. is lodged only as against his wife and daughter. Admittedly, no notice was served on the petitioner before the petitioner's bank accounts were frozen.

25. Accordingly, the learned Single Judge directed to defreeze the bank accounts which were frozen by the concern bank pursuant to directions of concerned police officer. Admittedly, in the present case, the Investigating Agency/Officer, in freezing the accounts of the Petitioners, has not reported freezzing of the accounts of the Petitioners to the learned Magistrate which is mandatory requirement under sub-Section (3) of Section 102 of Cr.PC. As disclosed in the petition it is an admitted position that accused No.1 Vipul Desai and his wife Arti Desai appears to be the Directors of their own company viz. E2E, and both the Petitioners herein were and are running their companies viz. B M Financial Services and Reliance Securities. Prima facie it appears that no report as contemplated under sub-section (3) of Section 102 of Cr.P.C. was forwarded to the learned Magistrate till filing of this petition. It is required to be noted that freezing of bank account is an act of investigating officer/agency and therefore, duty is cast upon the investigating agency/officer under sub-

section (3) of Section 102 of the Cr.P.C., to report the same to the learned Magistrate having the jurisdiction.

26. In the result, the Writ Petition succeeds and the same is accordingly allowed. The impugned order dated 11/07/2016 passed by learned Magistrate and the order dated 19/03/2018 passed by the learned Additional Sessions Judge rejecting the application of the Petitioners for defreezing the accounts are hereby quashed and set aside. The concerned Investigating Agency/officer is directed to defreeze the said bank accounts of the Petitioners forthwith. The Rule is accordingly made absolute to the aforesaid terms. It is made clear that, besides answering the question formulated in para 17 of the judgment, no any other point has been considered or answered in the present judgment. The Writ Petition is accordingly disposed of with parties to bear their respective costs.

[S.S. SHINDE, J.]

After pronouncement of Judgment

30th July 2019

At this stage, the learned counsel appearing for Respondent No. 2 – ICICI Bank prays for stay to the implementation / execution of this

judgment / order passed today. The learned counsel appearing for the Petitioners vehemently opposed the said prayer. However, in the facts and circumstances of the present case, and in the interest of justice the implementation / execution of the directions contained in the aforesaid judgment / order are stayed for a period of two weeks from today.

[S.S. SHINDE, J.]