IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
Criminal Writ Jurisdiction Case No.378 of 2020

Arising Out of PS. Case No.-255 Year-2020 Thana- PATLIPUTRA District- Patna

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1. M/S IMZ Corporate Private Limited registered office-E43, First Floor, Chattarpur Extension, New Delhi, South Delhi, India-110074 and having its Regional Office at Software Technology Park, Near Sai Mandir, Patliputra, Patna-800001 through its authorized representative, Ajay Kumar Das, aged about 62 years, Male, son of Late Mahadeo Lal Das resident of Jakkanpur, Machli Gali, Phulwari, Patna, P.S.-Jakkanpur, District-Patna.
2. Ajay Kumar Das, aged about 62 years, Male, S/o Late Mahadeo Lal Das Resident of Jakkanpur, Machli Gali, Phulwari, Patna, P.S.-Jakkanpur, District-Patna.

... ... Petitioners

Versus

1. State of Bihar through Principal Secretary,Deptt. of Home,Govt. of Bihar,Main Secretariat,Patna S.P Patna.
2. The Director General of Police, Govt. of Bihar, Main Secretariat, Patna. Patna.
3. The Senior Superintendent of Police, Patna. Patna.
4. The Station House Officer, Patliputra Police Station, Patna. Patna.
5. Satyendra Kumar Shahi, Officer-in-Charge-cum-SHO, Patliputra P.S., Patna. Patna.
6. The Branch Head, HDFC Bank, Krishnayan, Near Police Check Post, Boring Road, Patna-800001. Patna.
7. Branch Head,ICICI Bank,559/1,Ground Floor,Dayanand Colony,New Railway Road,Distt.-Gurugram,Haryana. Haryana.
8. Sidharta Kasana S/O Surendra Singh Kasana R/O- Kasana Farm House, Chattarpur,P.S.-Mehrauli, Dist.-South Delhi.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. S.D. Sanjay, Sr. Advocate Mr.Parul Prasad, Advocate
For the State	:	Mr. Prabhu Narayan Sharma, AC to A.G.
For the HDFC Bank	:	Ms. Shivangi, Advocate
For the Respondent/s	:	Mr.Saket Tiwary, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

C.A.V. JUDGMENT

Date : 23-12-2020

This Writ Application has been preferred for the following reliefs:

> "(i) For issuance of writ/direction upon the Respondents nos. 4 & 5 to forthwith withdraw his direction to the bankers of the Petitioner Company being Respondents nos. 6 & 7 for debit freeze of the bank accounts of the petitioner Company and to allow the Petitioner to make debit transactions in its accounts.
> (ii) For issuance of writ/direction to the Respondent no. 6 & 7 to defreeze the Bank Accounts of the petitioner company with the Respondent banks.
> (iii) For issuance of a writ in the nature of mandamus directing the Respondent nos. 1 to 3 to order the removal of the present I.O., Respondent nos. 4 & 5 in FIR bearing Patliputra P.S. Case No. 255 of 2020 and to appoint a new IO for the fair investigation in the above-mentioned FIR."

A First Information Report (in short 'F.I.R.') giving rise to Patliputra P.S. Case No. 255/2020 dated 09.07.2020 has been registered under Section 419, 420, 406, 467 and 471 of the Indian Penal Code at the instance of Mr. Siddharth Kasana who is respondent no. 8 in the present writ application. Respondent no. 8 has claimed that he being a Director of one M/s MSD Telematics Private Limited from its very inception was staying abroad in connection with the business of the Company. The Company provides GPS service in different departments like Excise, BSFC, Municipal Corporation and Mining Department in Bihar and Jharkhand.

He alleged that one Ashmeet Singh was

appointed as Director (Operation) of the Company and he was Incharge of Bihar/Jharkhand. It is alleged that said Ashmeet Singh along with his reliable employees such as Prashant Yadav, Dheeraj Dhanraj, Lalit together with some subordinate employees indulged in misappropriation of crores of rupees. Ashmeet Singh allegedly floated a new Company IMZ Corporates Pvt. Ltd. (petitioner no. 1) to run a parallel business while he was still working with MSD Telematics Private Limited.

It is alleged that the IMZ Corporates Pvt. Ltd. was floated/incorporated with a well neated conspiracy. According to the informant whenever he asked for rendering accounts the said Ashmeet Singh kept on delaying the same on one pretext or another and all of a sudden on 01.12.2019 Ashmeet Singh submitted his resignation from MSD Telematics Pvt. Ltd. The informant states that after Ashmeet Singh left the Company, the informant joined the office and thereafter he could know about the fraudulent acts of Ashmeet Singh.

It is alleged that MSD Telematics Pvt. Ltd.

had a GPS service contract with Vodafone and Airtel. Ashmeet Singh wrote an e-mail to Vodafone and Airtel in which he claimed that his Company has floated a new Company namely, IMZ Corporate Pvt. Ltd. and requested for transfer of all the GPS connections in the name of new Company. The informant thereafter alleges that Ashmeet Singh submitted a forged paper to Vodafone and Airtel claiming that the new Company has been brought in existence by MSD Telematics Pvt. Ltd. and for this purpose it is alleged that Ashmeet Singh used the letter head and seal of MSD Telematics Pvt. Ltd.

The informant claims that IMZ Corporate Pvt. Ltd. had no connection with MSD Telematics Pvt. Ltd. He further claims that by this act the accused persons who includes Prashant Yadav, Sachin Mathur, Harsh Malhotra, Mukesh Kumar, Dheeraj Dhanraj, Lalit Kumar and Amit Kumar have misappropriated approximately Rs. 10 Crores, out of which Rs. 4 Crores is only on account of renewal.

The informant alleges that Prashant Yadav, Sachin Mathur, Harsh Malhotra and Ashmeet Singh were looking after the work of Bihar State Food Corporation. Dheeraj Dhanraj and Prashant Yadav asked about 7000 vehicle owners of Bihar with whom MSD Telematics had contracts, to make payments to IMZ Corporate Pvt. Ltd. by representing that the new Company has now been floated. He alleges that the money belonging to MSD Telematics Pvt. Ltd. were got deposited in the account of IMZ Corporate Pvt. Ltd.

The whole allegation in the F.I.R. is that Ashmeet Singh and other employees who are named in the F.I.R. have used forged documents for unlawful gain, they have taken benefit of the stay of the informant in foreign countries and the accused persons have acted under a conspiracy, Ashmeet Singh has floated a new company while working with MSD Telematics Pvt. Ltd., then resigned w.e.f. 1st of December, 2019 and caused loss of crores of rupees to MSD Telematics Pvt. Ltd.

Mr. S.D. Sanjay, learned Senior Counsel for the petitioners submits that after registration of the present F.I.R. with Patliputra Police Station respondent no. 8 had submitted a written complaint to the D.C.P. Crime Branch, Gurugram, Haryana against Ashmeet Singh and others. A copy of the said complaint which was registered by Gurugram Sadar Police Station on 23.08.2020 is Annexure '14' to the writ application.

It is submitted that in Annexure '14' the informant has stated that he and Sri Ashmeet Singh were childhood friends and had cordial relationship with each other until May, 2020. It is stated that Sri Ashmeet Singh had approached the informant for purpose of seeking help in starting of business while he was facing hardship during the year 2011. At the said time the informant was running a company in the name and style of MSD Aviation Pvt. Ltd. and pursuant to the request made by Sri Ashmeet Singh they started a new business in the name and style of MSD Telematics Pvt. Ltd. sometimes in October, 2011. The informant claimed that he had brought the entire investment in the company and he kept on investing in the company till August, 2013. The informant further stated that in good faith and to help said Ashmeet Singh he gave 50% shareholding to him in MSD Telematics Pvt. Ltd. Ashmeet Singh was appointed as Director (Operation). It is stated that Ashmeet Singh was familiar with spare parts business. He has further narrated the details of how one Heuristics Info Systems Pvt. Ltd. which was owned by Amit Dubey and Pradeep Rai was purchased for a sum of Rs. 1.75 Crores from the funds of MSD Telematics Pvt.

Ltd. The informant states in the said complaint that Ashmeet Singh and he both were authorized to operate the bank account independently and in his absence Ashmeet Singh was single handedly operating the bank account. It is also stated that some transfers of amount were made to the informant regularly which were to be accounted for. In the said complaint it is further alleged that Ashmeet Singh self appointed himself as Managing Director of the Company in absence of the informant and then it is alleged that he spent money with huge overhead expenses to make money. In his complaint submitted to Gurugram Sadar Police Station the informant acknowledges about entering into an agreement with Ashmeet Singh in order to settle down things which were not going well. It is stated therein that they entered into an agreement under which Ashmeet Singh resigned from the directorship of the Company w.e.f. 31.12.2019 and the informant became Director of MSD Telematics Pvt. Ltd. on 01.01.2020. It is alleged that Sri Ashmeet Singh did not honour the commitments made to the informant and then it is alleged that the agreement was a very biased agreement with all advantages in favour of Sri Ashmeet Singh and all hardship were to be taken care of by the informant. Thereafter, the allegation have been made that Ashmeet Singh and other employees represented themselves for and on behalf of the MSD Telematics Pvt. Ltd. even after 01.12.2020 and this way MSD Telematics Pvt. Ltd. has been cheated under a criminal conspiracy.

Learned Senior Counsel has informed that because the F.I.R. lodged by the informant (respondent no. 8) with Gurugram Police Station was the second F.I.R., the same has been challenged before the Hon'ble Punjab & Haryana High Court and the Hon'ble High Court has been pleased to stay further proceeding pursuant to Annexure '14'.

The brief contention of learned Senior Counsel representing the petitioners in the present case is that in the given facts and circumstances which apparently show a kind of commercial disputes between the parties, the Investigating Officer or the Supervising Officer as the case may be could not have taken the extreme action of freezing of the two accounts of petitioner no. 1 Company. It is submitted that this is not one of those cases in which the act of cheating or getting unlawful gain by such act may be apparent on the face of the allegations and are requiring immediate seizure of the bank accounts. It is his submission that the various documents which might have been collected by the I.O. in course of investigation were required to be examined carefully before taking such drastic action of freezing of both the bank accounts of a running concern.

Learned Senior Counsel has made statements that this petitioner no. 1 Company has only these two bank accounts and all business receipts and expenses are credited and debited respectively in these accounts only. It is his submission that Section 102 Cr.P.C., though confers power on a Police Officer to seize any movable property where such property may be alleged or suspected to have been stolen or which may be found under circumstances which creates suspicion of commission of any offence, conferment of power on police officer is one thing, exercise and manner of exercise thereof would be quite different and distinct thing. It is his submission that it is not a case of stolen property. In the nature of this case, according to learned Senior Counsel for the petitioners, there must be some materials which provide such circumstances under which it may be suspected that there is a commission of any offence.

Learned Senior Counsel submits that any decision particularly when such decision has a drastic consequence on a business entity and may prove fatal for the existence of the said business entity would be required to be taken with all circumspection and care otherwise by the time the investigation will be completed, the business entity would become insolvent.

Learned Senior Counsel has submitted that in the present case even before collection of any significant material showing deposits of proceeds of crime on the part of the petitioner no. 1 Company, the Investigating Officer wrote to the banks not to allow petitioner no. 2 Company to operate the account. Learned Senior Counsel has relied upon the judgment of Hon'ble Supreme Court in the case of **Sri Jayendra Saraswathy Swamigal (II) Vs. State of Tamil Nadu** reported in **(2005) 8 SCC 77 = AIR 2005 SC 716** wherein it has been observed that an organization cannot be paralysed or closed down by issuing a direction u/s 102 of Cr.P.C. only for the reason that the head of the Mutt and a few office bearers are alleged to be involved in some offence. On the same analogy, it is submitted that in the present case the whole business of the company cannot be allowed to be paralysed.

It is his submission that relevance and reasons are twin principles of our constitution and any action particularly this kind of drastic action which may have an ultimate effect of causing death of the company must be in tune with the principles of fair play and action.

Learned Senior Counsel has also relied upon a judgment of the Hon'ble Madras High Court in the case of **B. Ranganathan Vs. State reported in 2003 Cr.LJ 2779 (Mad)** to submit that while looking for seizure of bank account, the police should do two things; he should inform the concerned Magistrate forthwith regarding the prohibitory order and 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.

It is submitted that in this case the I.O. neither gave any notice under Section 41(1) Cr.P.C. to the petitioners nor the seizure was reported to the jurisdictional Magistrate.

It is submitted that in the given facts and circumstances of the case, the direction to freeze the accounts of the petitioner no. 1 is wholly illegal, arbitrary and malafide exercise of power. Learned Senior Counsel has submitted that the malice in law is also one of the kinds of malafide.

The informant (respondent no. 8) has appeared in this case, he has filed a counter affidavit and has opposed the writ petition firstly on the ground that the petitioner has an appropriate remedy under Section 451 of Cr.P.C. before the learned Magistrate Court as the learned Magistrate would be competent to pass such order as may be required after recording such facts as he may think necessary.

The further submission on behalf of the respondent no. 8 is that police has exercised his power under Section 102 Cr.P.C. which uses the term 'alleged' or 'suspected'. In the present case since the allegation is that while committing fraud/forgery and cheating the accused persons have amassed wealth and the funds that should have been received by the informant's company are being deposited in the bank account of the Company by exercising criminal acts, the police has rightly freezed the bank account of the company in which the proceeds of crime is transferred.

It is then submitted that the petitioners has placed heavy reliance on the Memorandum of Understanding (MOU) alleged to have been executed between the informant's Company and the petitioners' Company but the said MOU has been signed by one Sachin Mathur who had no authority to sign the MOU and this document has been manufactured only to create a defence. The said Sachin Mathur is an accused in Patliputra P.S. Case No. 255/2020.

Learned counsel representing the respondent no. 8

has submitted that in the given facts and circumstances of the case this court need not interfere with the directions given by the Investigating Officer/Supervising Authority to the banks.

Since this case was listed by order of Hon'ble the Chief Justice after E-Mentioning during pandemic period when the proceeding of the courts are being held through video application, noticing the ongoing pandemic situation in which the civil courts are not working with it's full strength and the statutory alternative remedy at this stage was not equally efficacious and in absence of there being any equally efficacious remedy available to the petitioners, the petitioners had approached this Court, this Court entertained the writ application and considering the submissions of the parties, earlier passed order dated 21.10.2020 and 01.12.2020, allowing the petitioners to do transactions from these accounts for purpose of paying salaries to the employees of petitioner no. 1 Company and also for paying the statutory dues such as GST, TDS and to other creditors in terms of the chart enclosed with the supplementary affidavit as Annexure '15' series. The said direction was however subject to the following conditions:-

> (i) That the petitioners have undertaken before this Court that in future if so ordered by this Court they would indemnify the respondent no. 8 to the extent of amount which will be withdrawn by

> virtue of this order.
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> (ii) The petitioners shall ensure that all transactions of the petitioners' company i.e. the incomes/receipts coming from any source must be deposited and remained in deposit in these two accounts only and during this period the petitioners shall not open any new account and no money shall be diverted to any other account."

In order to satisfy itself with the kind of materials collected by the Investigating Officer in course of investigation with sole purpose to examine the manner in which power has been exercised by Police Officer under Section 102 Cr.P.C., this Court requested Mr. Prabhu Narayan Sharma, learned A.C. to learned A.G. to make available the case diary.

The case diary has been made available to this Court in a sealed envelop. Together with the case diary this Court finds copy of the shareholders agreement between Ashmeet Singh on the one hand and MSD Telematics Pvt. Ltd. on the other hand entered into on 17th May 2017, whereunder Ashmeet Singh has subscribed 50% of the issued and paid-up share capital and there has been some more understandings between the parties. This MOU has been shown signed by Ashmeet Singh on the one hand and Siddharth Kasana as also Mrs. Rekha Kasana on the other hand. There is another document attached with the case diary which is Memorandum of Understanding between MSD Telematics Pvt. Ltd. and IMZ Corporate Pvt. Ltd. entered into on January 1st, 2020 which has been made effective from the same date. Under this MOU parties have agreed to protect their mutual business interest and they have also enlisted the name of the clients which will go to MSD Telematics Pvt. Ltd. and the name of the clients which will go to the petitioner no. 1 Company namely IMZ Corporate Pvt. Ltd. List of IMZ's employees and list of MSD's employees are also enclosed with the MOUs. These documents have been brought on record by the petitioners also by way of enclosures to the writ application and existence of those documents have not been controverted by respondent no. 8, but this Court has referred these documents from the enclosures attached with the case diary only to appreciate that these documents are lying with the Investigating Officer of the case and have been collected in course of investigation. The Investigating Officer/Supervising Authority have, however, not taken any view on those documents and contents thereof have not been analysed by the Investigating Officer/Supervising Authority.

This Court finds from the materials present in the case diary that till this stage of investigation no material has been collected showing prima-facie that IMZ Corporate Pvt.

Ltd. (petitioner no. 1) has received any money from the clients allocated to MSD Telematics Pvt. Ltd. in terms of Annexures to the MOU.

Let it be recorded that at this stage this court is not examining any issue as to legality, validity or the binding nature of the MOUs which are on the record.

The Investigation is still going on but the Investigating Officer has acted towards freezing of the accounts of petitioner no. 1 on the direction of the Supervising Authority after noting that the petitioner no. 1 Company has taken GPS connections of about 7300 Sim Cards by misrepresentation and using fabricated documents in the name of MSD Technologies.

This Court would not record any observation with regard to the materials present in the case diary save and except to say that after going through the case diary and the enclosures thereto this court is of the considered opinion that the Supervising Authority/Investigating Officer of this case has acted in hot haste in issuing direction to the banks to freeze both the accounts of petitioner no. 1 Company. No doubt Section 102 Cr.P.C. confers power upon the Police Officer to seize any property and a bank account may also be seized/freezed but the power conferred upon the police officer is a drastic power which must be exercised in aid of investigation and not to punish the accused even before collection of sufficient materials raising a reasonable suspicion that the amount deposited in the bank accounts are proceeds of crime.

A careful reading of Section 102 Cr.P.C. would show that sub-section (1) of Section 102 Cr.P.C. talks of power of a police officer to seize any property which may be alleged or suspected to have been stolen, in the present case, the allegations is not of stealing any property by petitioner no.1, the allegation is that Sri Ashmeet Singh who has floated the petitioner no. 1 Company along with his reliable employees entered into a conspiracy, used the letter heads of MSD Telematics Pvt. Ltd. represented himself as Director of MSD Telematics Pvt. Ltd even after 01.12.2020. Even on this score, this Court finds from the F.I.R. (Annexure '14') and the MOU dated 31.12.2019 (Annexure '7') that Ashmeet Singh resigned on 31.12.2019 and the said resignation came into effect on January 1st, 2020.

In MOU (Annexure '7') he has been referred as founder of M.S.D. Telematics having 50% shareholding therein. Section 102 Cr.P.C. further reads "*or which may be found under circumstances which creates suspicion of the commission of any offence*". From the materials placed before this Court, till now the materials are not showing that the money deposited in the account of petitioner no. 1 are proceeds of crime. This Court is giving this observation only for the purpose of this case and it would not be taken as an opinion of this Court on the merit of the case.

As stated above, the investigation is still going on, and, at this stage, the court is considering the present application only to satisfy itself as to whether the freezing of accounts is preceded by a reasonable suspicion on the part of the police officer based on the available materials.

Since this Court finds no such material, the court would declare that the direction issued by the Investigating Officer to the respondent no. 6 & 7 banks are not legally tenable and must be declared an arbitrary exercise of power on the part of the Police Officer. Since, the I.O. has acted on the direction of the Supervising Authority plea of malafide against him would not sustain.

This Court has already recorded the conditions which were imposed upon the petitioner while passing the interim order dated 21.10.2020 and 01.12.2020. Learned Senior Counsel for the petitioners has reiterated that the petitioners would not divert the receipts of the Company to any other account and the petitioners would abide by any order which may be passed by a competent Court/Tribunal in an appropriate proceeding.

This Court directs respondent no. 6 & 7 to allow the petitioner no. 1 to operate it's bank account in it's usual course of business.

For the reasons stated hereinabove, this writ application is allowed. It would however be open for the Investigating Officer to look into the entire materials which may be further collected by him in course of investigation and after being satisfied with such materials necessitating an action under Section 102 Cr.P.C., it would be open for him to take appropriate action in accordance with law.

This Court makes it clear that no part of the discussions/observations made in this order shall be construed as any opinion of this Court as regards the allegations made by either parties and shall not influence the ongoing investigation.

This Writ Application stands disposed off accordingly.

Let the case diary be kept in a closed envelop and the same will be returned to Mr. Prabhu Narayan Sharma, learned A.C. to learned A.G.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	21.12.2020
Uploading Date	25.12.2020
Transmission Date	25.12.2020

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.