

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1300 of 2018

- Smt. Anshu Pathak, W/o Shri Rohit Mishra, Aged About 26 Years, D/o Shri Shubhnarayan Pathak, R/o Hiranandani, State Thane Police Station Thane Mumbai, Maharashtra, District : Mumbai, Maharashtra.

---- Applicant

Versus

- State of Chhattisgarh Through District-Magistrate, Bilaspur, District-Bilaspur, Chhattisgarh.

---- Respondent

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CRR No. 85 of 2019

- Vivek Pathak, S/o Shubhnarayan Pathak, Aged About 33 Years, R/o Dev Nandan Nagar Phase-I, Sarkanda Police-Station-Sarkanda, Seepat Road Bilaspur, District-Bilaspur, Chhattisgarh.

---- Applicant

Versus

- State of Chhattisgarh Through The Anti Corruption Bureau, (A. C. B.), Raipur, District-Raipur, Chhattisgarh.

---- Respondent

For Applicants	:Mr. Tarendra Kumar Jha with Mr. Amit Kumar, Advocates.
For Respondent/State	:Mr. Devendra Pratap Singh, Dy. Advocate General.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order on board

29/01/2020

Heard.

1. Since the above revision petitions arise out of the same criminal proceeding pending before the Court below, they are being decided by this common order.
2. Both the above criminal revisions have been filed by the applicants praying for defreezing of account held in their respective name which have been freezed by the respondent in the course of criminal investigation.
3. It is submitted by the counsel for applicant in Criminal Revision No.1300/2018 that though present applicant is not an accused in Special Criminal Case No.9/2017, her bank accounts bearing Nos.30701400023588 & 307010400025124 maintained at Axis Bank, Korba, having fixed deposits of Rs.80,000/- and Rs.4,00,000/- respectively, have been freezed by the Investigating Officer only on the ground that this applicant is daughter of accused Subhnarayan Pathak. This applicant is qualified Engineer and in job for the last so many years. She has her own sources of income, therefore, she can account for the deposit in her account. By the impugned order dated 12.11.2018, the learned Court below has erroneously rejected application filed by the applicant for defreezing accounts. Therefore, it is prayed that this revision be allowed and relief, as prayed for, be granted to applicant.
4. Learned counsel for applicant in CRR No.85/2019 submits that this applicant is also not an accused in Special Criminal Case No.9/2017 and merely because he is son of accused Shubh Narayan Pathak, his bank accounts bearing No. 9140400097212027 & 914040011208367, maintained in Axis Bank, Korba and having fixed deposit of Rs.4,00,000/- each, have been freezed by the Investigating Officer. The duration of fixed deposit has been completed. The applicant, who is married man, is living separately from his father and is having his

own business. Therefore, the investigation Officer in this case has no authority to make seizure of fixed deposits standing in the name of the applicant. It has been held in *M/s Malnad Construction Company, Shimoga & others v. State of Karnataka*, reported in 1994 Cr. L. J. 645, in which, that a police officer is not conferred with any power under Section 102 of CrPC to issue prohibitory order or direction to the banker of accused prohibiting operation of his account as the word 'seize' used in Section 102 of CrPC means taking actual physical possession of seized property in pursuance of a legal process. Therefore, the seizure made in this case is illegal. The learned trial Court has erroneously rejected the application filed by the applicant by the impugned order dated 7.1.2019, hence, it is prayed that this petition be allowed and the impugned order be set aside.

5. Learned State counsel opposes the submissions in both the cases and submits that as per evidence available in the case diary, which was collected in the course of investigation, there is direct proof that accused Shubhnarayan Pathak has made investments in the accounts mentioned herein above and seizure of these accounts documents have been made from the premises of the accused. Further, no such document was presented at the time of investigation that these applicants had their own sources of income or savings or collections. It is submitted that the judgment on which reliance is sought to be placed by the applicant i.e. *M/s Malnad Construction (supra)*, is no longer a good law and the same has been overruled by the Supreme Court in the case of *State of Maharashtra v. Tapas D. Neogy*, reported in (1997) 7 SCC 685. Referring to the judgment of *M/s Malnad Construction Company* and other judgments by various High Court giving divergent view, it was held that the bank account of the accused or any of his relation 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 it establishes their direct links with the commission of the offence. The learned trial Court has not committed any error in passing the impugned orders and therefore these revisions are liable to be dismissed.
6. I have heard learned counsel for the parties and perused the

documents on record.

7. There is no denial that applicant namely Anshu Pathak is daughter, whereas applicant Vivek Pathak is son of accused Shubhnarayan Pathak, therefore, they are direct relatives of the person, who is accused for amassing disproportionate assets which was found to be excessive in comparison to his known source of income. At the time of investigation, no such explanation has been offered, as is offered at this stage by the applicant side, therefore, whatever grounds that are being raised in this revision petitions are the grounds which need to be establish in the course of trial. At this stage, it cannot be *prima facie* held that the seizure made and the order issued by the Investigating Officer directing the banker to freeze the accounts of applicants, is incorrect. The law has been settled now by the Supreme Court in Tapas D. Neogy's case (supra) that the Investigating Officer has the power under Section 102 of CrPC to take in his possession the bank account of the accused as well as of his relatives, if there appears to be direct links with commission of offence. The claim of the prosecution in this case is still in force that the deposits in the account of these applicants have direct links with acts and deeds of accused Shubhnarayan Pathak. Therefore, it cannot be said that seizure of the bank accounts standing in the name of these applicants is illegal. The property in seizure may be subject to confiscation at the stage of final judgment, therefore, I am of this view that both these revision petitions are without any merit which are liable to be dismissed and are dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)
Judge