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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPCR No. 582 of 2020

Order reserved on 10/12/2020

Order delivered on 14/12/2020

Ram Naresh Tiwari S/o Late Shri Sukhram Tandon, Aged 54 years, R/o Quarter No. 20/E, Street No. 32 Sector 10, Bhilai, District Durg, Chhattisgarh.

---Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Home, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh.
2. Superintendent of Police, Anti Corruption and Economical Offence Bureau, Near Rajbhawan Civil Line, Raipur, Chhattisgarh.
3. Inspector cum Investigating Officer, Anti Corruption Bureau Near Rajbhawan Civil Line, Chhattisgarh.

--- Respondents

For Petitioner	:-	Mr. T.K. Tiwari, Advocate
For State	:-	Mr. Sunil Otwani, Addl. A.G. and Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Petitioner herein is working on the post of Patwari. In the meanwhile, on a complaint made

against him, FIR No. 08/2020 for offence punishable under Sections 13(1)(b) and 13(2) of Prevention of Corruption Act, 1988 (in short 'the Act of 1988') has been registered against him on 24/02/2020. Thereafter, the Investigating Officer respondent No. 3 sought information from various Banks with regard to the petitioner's and his family members' bank accounts and vide letter/order dated 03/12/2020 (Annexure R/1) directed that the petitioner and his family members be not allowed to make any transaction with the amount deposited prior to 24/02/2020. The petitioner is aggrieved against the said direction and has filed this writ petition seeking mandamus directing the respondents to allow him and his son and daughter to operate their bank accounts as they are in need of money and in absence thereof, they are unable to continue their day-to-day activities. Even otherwise, Sections 102(2) and 102(3) of CrPC and provisions of Sections 17 and 18 of the Act of 1988 have not been complied with, therefore, appropriate direction be issued for defreezing their accounts.

2. Return and additional return have been filed by the respondents/State stating *inter alia* that since offences punishable under Sections 13(1)(b) and 13(2) of the Act of 1988 have been registered against the petitioner, therefore, petitioner's and his son's and daughter's bank accounts have been directed to be freezed and information has been given to the Special Judge (Prevention of Corruption Act), Durg in compliance of Section 102(3) of CrPC on 03/12/2020 (Annexure R/1), as such, there is sufficient compliance of the provisions contained under Sections 102(3) of CrPC and Sections 17 and 18 of the Act of 1988.

3. Mr. T.K. Tiwari, learned counsel appearing for the petitioner, would submit that Section 102(3) of CrPC was not complied with till the order dated 04/12/2020 by which this Court directed the State counsel to seek information that on what date the Special Judge (PC Act), Durg has been informed in compliance of 102(3) of CrPC. He would further submit that it is the hard earned money of the petitioner and his son and daughter which has been deposited in their accounts which could not have been seized

without making an inquiry under Section 102(1) of CrPC. He would also submit that seizure of the bank accounts would clearly violate the human right of the petitioner and his son and daughter as they are rendered helpless in absence of the money which they have deposited in their accounts, that too, during these hard times of COVID-19 pandemic situation and he would rely upon the decision rendered by the Supreme Court in the matter of **Teesta Atul Setalvad v. State of Gujarat**[1] to buttress his submission.

4. Mr. Sunil Otwani, learned Additional Advocate General and Mr. Ravi Bhagat, learned Deputy Government Advocate, appearing for respondents No. 1 to 3/State would submit that the petitioner has the remedy of making an application for defreezing their bank accounts under Section 457 of the CrPC. Even otherwise, the provisions contained under Section 102(3) of CrPC, though belatedly, but have been complied with and the investigation by respondent No. 3 has been conducted strictly in accordance with law.

1 2018 (2) SCC 372

5. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the record with utmost circumspection.

6. In order to decide the dispute between the parties, it would be appropriate to notice the provisions contained in Section 102 of the CrPC, which states 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.
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> (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, or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, 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:
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> 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 section 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale."

7. A careful perusal of the provisions contained in sub-section (1) of Section 102 of the CrPC would show that the police officer in course of investigation can seize any property under Section 102 of the CrPC, which is the property alleged or suspected to have been stolen or is the object of crime under the investigation or has direct link with commission of offence for which the police officer is investigating into. Similarly, 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, or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, 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.
8. Now, the question for consideration would be whether the bank account is the property within the meaning of Section 102 (1) of the CrPC.

9. This question is no longer res-integra and stood authoritatively adjudicated by their Lordships of the Supreme Court in the matter of **State of Maharashtra v. Tapas D. Neogy**[2] in which their Lordships resolving the dispute have held that the bank account of the accused or any of his relation constitutes 'property' within the meaning of Section 102 of the Criminal Procedure Code and police officer in course of investigation can seize the operation of said account if such assets have direct link with the commission of offence for which the police officer is investigating into and observed as under:-

> "6. A plain reading of sub-section (1) of Section 102 indicates that the police officer has the power to seize any property which may be found under circumstances creating suspicion of the commission of any offence. The legislature having used the expression "any property" and "any offence" have made the applicability of the provisions wide enough to cover offences created under any Act. But the two preconditions for applicability of Section 102(1) are that it must be "property" and secondly, in respect of the said property there must have been suspicion of commission of any offence. In this view of the matter the two further questions that arise for consideration are whether the bank account of an accused or of his relation can be said to be "property" within the meaning of sub-section (1) of Section 102 of the CrPC and secondly, whether circumstances exist, creating suspicion of commission of any offence in relation to the same."

2 (1999) 7 SCC 685

> "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....."

10. Similarly, in the matter of **M.T. Enrica Lexie and Anr v. Doramma and Ors.**[3] Their Lordships of the Supreme Court have clearly held that the property not suspected of commission of the offence which is being investigated into by the police officer cannot be seized. Under Section 102 of the CrPC,

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3 2012 CRI.L.J. 2845

the police officer can seize such property, which is covered by Section 102(1) of the CrPC and no other.

11. The principle of law laid down by the Supreme Court in **Tapas D. Neogy** (supra) has been followed with approval in the matter of **Teesta Atul Setalvad** (supra) and it has been held that any property includes any bank account creating suspicion about commission of an offence. It was further held that investigating officer in course of investigation has power to seize or prohibit operation of bank account of any person which may be found under circumstances creating suspicion of commission of any offence. Their Lordships pertinently held that Section 102 of the CrPC does not contemplate the issuance of any such notice, and for the purpose of investigation, no notice to the suspect can be expected under the law. It was observed as under:-

> "49. The arguments impugning the freezing of the accounts under Section 102 CrPC without notice to the petitioners are to be noted for rejection for the simple reason that the Section 102 does not contemplate issuance of any such notice, and for the purpose of investigation, no notice to the suspect can be expected under the law. Section 102 CrPC is an important step towards investigation and in view of settled legal position that accused cannot have any say in investigation, notice to the suspect is out of question. The intention of the investigating agency is

> not required to be revealed to the suspect at that crucial stage, else, a message of alert would be received by the suspect creating a huge room for manipulation and or destruction of evidence."

12. From a conspectus of the aforesaid judgments rendered by their Lordships of the Supreme Court, it is quite vivid that for freezing the account under Section 102 of the CrPC, there is no need of prior notice to the account holder or to the accused or to the suspect for the purpose of investigation and the provisions contained in Section 102 (1), (2) and (3) of the CrPC have to be complied with for freezing the account and it can be freezed only when it is the property alleged to be stolen or suspected to have been stolen or would be object of crime under the investigation or has direct link with commission of offence for which the police officer is investigating into as it has been held by their Lordships of the Supreme Court in **Tapas D. Neogy** (supra) that the property not suspected for commission of offence which is being investigated by the police officer cannot be seized and similarly the provisions contained in Section 102 of the CrPC have also to be complied with forthwith by informing to the concerned Magistrate without any avoidable delay.

13. Reverting to the facts of the present case in light of the aforesaid legal position, it is quite vivid that a bank account is a property within the meaning of Section 102(1) of CrPC.

14. Mr. T.K. Tiwari, learned counsel for the petitioner, would now submit that since freezing of the bank accounts of petitioner as well as his son and daughter was not informed to the jurisdictional Special Court under Section 102(3) of the CrPC and the Special Judge (PC Act), Durg was informed only when this Court asked for information from the State after filing of this writ petition on 03/12/2020, therefore, the Special Judge would not have the jurisdiction to direct about the defreezing of the bank accounts in exercise of power conferred under Section 457 of CrPC.

15. The aforesaid argument deserves to be rejected. This Court in **Sanju Nishad v. State of Chhattisgarh**[4] has held as under :-

> "9. Section 102 (3) of the CrPC mandates every police officer to forthwith report the seizure to the Magistrate having jurisdiction. Therefore, such a provision is obligatory and imperative. Non-reporting the seizure to the Magistrate having jurisdiction cannot take away the authority of the concerned Magistrate to deal with the property in terms of Section 457(2)of the CrPC, as the provision of the Code casts an obligation to report to the Magistrate by the

4 WPCR No. 358/2016 decided on 09/05/2017

police, but if the concerned police inadvertently or willfully defaults to report,such default would not oust the initial jurisdiction of the Magistrate in respect of such seized property.

10. The Orissa High Court in the matter of **M.S. Jaggi v. Subaschandra Mohapatra**[5] has clearly held that the seizure of the property whether reported by the police or any other person, the Magistrate will have the jurisdiction under Section 457 of the CrPC, and observed as under in para 7: -

> "7. From the aforesaid discussion, the following conclusions arise :-
>
> (1) Whenever the seizure of the property by the police is reported to a Magistrate, his jurisdiction to act further under Section 457 accrues. Such report may be made either by a police officer or by any other person interested.
>
> ….......
>
> ….......""

As such, for defreezing the bank account, application for defreezing the bank account under Section 457 of CrPC is maintainable.

16. At this stage, Mr. T.K. Tiwari, learned counsel for the petitioner, would submit that since the bank accounts have been freezed but they have not been seized, therefore, the Magistrate may not have the jurisdiction to deal with it.

17. The Supreme Court, as noticed herein-above in the matter of **Tapas D. Neogy** (supra), has clearly held that the bank account of the accused or any of his relation constitutes property within the meaning

5 1977 Cri.L.J. 1902

of Section 102 of CrPC and the police officer in the course of investigation can seize the operation of the said account if such asset has direct link with the commission of offence for which the police officer is investigating into. As such, the investigating officer is entitled to seize the operation of the bank accounts in accordance with Section 102(1) of CrPC as held by the Supreme Court in **Tapas D. Neogy** (supra).

18. This Court is of the considered opinion that instead of considering this submission on merits it would be appropriate to direct the petitioner to avail the remedy available to him under Section 451/457 of CrPC and file an application for defreezing his bank accounts before the Special Judge (PC Act), Durg. The petitioner is at liberty to raise all his contentions in support of the said application as raised herein-above. All the contentions and submissions are left and kept open to be raised by the petitioner before the Special Judge (PC Act) in accordance with law.

19. Accordingly, this writ petition is disposed of with the aforesaid direction. Needless to say if the application is filed under Section 451/457 of CrPC, learned Special Judge (PC Act) would decide the said application expeditiously, keeping in

view that all the accounts of the petitioner as well as his son and daughter have been freezed, preferably within a period of ten days from the date of filing of the application by the petitioner.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet