THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos.23636, 23688 & 23777 OF 2020

Date:24.12.2020

W.P.No.23636 of 2020:

Between:

Shumsunnisa, W/o. M.A. Bari,
Age 64 years, Occ: Household,
R/o.4-10-368/1, Abbasia Colony,
Nalgonda Town and District .. Petitioner

And

The State of Telangana, rep., by its
Principal Secretary, Home Department,
Secretariat Buildings, Saifabad,
Hyderabad and others .. Respondents

The Court made the following:

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COMMON ORDER:

Heard learned counsel for the petitioners and learned Assistant Government Pleader for Home.

2. These three writ petitions are filed by Shumsunnisa, Athiya Nazneen and M.A. Bari, respectively. In these three writ petitions, petitioners are challenging the freezing of their bank accounts by the respondent – police.

3. On 06.06.2020, M.A. Khaleel lodged a complaint with the Devarakonda Police Station. According to the complainant, M.M.Quazafi is the President of Khader Memorial Educational Society and in the said capacity, he cheated the society by diverting large quantity of money belonging to the society to personal accounts opened in his name, in the name of his father, mother and sister. In the complaint, the complainant has listed eight bank accounts to which the amounts were transferred. Bank account mentioned at serial No.6 belongs to mother, and the bank account mentioned at serial No.8 belongs to sister of the President of the Society. Based on the said complaint, Crime No. 106 of 2020 was registered in Devarakonda Police Station and Police are investigating into the crime.

4. It is not in dispute that as the per the crime reported against the petitioner in W.P.No.23777 of 2020 and his son, who are arrayed as accused Nos.1 and 2, the money belonging to the society was diverted to the bank accounts, whose details are

mentioned in the complaint, which include the accounts claimed by the petitioners in these three writ petitions.

5. Section 102 of the Code of Criminal Procedure, 1973, vests power in the Police Officer investigating into the crime to seize the 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*".

6. Bank account is also a property and therefore the provisions of Section 102 Cr.P.C. are attracted to freeze the bank accounts in the process of investigating into the crime. Having regard to nature of crime reported in Crime No. 106 of 2020, Police suspect that these bank accounts are involved in the crime.

7. The scope of power of Police Officer to freeze the bank accounts and remedy available to aggrieved person was considered by this Court in W.P.Nos.13363 and 10565 of 2020, dated 03.12.2020. This Court upheld the power of the police to freeze the bank accounts in the process of investigating into the crime and relegated the petitioners to avail remedies under the Code of Criminal Procedure.

8. This Court held:

> "17. To appreciate the respective submissions, it is necessary to understand the scope of Section 102 Cr.P.C. It reads as under:
>
> **"S.102. Power of police officer to seize certain property.**
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> (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."

18. It is beyond pale of doubt that the bank account is also the property and falls within the ambit of Section 102 of Cr.P.C. From the plain reading of this section, it is apparent that property can be seized by the Police Officer if it is alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of offence. It is part of investigation into the crime. The Investigating Officer can seize the property, which is suspected to have been involved in crime, at any stage of the investigation.

19. Once it is seized, it is the duty of the Investigating Officer to preserve the said property so that evidence is not tampered/ destroyed frustrating the investigation and trial. In **Navada Properties Private Limited Vs State of Maharastra**[1], the Hon'ble Supreme Court was considering the scope of Section 102 of Criminal Procedure Code, particularly, what is meant by 'any property'. To the extent relevant paragraph 20 reads as under:

> "20......... Equally important, for the purpose of interpretation is the scope and object of Section 102 of the Code, which is to help and assist investigation and to enable the police officer to collect and collate evidence to be produced to prove the charge complained of and set up in the charge sheet. The Section is a part of the provisions concerning investigation undertaken by the police officer. After the charge sheet is filed, the prosecution leads and produces evidence to secure conviction. Section 102 is not, *per se*, an enabling provision by which the police officer acts to seize the property to do justice and to hand over the property to a person whom the police officer feels is the rightful and true owner. This is clear from the objective behind Section 102, use of the words in the Section and the scope and ambit of the power conferred on the Criminal Court vide Sections 451 to 459 of the Code. **The expression 'circumstances which create suspicion of the commission of any offence' in Section 102 does not refer to a firm opinion or an adjudication/finding by a police officer to ascertain whether or not 'any property' is required to be seized. The word 'suspicion' is a weaker and a broader expression than 'reasonable belief' or 'satisfaction'. The police officer is an investigator and not an adjudicator or a decision maker...**............"
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> (emphasis supplied)

[1] 2019 SCC Online SC 1247

25. In both cases, Police suspect the diversion of money of first petitioner firm in W.P.No.13363 of 2020 and the money of the society in W.P.No.10565 of 2020 to the other accounts of the petitioners. The investigation is not completed. It is not ascertained whether there was diversion of money, if so, how much. Thus, suspected properties have to be protected from destruction, wiping out evidence and swindling away the money, frustrating the investigation. Thus, at this stage, defreezing the bank accounts might cause hindrance to investigation. In exercise of equitable and discretionary jurisdiction, Court cannot invite a situation that will impinge upon unearthing/preventing crime and frustrate the investigation. When Court is confronted with the claim against defreezing the bank account on the ground of delay in reporting to the Magistrate about freezing account vis-à-vis the suspicion of diversion of money directly attributable to crimes, the Court has to lien in favour of allowing the Police Officer to continue his investigation and not to interfere with his decision to freeze the bank accounts *per se.*

26. Further no, right of petitioners' is infringed, except, they were denied operating their bank accounts for a limited period. This is a necessary concomitant when the concerned bank accounts are suspected to have been involved in pending crimes. Of course, caveat is decisions to freeze bank accounts must be *bona fide*, not intending to harass the accused, must be in compliance of Section 102 of Cr.P.C. But these are matters for consideration by the concerned Magistrate as and when an application is moved before him to defreeze the bank accounts.

31. At this stage, it is apt to note the observations of Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal** - [1992 Supp (1) SCC 335]. The Hon'ble Supreme Court has pointed out that: (SCC p.359, para 40):

> "... the field of investigation of any cognizable offence is exclusively within the domain of the investigating agencies over which the courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions relating to investigation...."

37. Further, whether Police Officer applied his mind and satisfied on fulfilment of ingredients of seizure are matters for consideration by trial Court and it is permissible for the accused to raise such pleas, before the learned Magistrate but not in proceedings under Article 226 of the Constitution of India.

38. Section 451 of Cr.P.C., enables the trial Court to grant interim custody pending trial. Similarly, Section 457 also vests

> power in the Magistrate to deal with the property as deemed proper and necessary. An accused whose property is seized by police officer can file application to grant interim custody. This is an effective and efficacious remedy.
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> 40. In these two cases, the Police have already intimated seizing of bank account to the concerned Magistrate. As rightly pointed out by the learned Assistant Government Pleader, Sections 451 and 457 Cr.P.C., vest power in the concerned Magistrate to grant interim custody of the crime property and it is always open to an aggrieved person to file appropriate application for granting interim custody. The subject bank accounts are the crime properties in the respective crimes and the seizure is already intimated to the concerned Magistrates. Therefore, it is deemed that the property is in the custody of the said Courts. In exercise of power of judicial review, writ Court cannot trench into the jurisdiction of the concerned Magistrate to deal with the crime property and order for release of crime property on the grounds as urged in these writ petitions. [**Mohd. Mazbool Ahmed @ Mateen and another vs. The Deputy Commissioner of Police, Special Investigation Team, Hyderabad and others – 1996 (3) ALT 215 (D.B.)**]. As held by the Division Bench in the above case, it is always open to the petitioners to file appropriate application before the criminal Court regarding handling of bank accounts."

9. The view expressed in the said decision equally applies in these writ petitions and these Writ Petitions are dismissed, granting liberty to the petitioners to avail appropriate remedies as available in law.

10. At this stage, learned counsel for the petitioners submits that the account held by the petitioner in W.P.No.23777 of 2020 is a pension account and because of freezing of the pension account, lot of hardship is caused to him. The Court is not expressing any opinion on this aspect. However, liberty is granted to the petitioner in W.P.No.23777 of 2020 to file appropriate application before the jurisdictional Magistrate requesting him to defreeze his bank account bearing A/c.No.62270208351, State Bank of India, DVK

Road Branch, Nalonga District, or at least permit him to withdraw the pension amount credited to the said account. Having regard to the claim of this petitioner that he is unable to withdraw his pension amount as it is freezed, if such an application is filed by the petitioner, learned Magistrate may consider the application and pass appropriate orders as expeditiously as possible preferably within a period of six weeks from the date of receipt of filing of such application by this petitioner.

Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date:24.12.2020
KH/KKM/tvk

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