

**CWP No. 14959 of 2021 and
CWP No. 17187 of 2021**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 14959 of 2021

Date of Decision: September 22, 2021

S. Xavier Susairathinam and others

.... Petitioner(s)

Versus

State of Haryana and others

..... Respondent(s)

CWP No. 17187 of 2021

Jhona Shridhar Kadam and another

.... Petitioner(s)

Versus

State of Haryana and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rajnikant Upadhyay, Advocate
for the petitioners.

Mr. Ashish Yadav, Additional A.G., Haryana
for respondents no.1 to 3.

Mr. Narender Hooda, Sr. Advocate with
Mr. Karanvir Hooda, Advocate,
Mr. Rishab Raj Jain, Advocate and
Mr. Naveen Sharma, Advocate
for respondent no.9 (in CWP-14959-2021) and
for respondent no.7 (in CWP-17187-2021).

Mr. Shivoy Dhir, Advocate
for respondent no.5-Bank (in CWP-14959-2021).

Mr. D.K. Singal, Advocate
for respondent no.6-Bank (in CWP-14959-2021).

LISA GILL, J.(oral)

This order shall dispose of CWP-14959-2021 and CWP-17187-2021.

Petitioners in both the writ petitions are aggrieved of the action of respondents in as much as their bank accounts have been freeze pursuant to communication received by the respondent-bank from the Cyber Cell, Gurugram.

Brief facts necessary for adjudication of the matter are that FIR No. 27 dated 08.05.2021 was registered on a complaint submitted by Vivek Rathee to the effect that one Shivam Singh has siphoned off Rs.4,00,00,000/- from the bank account of the company CAR Pavilion Pvt. Ltd. through illegal transfer and embezzlement of funds. Possible collusion with employees of the complainant company was alleged. Amount in question was first and foremost transferred into account of M/s. Bytie Enterprises, which is the sole proprietorship concern of Shivam Singh, who is alleged to have either hacked the bank account of complainant company or siphoned the amount with the help of its employees. Thereafter, a sum of Rs.10,00,000/- from the account of M/s. Bytie Enterprises was transferred in the account of M/s. FCP Traders of which petitioner no.1 (in CWP-14959-2021) is the proprietor. It is the case of petitioner no.1 that this is the amount which was owed to M/s. FCP Traders by respondent no.4. The amount was further transferred by petitioner no.1 to the accounts of petitioners no.2 and 3 (in CWP-14959-2021) and petitioners (in CWP-17187-2021).

It is brought to my notice that order of freezing of the account

has been passed by the respondent-authorities in terms of Section 102 Cr.P.C. This action has been duly reported to the Magistrate of competent jurisdiction. The Magistrate is seized of the matter and certain directions have been passed on 21.09.2021 itself in respect to the accounts of some of the persons/firms involved.

Mr. Hooda, learned senior counsel vehemently argues that the matter should be looked into by the Magistrate at this stage as the matter is still under investigation. Reliance has been placed upon the judgment of Hon'ble Supreme Court in *Teesta Atul Setalvad Vs. State of Gujrat, (2018) 2 SCC 372*.

Heard learned counsel for the parties.

Registration of FIR as above is a matter of record. Investigation in the said matter is admittedly on-going. Action of freezing bank accounts of the petitioners has been taken in exercise of powers under Section 102 Cr.P.C.

Section 102 Cr.P.C. 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 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.

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.”

Hon'ble Supreme Court in ***Teesta Atul Setalvad's*** case (supra) specifically observed that “*Any property*” as defined in Section 102 Cr.P.C. includes any bank account in respect to which there is a suspicion, which the Investigating Officer may have regarding the commission of offence, the Investigating Officer in the course of investigation, it is observed has the power to seize or prohibit operation of the bank account of any person and the bank account need not be only of accused but can be any account creating suspicion about commission of offence.”

Hon'ble Supreme Court further held that the parties in question can explain their position to the Investigating Agency and after investigation is complete, matter can proceed further depending on the material gathered during investigation. The affected persons would be at liberty to bring before the concerned Court the entire position alongwith the request for defreezing of accounts and the Court would adjudicate on the matter and if need be impose conditions as may be warranted in the factual matrix of the case.

It is useful to refer to the provisions of Section 457 Cr.P.C., which deals with procedure to be followed by police upon seizure of property. Section 457 Cr.P.C. reads as under:-

“Section 457 in The Code Of Criminal Procedure, 1973

457. Procedure by police upon seizure of property.

(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.”

It is not denied that action of freezing of the account was duly reported to the concerned Magistrate.

High Court of Bombay/Mumbai in the case of ***Indrakumar Faredun Irani Vs. State of Maharashtra and others, 1989 Cri LJ 1439,***

while referring to a judgment of the Hon'ble Supreme Court in Ram Parkash Sharma Vs. State of Haryana, (1978) 2 SCC 491, observed that the Magistrate having jurisdiction is the proper authority at the first instance for passing order under Section 102 of the Criminal Procedure Code, 1973 regarding custody of the property seized by the police during investigation.

Keeping in view the facts and circumstances of the case, it is considered appropriate that the petitioners be relegated to their remedy to approach the concerned Magistrate for the relief in question.

Accordingly, both the writ petitions are dismissed with liberty to the petitioners in both the writ petitions to avail the remedy available to them for redressal of their grievance/s. There is no expression of opinion on the merits of the matter.

September 22, 2021

Sunil

**(Lisa Gill)
Judge**

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No