

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 245 of 2022,
CRLREV No. 244 of 2022,
CRLREV No. 246 of 2022,
CRLREV No. 247 of 2022 &
CRLREV No. 248 of 2022

Applications under Section 397 read with Section 399 of the Code of Criminal Procedure, 1973.

CRLREV No. 245 of 2022

AFR

Maa Kuanri Transport Petitioner

-Versus-

State of Odisha Opp. Party

CRLREV No. 244 of 2022

Chaturbhuja Development Committee Petitioner

-Versus-

State of Odisha Opp. Party

CRLREV No. 246 of 2022

Jagat Janani Services Pvt. Ltd. Petitioner

-Versus-

State of Odisha Opp. Party

CRLREV No. 247 of 2022

Sanatan Mahakud Petitioner

-Versus-

State of Odisha Opp. Party

CRLREV No. 248 of 2022

Jagatjanani Services Petitioner

-Versus-

State of Odisha Opp. Party

Advocate(s) appeared in these cases:-

For Petitioners : M/s. Yasobant Das, Sr. Advocate
With M/s. Rajiv Kumar Mahanta,
S.K. Dwibedi & S. Hota,
Advocates
(for all the cases)

For Opp. Party : Mr. D.K. Mishra,
Addl. Government Advocate for
the State

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
8th December, 2022

SASHIKANTA MISHRA, J.

The common order passed by learned S.D.J.M., Keonjhar on 29.04.2022 in CMC No. 19 of 2022, CMC No.20 of 2022, CMC No. 21 of 2022, CMC No. 22 of 2022 and CMC No. 23 of 2022 in rejecting the prayer of the petitioners to defreeze their bank accounts is under challenge in the present batch of revisions.

2. The facts and point of law being same in all these petitions, they were heard together and are being disposed of by this common judgment.

3. For convenience, the facts relating to CRLREV No. 245 of 2022 are referred to.

The petitioner is a partnership firm represented by its Managing Partner, Sanatan Mahakud. The firm is engaged in transportation business and also facilitates the transport vehicles and other specialized vehicles engaged in mines and industries on receipt of commission. The Managing Partner received a notice under Section 160 of Cr.P.C. on 16.01.2018 from the S.I. of Sadar Police Station, Keonjhar directing him to appear in person in the Police Station on 20.01.2018 at 10 a.m. for his examination in connection with Sadar P.S. Case No. 12 dated 12.01.2018. Because of certain physical ailments, he could not appear on the date fixed and requested for grant of 20 days time. On the same day, the IIC and S.I. of Sadar Police Station held a press conference stating that they have freezed the bank

accounts of the firm and other accounts of the Managing Partner. Some cheques were deposited before the IndusInd Bank towards payment to truck owners but the same were not received by the Branch Manager of the bank on the ground that the accounts had been frozen as per the instructions of the I.O. of the Sadar Police Station. The petitioner requested the Branch Manager of IndusInd Bank, Joda in a letter on 29.01.2018 to disclose the particulars of the freezing of the accounts but the Branch Manager by letter dated 31.01.2018 refused to share copy of the communication basing on which the account was frozen. The petitioner therefore, approached this Court in CRLMP No.164 of 2018, wherein the IIC of Sadar Police Station entered appearance and filed counter affidavit stating that the account in question had been frozen in connection with Keonjhar Sadar P.S. Case No. 12 dated 12.01.2018. The petitioner, on enquiry, came to know that the IIC of Sadar Police Station had himself lodged an FIR on 12.08.2018 stating that there was a huge congregation near Railway over bridge at Silisuan of more than 2000

people, who were armed and were giving provocative slogans against police and the administration demanding abolition of Toll Plaza from Banajodi. The said protest was led by one Sudhir Kumar Nanda @ Raja of Nuasahi, Keonjhar along with 18 leaders. They were also said to be supporters of an outfit called “Sana Sena”. It was further stated that the IIC received reliable information that the protesters had been hired for the purpose and that huge amount of money would be distributed among them. He further stated to have received information that huge amount of cash from IndusInd Bank, Joda would be delivered to the leaders for distribution amongst the agitators to continue the agitation. On such information, the case was registered under Sections 143/148/341/283/294/506/149 IPC and Section 7 of the Criminal Law Amendment Act.

4. In the meantime, this Court by order dated 04.06.2021 disposed of the CRLMP filed by the petitioner with the following directions.

“.....While not entertaining these applications, this Court is of the considered opinion that it would be appropriate for petitioner to approach the

Investigating Officer or opposite party no.4 for defreezing of all the accounts. In the event, relief sought for by the petitioners is not acceded to either by the I.O. or by the opposite party no.4, it would be open to the petitioners to approach the Jurisdictional Magistrate by filing appropriate application with same/identical prayer. However, it is made clear that this Court has not gone into the merits of the case raised by the contesting parties in the aforesaid applications.”

5. Pursuant to such order, the advocates representing the Managing Partner appeared before the IIC on 22.06.2021 and submitted documents and an application to defreeze the Bank Accounts. The IIC however, instructed them to comply with the notice under Section 160 Cr.P.C.. Pursuant to such instruction, the Managing Partner appeared before the IIC and filed necessary documents but no action was taken in the matter. As such, the petitioner approached the Court of learned S.D.J.M., Keonjhar and filed a petition under Section 457 of Cr.P.C. with prayer to defreeze the accounts. Learned S.D.J.M. rejected the petitions on the ground that as per the report submitted by the IIC, Sadar Police Station, the bank accounts are required for the purpose of investigation and that the petitioner also has a link with the case. It was further held that the petitioner

has not yet produced relevant documents of his bank account. As already stated, the aforesaid order of the learned S.D.J.M., is impugned in the present revisions.

6. After filing of these Revision Petitions, this Court, by order dated 06.09.2022 directed the petitioner (Managing Partner) to appear before the IIC, Keonjhar Sadar P.S. on 26.09.2022 for the purpose of interrogation and to cooperate with the investigation. Pursuant to such order, the petitioner appeared before the IIC on 26.09.2022 and produced certain documents like IT Returns and Statement of Accounts etc. which were seized. However, a notice dated 29.09.2022 under Section 91 Cr.P.C. was issued to the petitioner on the ground that the relevant documents had not been produced. It is alleged that he did not comply with such notice.

7. Heard Mr. Y. Das, learned Senior Counsel with Mr. R.K. Mahanta, learned counsel for the petitioner and Mr. D.K. Mishra, learned Additional Government Advocate for the State.

8. Assailing the impugned order, Mr. Das, learned Senior Counsel would argue that while Section 102 of Cr.P.C. empowers the Police to seize property during investigation, such power is qualified by the requirement that the concerned property must have some nexus with the alleged offence being investigated. According to Mr. Das, there is absolutely no nexus between the petitioner's bank accounts and the alleged offence. Even the name of the petitioner or the Managing Partner does not figure in the FIR. A sum of Rs.50 lakhs was being transported from IndusInd Bank from Joda to Champua, which was seized and has since been released in favour of the Bank by order passed by learned S.D.J.M. Neither the FIR nor the investigation has revealed as to how the said amount was linked to the alleged offence. Even otherwise, the FIR was lodged entirely on suspicion and speculation as there was no proof whatsoever of any money having been paid or attempted to be paid to the agitators by any person much less by the petitioner firm or its Managing Partner. Mr. Das further contends that

the notices issued by the IIC requiring the Managing Partner to produce relevant documents and to reveal the source of money deposited in his bank accounts is entirely without jurisdiction as police has no power to call for such information. Summing up his arguments Mr. Das contends that firstly, there is no nexus whatsoever between the petitioner's bank accounts and the alleged offence; secondly, police has no power to ask the petitioner to reveal the source of money kept in the bank accounts and thirdly, freezing of the bank accounts is in direct violation of the fundamental right of the petitioner guaranteed under Article 19(1)(g) of the Constitution of India.

9. Per contra, Mr. D.K. Mishra, learned Addl. Government Advocate has argued that the fact that Rs.50 lakh in cash was seized while being transported at the relevant time, prima facie, proves the truth in the prosecution allegation. Mr. Mishra further contends that the agitators were supporters of the Managing Partner, who is an influential person of the area and were made to

stage the protest on the temptation of payment of money. Since investigation is still in progress, it is not possible to finally arrive at an opinion as regards the nexus between the bank accounts and the alleged offence. Mr. Mishra also argues that the Managing Partner has not cooperated with the investigation by not responding positively to the notices issued by him. According to Mr. Mishra, if the Managing Partner is innocent, he should have come forward and disclosed the source of money kept in his bank account more so, when the Deputy Branch Manager of IndusInd Bank, Joda, namely, Abhisekh Sarkar has stated in his statement under Section 164 of Cr.P.C. that he was asked to take out cash of Rs.50 lakhs by the bank's cashier by stating that the same was meant for Sanatan Mahakud, M.L.A. of Champua (the managing partner).

10. There is no dispute with regard to the power of the Police to seize any property under Section 102 of Cr.P.C. The question is, if such power is absolute and

unqualified. To answer this, it would be profitable to refer to the provision itself, which is quoted hereinbelow;

“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, 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.”

11. Thus, the Police Officer, in course of investigation can seize any property *‘if such property is alleged to be stolen or is suspected to be stolen or is the object of the crime under investigation or has direct link with the commission of offence which is being investigated’.*

Conversely, a property not falling under any of the aforementioned categories cannot be seized. In the case of ***M.T. Enrica Lexie and Anr. v. Doramma and Ors.***, reported in AIR 2012 SC 2134, the Apex Court held that

“a property not suspected for commission of the offence which is being investigated into by the Police Office cannot be seized”. It has been argued at length by Mr. Das, learned Senior Counsel that the FIR allegations pertain to agitation by a group of persons demanding abolition of toll plaza on the national highway and further that they were being paid money for such purpose. The name of the petitioner does not find place in the FIR. The petitioner or the Managing Partner have not been named as accused person in the case. The only material relied upon by the prosecution in this regard is, seizure of cash of Rs.50 lakhs during its transportation from Joda to Champua. There is no direct or indirect material to even remotely suggest that the said money was meant to be distributed among the agitators. In so far as the other accounts are concerned, there is not a whisper of allegation that any money from such accounts was either used or meant to be distributed among the agitators. It has also been argued that money standing in the accounts is duly accounted for being reflected in the statutorily audited accounts as also

in the income tax returns, GST returns etc. Despite the fact that investigation is yet to conclude, the prosecution has not come up with any material showing a live nexus between the money kept in the said bank accounts and the alleged offences. If the FIR allegations are considered objectively, it would reveal nothing but an apprehension in the mind of the informant that the agitators were acting on the temptation of being paid money.

12. For the forgoing discussion, this Court holds that the power of police to seize the property under Section 102 of Cr.P.C. is not absolute or unqualified to the extent that such power can be exercised only in respect of property alleged to be stolen or suspected to be stolen or object of the crime under investigation or having direct link with the commission of offence being investigated.

13. Another aspect that needs consideration in this context is non-compliance of the mandatory provision under Sub-Section (3) of Section 102 of Cr.P.C. It has been argued by Mr. Das, learned Senior Counsel that as per Sub-Section (3) of Section 102, the Police Officer

seizing the property is obliged to report such seizure to the concerned Magistrate. In the instant case, such requirement of the statute was not complied with inasmuch as the fact of seizure of the bank accounts was not reported to the Magistrate so as to allow him to give custody thereof to any person. In the instant case, only upon the petition under Section 457 Cr.P.C. being filed by the petitioner, learned S.D.J.M. called for a report from the I.O. regarding seizure whereupon it was intimated that the same is required for the purpose of investigation. Mr. Das has relied upon a decision of Chhatisgarh High Court in the case of ***Shree Mahalaxmi Associates v. State of Chhattisgarh***, reported in AIR Online 2020 Chh 1211, wherein it was held that the Magistrate in question could not have rejected the prayer of the petitioner therein without considering whether there was compliance of the provisions contained in Sub-Section (3) of Section 102. This Court is in respectful agreement with the above view and further holds that from the use of the word 'shall' in Sub-Section (3) it is evident that the police officer is

mandated to report the seizure of the property to the Magistrate.

14. Reading of the impugned order further shows that the learned S.D.J.M. has not considered the aforementioned aspects at all much less the apparent non-compliance of the requirement of Section 102(3) of Cr.P.C. On the other hand, the report of the I.O. seems to have been accepted mechanically. It is needless to say that for a Magistrate exercising jurisdiction under Section 457 of Cr.P.C. application of judicial mind to the facts of the case and the likely consequence of the order proposed to be passed must be considered by him before actually passing such order. Unfortunately, learned S.D.J.M. appears to have dealt with the matter in a slipshod manner without bothering to examine the pros and cons involved therein. For the above reasons therefore, the impugned order cannot be sustained in the eye of law.

15. Another aspect needs to be considered. It has been brought on record by way of affidavits filed by the IIC of Sadar P.S. that during pendency of the present cases, a

notice was issued to the petitioner on 29.09.2022 purportedly under Section 91 of Cr.P.C. calling upon him to produce the documents relating to the frozen bank accounts. He has been asked to disclose the source of deposits/credits on account of what money has been deposited in the said five accounts since the opening of the account till 12.04.2018 in respect of each and every deposit chronologically and details of distribution/utilization of money withdrawn from the above five accounts since opening of the account till 12.04.2018 in respect of each and every withdrawal chronologically.

16. Before proceeding further, it would be proper to refer to the provision under Section 91 of Cr.P.C., which reads as follows:

“91. Summons to produce document or other thing.— (1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend

and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed—

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority."

This provision has been interpreted by the Apex Court in several decisions, notable among them is the case of ***State of Orissa v. Debendra Nath Padhi***, reported in (2005) 1 SCC 568. In case of ***Debendra Nath Padhi*** (supra), the Apex Court observed as under;

"25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is "necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code". The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document

as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.”

Thus, in exercising the power under Section 91 of Cr.P.C. the first and foremost requirement is ‘necessity’ or ‘desirability’.

17. Viewed in light of the above principles it is seen that the petitioner was initially called upon to produce certain documents by a notice under Section 160 of Cr.P.C., which he did. The said documents were treated as inadequate and therefore, the notice under Section 91 was issued calling upon him to produce documents relating to each and every single transaction of his bank

accounts till 12.04.2018 since the date of opening of the accounts. At the first blush, this appears to be a draconian use of power by the police. This Court has already held that freezing of the bank accounts is entirely unjustified in the absence of evidence showing link between the alleged offences and the accounts in question. It is further to be noted that this is not a case of disproportionate assets or money laundering where the source of money may be relevant for investigation. On the contrary, this is a case, as stated earlier, based entirely on suspicion that the money “may be” used in funding the agitation. Interestingly, it is not the prosecution case that the money was actually so used. Therefore, how the information sought for in the notice under Section 91 of Cr.P.C. is necessary, remains shrouded in mystery. As regards desirability, it is to be noted that the petitioner being a businessman, freezing of the bank accounts would obviously have had an adverse effect on his transactions. The question is, can the entire business of a person be brought to a grinding halt only on suspicion. The answer

can only be in the negative. Moreover, as argued by learned Senior Counsel, this action also directly affects the petitioner's fundamental right guaranteed under Article 19(1)(g), i.e., the right to practice any profession, or to carry on any occupation, trade or business. On an objective examination of the facts and circumstances obtaining in the case, this Court is of the considered view that in the absence of any link between the alleged offence and the petitioner's bank accounts, issuance of the notice under Section 91 of Cr.P.C. is entirely illegal, unjustified and tantamounts to unnecessary harassment of the petitioner by the investigating agency more so by the fact that nothing incriminating has come out in the prolonged investigation that has shown no sign of conclusion, even after lapse of more than four years.

18. Thus, from a conspectus of the analysis and discussion made hereinbefore, this Court finds that the impugned order passed by learned S.D.J.M., in rejecting the application filed by the petitioner under Section 457 of Cr.P.C. to defreeze the accounts cannot be sustained in

the eye of law and is therefore, set aside. Learned S.D.J.M. is directed to pass necessary orders directing defreezing of the seized bank accounts without any further delay. Consequently, the petitioner shall not be required to comply with the notice dated 29.09.2022 issued by the IIC of Sadar Police Station, Keonjhar under Section 91 of Cr.P.C.

19. The Criminal Revisions are disposed of accordingly.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 8th December, 2022/ A.K. Rana