IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL WRIT PETITION NO. 4521 OF 2021**



1. SDS Broking & Trading Auctioning Centre
OPC Pvt. Ltd.
through its M.D. Sudhir Dhananjay Sarode
& Anr. ...Petitioners

Vs.

1. The State of Maharashtra
through Sr.Police Inspector,
Crime Branch (Central Department) ... Respondent

****

Mr.Satish Borulkar a/w. Mr.Manoj Patil i/b Mr.Uday Bhanudas Gavali for petitioners.

Ms.Anamika Malhotra, APP for respondent-State.

API Shashikant Pawar, Central Unit, Crime Branch, Navi Mumbai, present.

**CORAM : N. J. JAMADAR, J.**
**CLOSED FOR ORDER ON: 20th APRIL, 2022**
**PRONOUNCED ON : 28th APRIL, 2022**

**ORDER :**

1. The challenge in this petition is to an order passed by learned Judicial Magistrate, First Class, Vashi in Other Misc. Application (Criminal) No.357 of 2021, whereby the prayer of the petitioners to defreez the bank account Nos.(i) Saving A/c. No. 919010052600469 of Axis Bank Ltd., (ii) Saving A/c. No. 3913158677 of Kotak Mahindra Bank Ltd., (iii) Current A/c.No. 10190002381040 of Bandhan Bank, (iv) Saving A/c. No. 50200000504236 of Bandhan Bank, (v) Current A/c. No.

3113972684 of Kotak Mahindra Bank Ltd., (vi) Saving A/c. No. : 3112255290 of Kotak Mahindra Bank Ltd., came to be rejected.

2. The petitioner No.1 is a company incorporated under the Companies Act, 1956. The petitioner No.2 is the Director of petitioner No.1. Crime was registered at C.R. No.02 of 2021 against the petitioners for the offences punishable under sections 294(A) and, 420 read with 34 of the Indian Penal Code, 1860 ('the Code'), sections 7(3), 9(1) of Lotteries (Regulation) Act, 1998, sections 4(a) and 5 of the Maharashtra Prevention of Gambling Act, 1887, and section 66-D of the Information Technologies Act, 2000. The petitioner No.2 came to be arrested. Property was seized from the premises of the petitioners. Bank accounts of the petitioners were ordered to be freezed.

3. The petitioners preferred an application for return of the property and de-freezing of the bank accounts. The learned Magistrate was persuaded to partly allow the application and return part of the seized property. However, the prayer to de-freez the accounts came to be rejected. Hence, the petitioners have invoked the writ jurisdiction of this Court.

4. I have heard Mr.Satish Borulkar, the learned counsel for the petitioners, and Ms.Malhotra, the learned APP for the State.

5. Mr.Borulkar, the learned counsel for the petitioners canvassed a two-pronged submission. First there was no justification to order freezing of the accounts of the petitioner No.1 which is a corporate entity. Second, the action cannot be sustained, as there is a flagrant violation of the mandate contained in section 102 (3) of the Code of Criminal Procedure, 1973 ('the Code') to forthwith report the factum of seizure to the jurisdictional magistrate.

6. Ms.Malhotra submitted that indeed there is omission on the part of the investigating agency to immediately report the freezing of the accounts to the jurisdictional magistrate. In the aforesaid view of the matter, in the peculiar facts of the case, it may not be necessary to delve deep into the aspect as to whether the freezing of the account satisfies the requirement of sub-section (1) of section 102 of the Code as the petition deserves to be allowed for the non-compliance with the provisions contained in sub-section (3) of section 102 of the Code.

7. Section 102 of the Code reads as under :

> **Section 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.]

8. The requirement of sub-section (3) of section 102 to forthwith report the seizure of property is couched in a mandatory form. Under the Code, the Magistrate exercises supervisory control over the investigating agency in certain areas. Reporting of the seizure of the property to the jurisdictional magistrate serves a definite purpose. The legislature, thus, provided that such report of seizure be made forthwith. The non-

compliance with the statutory requirement cannot be brushed aside as a mere irregularity.

9. A useful reference in this context can be made to a Division Bench Judgment of this Court in the case of ***Dr. Shashikant D. Karnik vs The State Of Maharashtra*** [1]***,*** wherein the requirements of section 102 were postulated as under :

> 17 Re-reading of Section 102 of the Cr.P.C. shows that what is permitted to be done is the seizure of the property by the Police Officer. Now, as per the view of the Supreme Court, bank accounts can be seized under Section 102 of the Cr.P.C. There is no doubt about that, and, since they are bank accounts, the seizure means their attachment by the police and the attachment order of the bank accounts will have the effect of stopping the account holder from operating those bank accounts. But in any case when the powers are to be exercised by the police officer under Section 102 of the Cr.P.C. and they are so exercised, there is nothing like giving oral instructions of stopping the operation of the account or written instructions not to allow operations of the accounts. If such instructions are given either oral or in writing then they are to be regarded as attachment of the account. Therefore, what is stated in the aforesaid affidavit of Mr. Pardeshi, as quoted above, is an attempt to escape from the consequences of non compliance to the Section 102 of Cr.P.C. No other provision of the Cr.P.C. was shown to us by Mr. Mhaispurkar which empowers the police officer, firstly, to issue orders oral or written of stopping the operation of account before attachment or seizure and then pass second order of attachment of account. There is nothing like empowering the police officers to issue ad interim or temporary order of stopping the operation and then final order of attachment of the account. If they issue any order of stopping operation of the account, it has to be treated as action under Section 102 of the Cr.P.C. resulting in seizure i.e. attachment of the account, and, if that is so the compliance to all the three requirements, is a must.
>
> 18. So far as requirement under Section 102(1) is concerned, it is obligatory upon the police to show that the

1 2008 Cri.LJ 148

property which they want to attach or attaching is under circumstances which create suspicion of the commission of any offence. From paragraph 5 of the affidavit of Mr. Pardeshi, ACP attached to ACB, quoted above, and from the oral submissions made by Mr. Mhaispurkar, it is clear that till this date the authority who attached the accounts of the petitioner have not been able to come to any conclusion, even primafacie case that the amount in the accounts has any connection with the offence of disproportionate income of the petitioner. In these circumstances, there is no option but to hold that any action taken in giving oral instructions of stopping the operation of the account or in issuing written directions of stopping the operation of account, is illegal perse. Section 102 of the Cr.P.C. does not permit any police officer to seize the property, viz. to attach the account in the first instance and then to decide whether the property has any connection with the commission of any offence. The attachment orders oral or written in this case are issued in 2002, we are in 2007, but till this date investigating agency has not been able to come to a conclusion, as stated in paragraph 5 of the affidavit reproduced above, that the amount lying in the bank accounts, is out of the disproportionate income of the petitioner. In these circumstances, the entire attachment under oral or written directions has to be struck down as has been illegal.

19. Second requirement of Section 102(2) of Cr.P.C. is that the officer seizing the account or attaching the account subordinate to the officer in charge of Page 0941 the police station has to forthwith report the seizure or attachment to his superior i.e. to the officer in charge of the police station. Even though the State has filed two affidavits of Mr. Pardeshi, ACP of Anti Corruption Bureau, not a word is uttered about this requirement of Sub section (2) of Section 102 of Cr.P.C. that the officer ordering attachment of the accounts oral or in writing whether was subordinate to the officer in charge of the police station, meaning thereby whether any superior officer was there in the Anti Corruption Bureau above him and there was any report by the said officer to his superior. What is stated in paragraph 6 of the first affidavit of Mr. Pardeshi is that "...on completion of the open enquiry, the Enquiry Officer on 23.8.2005 submitted his final report". This is not the compliance to Sub section (2) of Section 102 of Cr.P.C. If the Officer giving instructions of stopping the operation of the account of the petitioner to a superior, then it was necessary for that officer to report this matter to his superior as required by Sub section (2) of Section 102.

> 20. Third requirement of Sub Section (3) of Section 102, lays down a mandate that every police officer acting under Sub-section (1) shall forthwith report the seizure or attachment of accounts to the Magistrate having jurisdiction. Admittedly, this is not done in the present case. Paragraph 5 of the second affidavit of Mr. Pardeshi, quoted above is very clear in this regard as well as the oral submission of Mr. Mhaispurkar. It will be therefore clear that there is absolutely no compliance to any of the provisions of Sub sections (1), (2) and (3) of Section 102 of Cr.P.C, in this matter. Consequently, the petition is required to be allowed and the orders are required to be quashed as prayed.
>
> (emphasis supplied)

10. Following the aforesaid judgment, this Court in the cases of ***Manish Khandelwal Vs. State of Maharashtra & Ors.***[2] and ***Shri Vilas s/o. Prabhakar Dange Vs. State of Maharashtra***[3] has quashed the actions of freezing of accounts under section 102 for failure to report the seizure to the jurisdictional magistrate forthwith.

11. For the foregoing reasons, the petition deserves to be allowed.

12. Hence, the following order :

**O R D E R**

(i) The petition stands allowed.

(ii) The impugned order, dated 30th July 2021 passed by the learned 12th Judicial Magistrate, Vashi, Navi Mumbai in

2 Cri.Writ Petition No. 2434/2018 dt.30-07-2019
3 Cri. Writ Petition No.1033/2017 dt.7-12-2017 (Nagpur Bench)

Other Misc. Application (Criminal) No.357 of 2021 stands quashed and set aside.

(iii) The orders of freezing of the accounts of the petitioners in connection with C.R. No.02 of 2021 stand quashed and set aside.

(iv) The accounts of the petitioners, viz., (i) Saving A/c. No. 919010052600469 of Axis Bank Ltd., (ii) Saving A/c. No. 3913158677 of Kotak Mahindra Bank Ltd., (iii) Current A/c.No. 10190002381040 of Bandhan Bank, (iv) Saving A/c. No. 50200000504236 of Bandhan Bank, (v) Current A/c. No. 3113972684 of Kotak Mahindra Bank Ltd., (vi) Saving A/c. No. : 3112255290 of Kotak Mahindra Bank Ltd. stand de-freezed.

13. All concerned to act on an authenticated copy of this order.

**(N.J. Jamadar, J.)**