



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on	Orders pronounced on
09.02.2022	10.03.2022

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THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

Crl.R.C.No.795 of 2021

R.Sampath

...Petitioner/Accused No.1

Vs.

State Represented by
Inspector of Police,
CBI / ACB / Chennai

Crime No.R.C.MA1 2019 (A) 0001.

...Respondent/Complainant

Criminal Revision Petition is filed under Section 397 r/w 401 of Code of Criminal Procedure, to set aside the order passed in Crl.M.P.No.3298 of 2021 in C.C.No.7 of 2021 dated 24.09.2021 by the learned XIV Additional Special Judge for CBI Cases, Chennai, and direct defreezing of accounts, return of properties.

For Petitioner : Mr.Sunder Mohan

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI cases.

ORDER

This Criminal Revision case is filed against the order passed in Crl.M.P.No.3298 of 2021 in C.C.No.7 of 2021 on the file of the learned XIV Additional Special Judge for CBI cases, Chennai.

2. Crl.M.P.No.3298 of 2021 was filed under Section 451 of Cr.P.C for the following reliefs:-

a) To direct defreezing of the following accounts:-

S.No.	Bank Name	A/C.No.	Held By
1.	ICICI Bank	648801503814	Self
2.	ICICI Bank	603301111209	Wife
3.	HSBC	042-739839-006	Self
4.	HSBC	042-738310-006	Wife



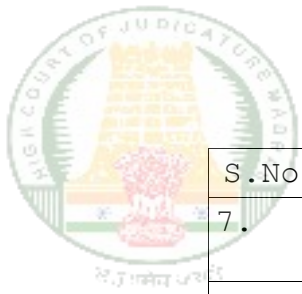
S.No.	Bank Name	A/C.No.	Held By
5.	Oriental Bank of Commerce	08912010005370	Self & Wife
6.	Oriental Bank of Commerce	08912010003530	Wife & Self
7.	Oriental Bank of Commerce	08912191004168	S.Suraj & Self

b) and direct the complete defreeze State Bank of India account No.20069128592 which was partly allowed to the extent of withdrawal of pension amount in CrI.M.P.No.4003 of 2018.

c) to permit operation of the locker HH12 held in Oriental Bank of Commerce, Adayar Branch by petitioner and his wife.

3. The case of the petitioner is that he was working as Deputy Director General, CPWD and retired from service on 31.12.2016. On 10.03.2017, the respondent police searched his official residence at Besant Nagar and took an inventory of articles available and prepared inventory memo listing out the articles found at his residence. He also seized certain documents and articles enumerated in the search list. The documents included title deeds of the properties owned either by him or by his wife, insurance policies held in his name besides, certain cheques, mobile phone and keys relating to locker No.HH12 held jointly by him and his wife in Oriental Bank of Commerce, Adyar. On 16.03.2017, respondent called him and his wife to the Oriental Bank of Commerce, Adyar branch for opening the locker No.HH12. They took a list of articles available in the locker and proceedings were drawn by the respondent in the presence of him, his wife and the Branch Manager of Oriental Bank of Commerce and other officials. Locker was then closed and keys were handed over to the Inspector of Police Smt.Bindhu. Respondent directed Branch Manager to maintain "status quo" with regard to operation of the locker. Respondent issued instruction to freeze his account and his wife held in the following Banks:-

S.No	Bank Name	A/C.No.	Held By
1.	State Bank of India	20069128592	Self & Wife
2.	Kotak Mahindra Bank	7411773035	Self & Wife
3.	ICICI Bank	648801503814	Self
4.	ICICI Bank	603301111209	Wife
5.	HSBC	042-739839-006	Self
6.	HSBC	042-738310-006	Wife



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S.No	Bank Name			A/C.No.	Held By
7.	Oriental Commerce	Bank	of	08912010005370	Self & Wife
8.	Oriental Commerce	Bank	of	08912010003530	Wife & Self
9.	Oriental Commerce	Bank	of	08912191004168	S.Suraj & Self

4. Petitioner made a request to the Inspector on 17.08.2017 to defreeze his account, where his pension was getting credited in State Bank of India jointly held by him and his wife. The reminder was sent on 21.09.2017 to the Superintendent of Police, ACB. On 21.09.2017, he received reply stating that defreezing of bank accounts cannot be done from their end and it was advised that he may approach the concerned Court for defreezing the bank accounts. Final report was filed under Sections 120-B IPC 7, 11, 12, 13 (2), r/w. 13 (1) (d) of the Prevention of Corruption Act, 1988. The amounts lying in the bank accounts have nothing to do with the alleged offence in the charge sheet. The allegation is that petitioner received cheque from the accused and then credited into his account at Kotak Mahindra Bank, South Mambalam branch. The allegation that, it is bribery amount, is not correct. Apart from this amount, amount lying in other bank accounts are totally unrelated to the alleged offence. The articles in the locker at Oriental Bank of Commerce have nothing to do with the alleged offence. Most of the articles are gold jewellerys, which belong to his wife or his daughter. Prosecution has not shown any nexus with the bank accounts, documents and articles in the locker and the alleged offence. Petitioner filed CrI.M.P.No.4003 of 2018 in C.C.No.9 of 2018 for defreezing the account, for permission to operate the locker and for return of the documents. That petition was partly allowed. The defreezing of account in the State Bank of India was permitted to the extent of accessing his account to withdraw the pension credited subsequent to 09.03.2017.

5. Aggrieved against the order, petitioner filed Revision before this Court in CrI.R.C.No.926 of 2018. This Court observed that, CBI has to complete the investigation as soon as possible. Thereafter, petitioner was granted liberty to workout his remedy in the manner known to law. Subsequently, respondent registered FIR in Crime No.RC MA1 2019 (A) 0001 for the alleged offence under Section 13 (2) r/w. 13 (1) (e) of Prevention of Corruption Act, 1988 and filed charge sheet in C.C.No.7 of 2021. Petitioner filed a petition in CrI.M.P.No.1016 of 2021 in C.C.No.9 of 2018 before the trial Court under Section 451 of Cr.P.C for defreezing accounts and permission to operate bank locker. Respondent filed counter to the effect that seized



documents in C.C.No.9 of 2018 have been transferred to RC MA1 2019 A 0001 of CBI/ACB in C.C.No.7 of 2021. No intimation was given regarding transfer of seized documents to the above said case. The bank accounts and the locker are absolutely essential for the petitioner to use. Respondent cannot endlessly deprive his right to use his bank accounts and locker. Therefore, this petition.

6. Respondent filed counter alleging that while petitioner was functioning as public servant during the period 03.12.2012 to 31.12.2016 as Deputy Director General (Headquarters) amassed disproportionate assets in his name and in the name of his wife to the extent of Rs.1,09,04,700.37/-. He cannot satisfactorily account for this income. After the investigation, final report has been filed before the learned VIII Principal Special Judge for CBI cases, Chennai, for the offences under Section 13(2) r/w. 13(1)(e) of the Prevention of Corruption Act, 1988 against him and under Section 109 IPC r/w. Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988 against his wife Suguna. The averment that, no intimation was given regarding the transfer of seized documents to Crime No.RC MA1 2019 A 0001 is strongly denied. Seized documents and material objects were intimidated by the investigating officer in RC MA1 2017 A 0005 and it was acknowledged by the petitioner. Several bank accounts and locker contents of gold jewellerys, gold bars are maintained by the petitioner and his wife and the same is shown as movable assets of the petitioner and his family members at the beginning of the check period and at the end of check period. The bank balance held in banks by the petitioner and his wife and their son Suraj Sampath at the beginning of check period are shown in the charge sheet. Bank balance at the end of check period are also shown in the charge sheet. Similar contents of locker in the name of petitioner and his wife were also shown as movable assets in the charge sheet. Petitioner and his wife maintained 16 bank accounts with various banks during the check period and the bank balance are shown in the charge sheet as movable assets and these proceeds form part of the crime. Since, the case is in trial stage, the accounts cannot be defreezed.

7. It is seen from the additional counter filed by the respondent that transfer of documents and material objects from the case in Crime No.RC MA1 2017 A0005 to another case in Crime No.RC MA1 2019 A0001 is a well known fact to the petitioner. The movable assets, such as bank balances, are part of crime in Crime No.RC MA1 2019 A0001 and it was informed to the petitioner/accused persons during their examination before the filing of charge sheet in Crime No.RC MA1 2019 A0001. 16 Savings Bank accounts in the name of petitioner Sampath, Smt.S.Suguna jointly and severally and the accounts in the name



of the son individually or jointly with either of the accused were shown as movable assets and marked in item Sl.Nos.17 to 32. Locker held at Oriental Bank of Commerce, Adyar Branch contends were also shown as movable assets and marked as item No.2 in statement B of the charge in Crime No.RC MA1 2019 A0001 Vide C.C.No.7 of 2021. All the properties are case properties. The amounts lying in the accounts are considered in the case for calculating disproportionate assets and hence, the petitioner should not be allowed to operate the accounts.

8. Learned counsel for the petitioner submitted that after freezing the accounts, petitioner filed Crl.M.P.No.4003 of 2018 in C.C.No.9 of 2018 before XIV Additional Court for CBI Cases for defreezing the accounts. The Court partly allowed the petition and directed to defreeze the bank account held in SBI only to the extent of permitting the petitioner to access his account to withdraw the pension credited subsequent to 09.03.2017. Against the said order, petitioner filed Crl.R.C.No.926 of 2018. It was submitted by the respondent that seized documents, accounts and locker are necessary for investigation of another possible crime of amassing properties disproportionate to the known sources of income. Therefore, this Court observed that Central Bureau of Investigation has to complete the investigation as soon as possible. Thereafter, liberty was granted to the petitioner to work out the remedy in the manner known to law. Subsequently, respondent registered First Information Report in Crime No.RC MA1 2019 A0001 for the alleged offence under Section 13(2) read with 13(1)(e) of Prevention of Corruption Act and filed charge sheet in C.C.No.7 of 2021. Petitioner filed Crl.M.P.No.1016 of 2021 in C.C.No.9 of 2018 under Section 451 Cr.P.C for defreezing accounts and permission to operate bank locker. Respondent filed a counter stating that the seized documents in C.C.No.9 of 2018 has been transferred to Crime No.RC MA1 2019 A0001 relatable to C.C.No.7 of 2021. Therefore, that petition was withdrawn and thereafter, Crl.M.P.No.3298 of 2021 in C.C.No.7 of 2021 was filed. That petition was dismissed. Therefore, this present Criminal Revision Case.

9. It is further submitted by the learned counsel for the petitioner that respondent did not give any intimation with regard to transfer of properties seized to Crime No.RC MA1 2019 A0001. Respondent cannot resort the seizure under Section 102 Cr.P.C. unless the case properties are needed for trial. In order to seize the property under Section 102 Cr.P.C, the property should have either been a stolen property or it has created suspicion of commission of offence. Bank accounts, being a sequel to the discovery of commission of offence, cannot be seized under Section 102 Cr.P.C. Prosecution is not clear as to the case in which the property seized are going to be treated



as case properties. Investigation is completed in both the cases. If at all there is a necessity to seize the properties, respondent should have invoked Section 18(a) of Prevention of Corruption Act, 1988. Provision of Criminal Law Amendment Ordinance, 1944 should have been applied for attaching the property. Immovable properties of the petitioner are not attached. Funds in the bank account cannot be considered as case properties. Therefore, learned counsel for the petitioner submitted that freezing of bank accounts and bank locker is against law and freezing order has to be set aside. In support of his submission, learned counsel for the petitioner relied on the judgment reported in (1987) SCC Online Del 221 (Ms.Swaran Sabharwal ..vs.. Commissioner of Police), (1997) 7 SCC 685 (State of Maharashtra ..vs.. Tapas D.Neogy), (2018) 2 SCC 372 (Teesta Atul Setalvad ..vs.. State of Gujarat), 2019 SCC OnLine SC 1247 (Nevada Properties Private Limited ..vs.. State of Maharashtra) and 2021 SCC OnLine SC 875 (Ratan Babulal ..vs.. State of Karnataka).

10. In response, learned Special Public Prosecutor appearing for the respondent submitted that the police officer has power to seize the property suspected to have been stolen or which may be found under circumstances, which create suspicion of the commission of any offence. Accordingly, petitioner's account along with his wife's account, bank locker were freezed. Respondent can attach the property at any time. There are two cases registered against the petitioner and others, one for misconduct and other for amassing wealth disproportionate to known sources of income. Transfer of accounts and property seized in misconduct case was informed to the petitioner during the course of investigation. These are the case properties required to prove the charges against the petitioner and liable to be confiscated. In fact, memo was filed for transferring the case properties from one case to another case. Amounts available in the bank accounts, articles available in the bank locker are proceeds of crime and if they are allowed to be accessed by the petitioner, the case of the prosecution would be seriously prejudiced and therefore, the learned Special Public Prosecutor prayed for dismissal of this petition.

11. Now, the main points for consideration in this petition are :-

(1) Whether the seizure of the bank accounts, locker by the respondent under Section 102 Cr.P.C is in accordance with law.

(2) Whether the property seized in one crime number can be transferred to other crime number.



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12. Section 102(1) Cr.P.C reads as follows:-
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.

The reading of this section makes it clear that the police officer may seize any property alleged or suspected to have been stolen or or which may be found under circumstances, which create suspicion of commission of any offence.

13. From the judgments relied by the learned counsel for the petitioner, especially, the judgment reported in (1987) SCC Online Del 221 (Ms.Swaran Sabharwal ..vs.. Commissioner of Police), it is observed that assuming that a bank account is 'property' within the meaning of Section, it should be a property 'found under circumstances which create the suspicion of commission of offence to justify action under Section 102 Cr.P.C.'. There are no circumstances attendant upon the bank account or its operation that have led the officer to suspect that some offences have been committed somewhere. The discovery of the bank account is a sequel to the discovery of the commission of offence. The police suspected that some of the proceeds realised by the sale of official secrets have been passed on to the petitioner by her husband. This itself is not sufficient to attract Section 102 Cr.P.C., as it cannot be said that the bank account has been traced or discovered in the circumstance, which have made police aware of the commission of offence.

14. This judgment was referred in the judgment reported in (1997) 7 SCC 685 (State of Maharashtra ..vs.. Tapas D.Neogy) and it was observed that 'Having considered the divergent views taken by different High Courts with regard to the power of seizure under Section 102 of Cr.P.C and whether the bank account can be held to be 'property' within the meaning of Section 102(1) Cr.P.C., we see no justification to give any narrow interpretation to the provisions of Code of Criminal Procedure. 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 Cr.P.C and a police officer in the course of investigation can seize or prohibit the operation of the said account, if such assets have direct links with the commission of offence, for which the police officer is investigating into.



15. While dealing with the scope of the power under Section 102 Cr.P.C, it is observed in the judgment reported in 2015 SCC OnLine Mad 6729 (M.Adithya Cholan ..vs.. Union of India) quoting from the case of His Holiness Sri Kanchi Kamakoti Peetadhipathi Jagadguru Sri.Sankaracharya Swamigal Srimatam Samasthanam, represented by its Manager ..vs.. State of Tamil Nadu reported in 2005 (1) CTC 657 that, "this Court explains that only two categories of properties, namely, (1) alleged or suspected to have been stolen or (2) which may be found under circumstances, which create suspicion of the commission of any offence, can be seized. The assets and money should have direct links with the offence committed by the accused."

16. Dealing with the question centers around sweep, purport and applicability of Section 102(1) of Cr.P.C, the Hon'ble Supreme Court in Teesta Atul Setalvad ..vs.. State of Gujarat reported in (2018) 2 SCC 372 observed quoting from the judgment reported in (1997) 7 SCC 685 (State of Maharashtra ..vs.. Tapas D.Neogy) that, '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 Cr.P.C and a police officer in the course of investigation can seize or prohibit the operation of the said account, if such assets have direct links with the commission of offence for which the police officer is investigating into. It was observed also in the decision in State of Maharashtra ..vs.. Tapas D.Nyogy (cited supra) that, there is no room to countenance to challenge the action of the seizure of bank account of any person, which may be found under circumstances creating suspicion of the commission of any offence.

17. While dealing with the question as to whether the expression 'any property' used in sub-section (1) of Section 102 of Cr.P.C., includes immovable property or not and whether a police officer can take custody and seize the immovable property, the Hon'ble Supreme Court in Nevada Properties Private Limited through its Directors ..vs.. State of Maharashtra reported in 2019 SCC OnLine SC 1247 : (2019) 20 SCC 119, held that 'Section 102 postulates seizure of the property. Immovable property cannot, in its strict sense, be seized, though documents of title etc., relating to immovable property can be seized, taking into custody and produced. The reference was answered by holding that power of a police officer under Section 102 of Cr.P.C. to seize any property, which may be found under circumstances that create suspicion of the commission of any offence, would not include the power to attach, seize and seal any immovable property".



18. The reading of the aforesaid judgments gives an understanding that the bank account can be held to be 'property' within the meaning of Section 102(1) of Cr.P.C., and if it is established that it had direct link with the offence committed by the accused, it can be seized. What is important is that the account and assets should have direct links with the commission of offence, for which the police officer is investigating into. In that case, police officer can seize the account or prohibit the operation of the account.

19. Finally, learned counsel for the petitioner submitted the judgment of the Hon'ble Supreme Court in Rattan Babulal ..vs.. State of Karnataka reported in 2021 SCC OnLine 875 for the proposition that when Section 18A of Prevention of Corruption Act gives power of attachment and forfeiture of property, the attachment of bank account and freezing of account under Section 102 Cr.P.C is unsustainable. Learned counsel for the petitioner heavily relied on this judgment in support of his submission that the seizure of account and locker and its freezing under Section 102 Cr.P.C., is not sustainable and against the law. The reading of this judgment shows that, it was submitted by the respondent therein that they are in the process of filing an application under Section 18A of Prevention of Corruption Act, 1988. Taking that into account, it was held that it was not possible to sustain the freezing of bank account under Section 102 Cr.P.C., as the Prevention of Corruption Act is a Code by itself.

20. In the case before hand, accounts and bank locker were freezed, not in this case, but in Crime No.RC MA1 2017 A0005 concerned in C.C.No.9 of 2018, all the properties were transferred to Crime No.RC MA1 2019 A0001 in C.C.No.7 of 2021. There is no freezing order in Crime No.RC MA1 2019 A0001 in C.C.No.7 of 2021. Already petitioner filed CrI.M.P.No.4003 of 2018 in C.C.No.9 of 2018 for defreezing the account and that was allowed in part. Both the cases in C.C.No.9 of 2018 and C.C.No.7 of 2021 are interrelated. Interrelated in the sense, C.C.No.9 of 2018 was registered for the offences under Sections 120-B IPC, 7, 11, 12, 13 (2), r/w. 13 (1) (d) of the Prevention of Corruption Act, 1988 and the case in C.C.No.7 of 2021 was registered for the offences under Sections 13 (2) r/w. 13(1)(e) of Prevention of Corruption Act, 1988. One is for misconduct and other one is for amassing wealth disproportionate to the known source of income.

21. The reading of the aforesaid judgments, especially the judgment reported in (1997) 7 SCC 685 (cited supra) shows that the bank account of the accused or any of his relatives is 'property' within the meaning of Section 102 of



Cr.P.C., and the police officer, in the course of investigation, can seize or prohibit the operation of the said account, if such assets have direct links with the commission of offence. This position was again reiterated in the judgment reported in (2018) 2 SCC 372 (cited supra). After this decision, which is a decision of three member Hon'ble Judges of the Supreme Court, there is no room to countenance the challenge to the action of seizure of bank account of any person, which may be found under circumstances, creating suspicion of the commission of any offence. The power of police officer under Section 102 of the Code to seize any property, which may be found under circumstances, which create suspicion of the commission of any offence was again reaffirmed, but it was held that this power would not include the power to attach, seize and seal an immovable property in the judgment reported in (2019) 20 SCC 119 (cited supra).

22. In the case before hand, it is specifically alleged by the respondent that the amount lying in the deposit of the bank accounts and articles kept in the locker frozen are proceeds of crime and they required for the purpose of marking as evidence and for the purpose of fixing the disproportionate assets during the course of trial. If the accounts are defrozen and the petitioner is permitted to operate the locker, there is every possibility of withdrawing the amount available in the bank account and removing the articles. It is submitted that the proceeds of crime are liable to be confiscated at the end of trial. The respondent still has option to take action under Section 18 A of the Prevention of Corruption Act to apply for attachment, confiscation of money and property. Taking into consideration the legal position on the subject and the submissions of the respondent that the articles available in the bank locker and the amounts available in the bank accounts are required as evidence during the course of trial, this Court is of the view that the trial Court has rightly dismissed the petition in CrI.M.P.No.3298 of 2021 in C.C.No.7 of 2021 and it requires no interference.

23. It is, thus, answered that seizure of bank accounts and bank locker is in accordance with law for the point No.1. It is already referred that the cases in C.C.No.9 of 2018 and C.C.No.7 of 2021 are connected. Both the cases have to be tried simultaneously. It is specifically stated by the respondent that transfer of property from C.C.No.9 of 2018 to C.C.No.7 of 2021 was informed to the petitioner and a memo was filed in this regard in the Court. In the facts and circumstances of the case, this Court is of the view that there is nothing wrong in transferring the property seized in C.C.No.9 of 2018 to C.C.No.7 of 2021. Thus, the point No.2 is answered.



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24. In this view of the matter, the order of learned XIV Additional Special Judge for CBI Cases, Chennai, in Cr1.M.P.No.3298 of 2021 in C.C.No.7 of 2021 dated 24.09.2021 is confirmed and the Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar(CS-VII)

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Sub Assistant Registrar

ep/mra

To

- 1.The XIV Additional Special Judge
for CBI Cases,
Chennai.
2. The Inspector of Police,
CBI / ACB / Chennai
Crime No.R.C.MA1 2019 (A) 0001.
- 3.The Special Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.795 of 2021

CA(CO)
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