

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

233

CWP No.10019 of 2023

Date of decision: 28.07.2023.

M/S BALAJI INFRA BUILDTECH AND ANOTHER

.....Petitioners

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Anmol Rattan Sidhu, Sr. Advocate with
Ms. Sandhya Gaur, Advocate
for the petitioners.

Ms. Lavanya Paul, DAG, Punjab.

Mr. Birinder Pal Singh, Advocate, for
Mr. A.P.S. Shergill, Advocate,
for respondent No.4.

Mr. Shivoy Dhir, Advocate, and
Mr. Samrit Gill, Advocate, for
for respondent No.5.

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present petition is to the communication/order
bearing Memo Nos. 67 & 68 dated 12.04.2023 whereby an order under
Section 102 of the Criminal Procedure Code, 1973 has been sent by the
Vigilance Bureau, Punjab directing the Branch Manager of the HDFC Bank,

Ward No.09, Chandigarh Road, Kurali, S.A.S Nagar, Mohali & Branch Manager, AXIS Bank, Kurali, SAS Nagar to freeze the Bank Accounts of the petitioner. The extract of the aforesaid communications reads thus:-

“No. 67 dated 12.04.2023

*Subject:- **Request for freezing the bank accounts.***

That a case FIR No. 18, Dated 12.10.2022, U/S 13 (1) (b) r/w 13(2), PC Act 1988 as amendment by PC (Amendment) Act 2018 and 420, 465, 467, 468, 471, 120-B IPC, PS Vigilance Bureau, Flying Squad-1, Punjab at Mohali was registered against Girish Verma s/o Manohar Lal Verma & Others.

2. During investigation, it has surfaced that accused Vikas Verma & others partners/ firm have unexplained inter-se suspicious financial transactions. These persons are holding account(s) with your bank. The circumstances of the case and perusal of transaction statements of the accounts of the accused persons clearly points towards commission of offence. The details of the bank account(s) are as following:-

<i>S.No.</i>	<i>Account Holder</i>	<i>Account No.</i>
<i>1.</i>	<i>Balaji Infra Buildtech</i>	<i>50200037648489</i>
<i>2.</i>	<i>Ashu Goyal</i>	<i>13711000008442</i>
<i>3.</i>	<i>Gaurav Gupta</i>	<i>13711600001392</i>

3. You are hereby requested to kindly freeze the above mentioned bank account(s) and prohibit the account holder(s) from operating these account(s) till any further directions of the concerned Hon'ble Court.

“No. 68 dated 12.04.2023

*Subject:- **Request for freezing the bank accounts.***

That a case FIR No. 18, Dated 12.10.2022, U/S 13 (1) (b) r/w 13(2), PC Act 1988 as amendment by PC (Amendment) Act 2018 and 420, 465, 467, 468, 471, 120-B IPC, PS Vigilance Bureau, Flying Squad-1, Punjab at Mohali was registered against Girish Verma s/o Manohar Lal Verma & Others.

2. During investigation, it has surfaced that accused Vikas Verma & others have unexplained inter-se suspicious financial transactions within themselves and with the firm. This firm is holding account(s) with your bank. The circumstances of the case and perusal of transaction statements of the accounts of the accused persons firm clearly points towards commission of offence. The details of the bank account(s) are as following:-

<i>S.No.</i>	<i>Account Holder</i>	<i>Account No.</i>
<i>1.</i>	<i>Balaji Developers</i>	<i>920020025419770</i>

3. You are hereby requested to kindly freeze the above mentioned bank account and prohibit the account holder(s) from operating this account till any further directions of the concerned Hon'ble Court.”

Briefly summarized, the facts of the case are that the petitioner firms which are duly registered with the Registrar of Firms vide Certificate of Registration bearing No.240 of 2019-2020 dated 16.04.2019 and No.2820 of 2021 dated 03.03.2021 have approached this Court challenging the above said communications. It is averred that Vigilance Enquiry No.01 dated

25.07.2022 culminated into case FIR No.18 dated 12.10.2022 for commission of offence under Section 13 (2) of the Prevention of Corruption Act, 1988 as amended and for offences under Sections 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code was registered at Police Station Vigilance Bureau Flying Squad-I, Punjab, at Mohali. The complainant in the said case happens to be one Assistant Inspector General of Police, Vigilance Bureau, and the same has been registered against one Girish Verma, the then Executive Officer of Zirakpur, District S.A.S. Nagar. The allegations were to the effect that the above said Executive Officer had incurred expenses much beyond his known sources of income during the period 01.04.2008 to 31.03.2021 and that disproportionate assets had been obtained by use of corrupt means misusing his official position. It was pointed out that during the above said period, the accused had spent an amount of Rs.15,11,15,448/- (Rupees Fifteen Crores Eleven Lakhs Fifteen Thousand Four Hundred Forty Eight) whereas his total income from all sources was Rs.7,95,76,097/- (Rupees Seven Crores Ninety Five Lakhs Seventy Six Thousand and Ninety Seven only). During the course of the preliminary inquiry, Vikas Verma son of Girish Verma accused as well as his mother Sangeet Verma i.e. wife of Girish Verma along with few other persons have rendered their assistance and transferred huge amounts of money in the banks. Accused Girish Verma was arrested on 12.10.2022 and during the course of investigation, Smt.Sangeeta Verma wife of Girish Verma and Vikas Verma son of Girish Verma were also nominated as accused on 30.11.2022 under Section 120-B of the Indian Penal Code. A final report under Section 173 of the Code of Criminal Procedure was prepared on 03.12.2022 and submitted before the trial Court on 09.12.2022.

On 02.02.2023, the officials of Police Station Vigilance Bureau nominated Gaurav Gupta and Ashu Goyal, both partners in petitioner No.2-M/s Balaji Developers vide General Diary dated 27.01.2023 with the allegations that Gaurav Gupta and Ashu Goyal have transferred an amount of Rs.15 Lakhs and Rs.30 Lakhs respectively to the bank account of Vikas Verma son of Girish Verma who is also a partner in the petitioner firms by way of RTGS from their respective bank accounts. The amounts that were extended as family loan are claimed to have been returned by way of bank transfers before and after registration of the FIR.

Thereafter, vide another General Diary, certain additional offences under the Indian Penal Code were added and Ashish Sharma along with Sanjiv Kumar were also nominated as accused on the ground that petitioner No.1-firm had submitted certain documents while applying for authorization of unauthorized colony in the year 2019 which such documents have been alleged to be forged and fabricated. During the course of the ongoing inquiry/investigation, respondents issued communications/orders impugned herein that current accounts of the petitioner-firms stood frozen. It is further averred that the Inquiry Officer initially issued notice dated 08.09.2022 to the Managing Director of M/s Balaji Developers, Kurali, District S.A.S. Nagar to join vigilance inquiry and that they had duly joined the proceedings on 09.09.2022 along with account and prayed for some time to submit all the relevant documents. They again joined along with the records of partnership, bank account statements, relevant record of licensing Authorities, details of investment, purchase of property, year-wise balance sheets and the details of the amounts credited to the account of the petitioner in terms of the notice served by the Vigilance

Bureau.

It has been further averred that so far as petitioner No.1-M/s Balaji Infra Buildteh is concerned, there are three partners in the said firm i.e. Gaurav Gupta, Ashish Sharma and Vikas Verma to the extent of 65%, 15% and 20% respectively.

The said partnership deed was executed on 15.10.2020 and that in so far as petitioner No.2-M/s Balaji Developers is concerned, the said firm was re-constituted on 24.07.2020 wherein the following were the partners i.e. Gaurav Gupta, Vikas Verma to the extent of 35% each and Ashish Sharma and Ashu Goyal to the extent of 15% each.

It has been further averred that so far as the question of submission of documents while applying for authorization of unauthorized colonies in the year 2019 being forged and fabricated is concerned, Vikas Verma son of main accused Girish Verma was not a partner in the firms and that any such accusations relates to a period much prior to his induction as a partner in petitioner No.2-firm.

It is averred that during the course of Inquiry, only the transactions of Rs.15 Lakhs and 30 Lakhs are stated to have been entered into between the partners and the accused. No such transaction took place during the course of the partnership firm and that any such transaction is between and within the individual partners for which accounts of the partnership firm have been closed. Moreover, the provisions of Section 102 of the Code of Criminal Procedure would also not be applicable in the facts of the present case.

Status report by way of affidavit of Harvinder Pal Singh, PPS,
Deputy Superintendent of Police, Vigilance Bureau, Flying Squad-I, Mohali

has been filed wherein emphasis has been laid on the nexus/association of the petitioners with the main accused i.e. Girish Verma and the participation/financial contribution of his son Vikas Verma. It is emphasized that the said investment is in fact an ill gotten money. The total income of Girish Verma and his family was found to be Rs.7,95,76,097/- for the period from 01.04.2008 to 31.03.2021, however, they have already spent a sum of Rs. 15,11,15,448/-. The expenditure carried out by the accused was thus 89.90% more than his gross income from all sources. Details have been also given with respect to the properties acquired by Girish Verma in connivance with his family members with various developers/builders with whom he had links apart from moveable/immovable properties acquired by him.

It has been further averred that from the year 2004 onwards, accused Girish Verma had been regularly purchasing prime residential/commercial properties in the cities of Mohali, Panchkula, Mansa and Ludhiana and there have been as many as 21 number of movable and immovable properties mostly in the name of his wife Sangeeta Verma and son Vikas Verma. There were further 19 Saving/Current/deposit Accounts of Girish Verma, his wife Sangeeta Verma and son Vikas Verma in which fixed deposits have been made. It is alleged that accused Girish Verma initially obtained friendly loans for purchase of commercial/residential properties in the name of his wife and son and would actually repay the loan amount using the unaccounted money obtained by him through unfair means. The said modus operandi is stated to have been adopted by him in connivance with his wife Sangeeta Verma and son Vikas Verma and partners namely Gaurav Gupta, Ashish Sharma, Ashu Goyal and Sanjiv Kumar who acquired some properties. The partners of the petitioner firms

were nominated as accused on 27.01.2023 and 31.01.2023 for entering into criminal conspiracy and causing illicit enrichment to the main accused. It is averred that accused Vikas Verma had received Rs.15 Lakhs from Gaurav Gupta who was Counsellor from 09.03.2015 to 08.03.2020. Vikas Verma was entered as a partner in the partnership firm on 24.07.2020 and the second petitioner firm on 01.10.2020. Payments were also being disbursed as ex-gratia. A reference was also made to the statements of various vendors who had executed sale deeds in favour of the petitioner firms to contend that actual sale consideration for the land was much higher than value at which the registration had been done and that there have been cash deposits in the accounts of the said firms as well as by the land owners in their personal accounts.

It is further argued by the learned counsel that charge sheet against the accused has already been filed which establishes the involvement of the petitioners with the accused in siphoning of ill gotten money and facilitating the accused. She further contends that the petitioners were operating the said account despite registration of a criminal case and notwithstanding that proceeds of crime had been transferred through the above said accounts. It is vehemently argued that Section 102 Cr. P.C. is not a mandatory clause as per Division Bench Judgment of the Allahabad High Court in the matter of **Amit Singh Vs. State of Uttar Pradesh reported as 2022 (5) ILR (Allahabad) page 1199** and the relevant extract thereof is extracted as under:-

“(14) In view of submissions of learned counsel for the parties the main issue which falls for our consideration is as to whether Section 102(3) Cr.P.C. is mandatory or directory in nature? It is well settled that nonobservance of a mandatory condition is

fatal to the validity of the action. However, non-observance would not matter if the condition is found to be merely directory. In other words, it is not that every omission or defect entails the drastic penalty of invalidity. Whether the provision is mandatory or directory can be ascertained by looking at the entire scheme and purpose of the provision and by weighing the importance of the condition, the prejudice to private rights and the claims of the public interest, therefore, it will depend upon the provisions of the statute and mere use of word 'shall' would itself not make the provision mandatory. The Hon'ble Supreme Court in the case of State of Haryana Versus Raghuvir Dayal (Supra) has held that the use of word 'shall' is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment, on consequences to flow from such construction would not so demand.

(15) The Hon'ble Supreme Court, in the case of Nasiruddin and Others Versus Sita Ram Agarwal; AIR 2003 Supreme Court 1543, has held that it is well settled that the real intention of the legislation must be gathered from the language used. It may be true that the use of the expression 'shall or may' is not decisive for arriving at a finding as to whether statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character. It has further been held that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time frame, the same will be held to be directory unless the consequences therefor are specified. The relevant paragraphs 38 and 39 are extracted below:-

38. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that

in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression "shall or may" is not decisive for arriving at a finding as to whether the statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character. 39. Yet there is another aspect of the matter which cannot be lost sight of. It is a well-settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefore are specified. In Sutherland's Statutory Construction, 3rd Edn., Vol. 3, at p. 107 it is pointed out that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that which obtains with respect to public officers. Again, at p. 109, it is pointed out that often the question as to whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that shall follow non-compliance with the provision. At p. 111 it is stated as follows: "As a corollary of the rule outlined above, the fact that no consequences of non-

compliance are stated in the statute, has been considered as a factor tending towards a directory construction. But this is only an element to be considered, and is by no means conclusive.”

(16) The consequences of non-reporting about the seized property have not been provided under the section. In addition, the requirement of reporting in the manner, as stated, is on the part of a public functionary and in view of the law laid down by the Hon’ble Supreme Court, as noticed above, the same is required to be held to be directory unless the consequences thereof are specified. Since the consequences have not been specified, it would be safe to hold that requirement of Section 102(3) Cr.P.C. cannot be termed as mandatory but would be directory in nature.”

Apprehension is further expressed that the petitioners are likely to influence the witnesses.

Counsel for the remaining respondents, however, submit that they have only complied with the directives issued to them and have no real contest in the matter.

I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present petition as well as the judgment cited by the respective counsel.

Before proceeding further into the matter, it would be necessary to refer to the relevant statutory provision, the power whereof has been exercised by the Investigating Officer. Section 102 Cr.P.C. reads thus:

Section 102 in The Code Of Criminal Procedure, 1973

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.

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.”

A plain reading of the aforesaid provision clearly shows that the power under Section 102 Cr.P.C. is to be invoked when a Police Office seizes any property which is alleged or suspected to have been stolen or which may have been found under circumstances that create suspicion of the commission of any offence. A plain reading thereof suggests that the seizure of the property itself must emanate from a suspicion of commission of offence and should lead to discovery of crime.

Per contra, the circumstances of the case display a converse

preposition where the respondents were already in knowledge of the offence and have already collected the relevant evidence. The seizure of the property is only in the process of collecting further evidence and to stop operation of the Account which was purportedly used in the transactions undertaken by the accused persons.

The Hon'ble Supreme Court, in the judgment of "***Nevada Properties Private Limited through its Directors versus State of Maharashtra and another***", reported as **2019 (4) R.C.R. (Criminal) 592** dealt with the above said issue and interpretation and application of Section 102. The relevant extract of the said judgment reads thus:-

"8. Decision of this Court in Tapas D. Neogy (supra) was in respect of the bank accounts and it did not examine and answer the question whether the expression 'any property' would include immovable property. This question was, however, noticed in paragraph 6 in Tapas D. Neogy (supra), which had made reference to a decision of the Delhi High Court in Ms. Swaran Sabharwal v. Commissioner of Police, 1988 Crl.L.J. 241 (Del.) DB, in which it was held that Section 102 requires that the seized property by itself should lead to the suspicion that some offence has been committed. The discovery of the offence should be a sequel to the discovery of that property and not the other way around. Reference in this regard can also be made to Jagdish Chander and Others v. State and Others, 40 (199) DLT) 233, wherein the petitioner had challenged the seizure action of the police on the ground that the word 'seizure' appearing in Section 102 of the Code would imply actual taking of possession and, therefore, would not include immovable property. This contention was not answered and left open as the Delhi High Court came to the conclusion that the seizure order therein under Section 102 of the Code was not in accordance with the statutory requirement as the property should be discovered under circumstances which create a suspicion of the

*commission of an offence, that is, the police officer should come across certain property in circumstances which create in his mind a suspicion that an offence has been committed. **Section 102, it was held, would not be attracted where the property has not been traced or discovered which leads to a suspicion of an offence having been committed. Discovery of property should precede the detection of crime.** This ratio was subsequently followed in *P.K. Parmar and Others v. Union of India and Another*, 1999 CrL.J. 2499 (Del.) in which the Delhi High Court had reiterated that unless discovery of the property leads to a suspicion of an offence having been committed, Section 102 of the Code cannot be invoked for seizing such properties. The Delhi High Court examined the question; whether the discovery of the bank accounts had preceded the suspicion of the offences having been committed and held that there were good reasons, in view of the attending circumstances, which had led Central Bureau of Investigation (hereinafter referred to as the "CBI) to be suspicious of an offence having been committed in relation to such accounts. The accounts were found either in the name of non-existent persons or in bogus names and all such accounts were allegedly being maintained by the principal accused."*

The above said proposition of law was followed by the Bombay High Court in the matter of ***"Gulam Sarvar versus State of Maharashtra and others"*** bearing Criminal Writ Petition No. 1132 of 2017 decided on 05.02.2018. The relevant extract thereof reads thus:

"13. Power under Section 102 of the Code of Criminal Procedure, 1973 can be invoked by a Police Officer only when the property to be seized is alleged or suspected to have been stolen or which is found under such circumstances as to create suspicion of commission of any offence, so that such seizure provides effective assistance to him in the investigation. To

exercise this power, it is not necessary for the Investigating Officer to justify the seizure of bank account by collecting evidence as if a trial is being held and it is enough for him to justify his action by reasonably showing that the amount in the account creates a reasonable suspicion of commission of crime. However, it is necessary in a case where account has been seized or frozen under Section 102 (1) Cr.P.C. 1973, it being a property not capable of being transported to Court or actually held in custody by the Police, to report the seizure to the Magistrate, as required under sub-Section (3) of Section 102 Cr.P.C. A useful reference in this regard may be had to the cases of State of Maharashtra Vs. Tapas D. Neogy, reported in (1999) 7 SCC 685 and Teesta Atul Setalvad Vs. State of Gujarat, Criminal Appeal No. 1099/2017 decided by Hon'ble Apex Court on 15.12.2017."

The Madras High Court, in the matter of **"B.Kavitha versus Inspector of Police and others"** reported as **2019 (2) LW (Criminal) 56** observed that freezing of Bank Account has to be undertaken only in rare cases and that to in strict compliance with the procedure under Section 102 Cr. P.C. Further, in the judgment of **"R. Chandrasekar versus Inspector of Police, Salem and another"** reported as **2003 (1) R.C.R. (Criminal) 503**, it was held that where the discovery of the property is not in the nature leading to creation of a suspicion that any offence has been committed, the same would not be sufficient to attract 102 Cr.P.C. The allegations of the prosecution in the said case were that the Bank Account was a sequel to the discovery of the commission of the offence. Hence, the revelation of the Bank account did not lead to tracing or discovery of the commission of offence. The seizure as ordered was accordingly set aside.

Although it may be contended on behalf of the respondent-State

that discovery of the aforesaid Bank Accounts did lead to exposing the participation of the other co-accused in the commission of the offence, however, no such circumstances have been displayed by the respondents under which the case of the prosecution can be said to suffer a jolt or prejudice if the Account is not frozen. Once the account details/the Banking transactions establishing the nexus are in possession of the respondent-investigating agency, there is no reasons or occasion for directing that the account should be kept in a State of continuous freeze, even though it might not advance any further purpose of investigation.

The evidence in the case has already been collected and is in possession of the Prosecuting Agency. There is no further role of the aforesaid Bank Account and there is no valid or compelling justification for stalling operations of the those Bank Accounts as well as the firms in their entirety more so when the housing projects are being undertaken wherein people have made investments and it shall have a cascading effect on the investments/aspirations of other persons as well. The only apprehension expressed by the respondent is that the petitioners are likely to influence the investigation, however, any such apprehension which is not founded on valid material and consideration cannot be the basis to presume that the petitioners are likely to indulge in a manner as is likely to influence the witnesses and/or hamper the progress of investigation. Even if that be so, the Investigating Agency cannot be said to be remediless against the petitioners or any other person who may be alleged to have abused his concessions and interferes with the process of investigation/the recording of evidence by way of influencing the witnesses. The prosecuting Agency cannot tend to absolve itself of its responsibility of proving its case by relying upon misplaced

apprehensions against the conduct of the accused persons. The witnesses having been cited by the prosecuting agency, it is obligation of the prosecuting agency to keep its evidence intact and/or to take recourse to appropriate mechanism available to them in law of the protection of witnesses and/or taking action against the accused who has abused the concession granted in his favour. The same cannot be a ground to perpetuate an adversity which is otherwise not likely to substantiate or support the case of the prosecuting agency.

There seems to be no tangible explanation put forth by the respondents for continued *status quo* as regards the operation of the Accounts.

Insofar as the involvement of the petitioner's partnership in the commission of the offence is concerned, this Court is not going into the said matter at this stage since the same is not an issue placed before it and any such expression shall have an impact on final merit. More-so, it is yet to be determined as to whether account of the petitioners were used in commission of crime since the explanation as per reply is that the transactions were from the individual accounts of the petitioners and not the petitioner firms. The validity, admissibility and legality of evidence and its proof is required to be examined by the competent Court in accordance with law. The expression laid herein above is only with respect to allowing/disallowing the continued state of the account being frozen during a pendency of a criminal trial.

I find that no valid justification exists for keeping the account in a non-operational state. The communication dated 12.04.2023 bearing Memo No.67 and 68 sent by the Investigating Officer in relation to case FIR No. 18 dated 12.10.2022 registered at Police Station, Vigilance Bureau, FS-

1, Punjab at Mohali under Sections 13 (1)(B) read with Section 13 (2) of the Prevention of Corruption Act, 1988 and Section 120 (B) of the IPC are hence set aside.

The writ petition is accordingly allowed.

(VINOD S. BHARDWAJ)
JUDGE

JULY 28, 2023
raaj arora/Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No