

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

**CWP-24190-2022 (O&M).
Date of Decision: 17.03.2023.**

ANUSHKA ARORA AND ANOTHER

.. Petitioners

Versus

PUNJAB AND SIND BANK AND OTHERS

... Respondents

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

PRESENT Mr. Puneet Bali, Sr. Advocate, with
Mr. Surjeet Bhadu, Advocate, and
Mr. Veer Singh, Advocate, for the petitioners.

Mr. Gaurav Goel, Advocate, and
Mr. Navjit Singh, Advocate,
for the respondent No.1.

Mr. Sunil Chadha, Sr. Advocate, with
Mr. Akshay Chadha, Advocate,
Mr. Vaibhav Narang, Advocate, and
Mr. Jaiveer Chandel, Advocate,
for respondents No.2 and 3.

VINOD S. BHARDWAJ, J.

The present writ petition has been filed for seeking issuance of directions to respondent No.1-Punjab and Sind Bank, Hall Bazar Branch, Amritsar, to defreeze the bank accounts/fixed deposit accounts in the name of the petitioners and their proprietorship concerns. Quashing of letter dated 14.07.2022 (Annexure P-1) written by Incharge, Cyber Crime Cell, Haridwar, Uttarakhand, was also prayed for.

Briefly summarized, the facts of the present case are that the petitioners are daughters of one Rakesh Mehra, proprietor of the firms namely M/s Sri Shivaji Global Export and M/s Shiva Mahadev Overseas. Petitioners No.1 and 2 are also carrying on their business through their own proprietorship concerns namely Ms. Sri Shiva Corporation and M/s Shiv Shakti Organic Products respectively.

Rakesh Mehra, father of the petitioners was having business dealings with Divya Pharmacy and Patanjali Ayurveda Limited situated at Haridwar. He used to supply raw material to the said entities and the business relationships continued from the period 2008 to 2017. There were certain unsettled amounts between the father of the petitioners and the above said two entities Divya Pharmacy and the Patanjali Ayurveda Limited. Without going into the merits of said dispute, the same resulted in registering case FIR No.0177 dated 07.06.2022 at Police Station, Kankhal, Haridwar, for the commission of offences under Sections 420 and 506 of the Indian Penal Code, 1860 against Rakesh Mehra-the father of the petitioners. A petition for seeking quashing of the aforesaid FIR was filed by Rakesh Mehra, before the High Court of Uttarakhand at Nainital wherein an interim stay was initially granted, however, owing to a technical error on part of the Notary, the said petition was eventually dismissed. An SLP (Crl.) against the said order is stated to be pending before the Hon'ble Supreme Court of India.

The petitioners contend that they are neither named as accused in the said FIR nor any role has been assigned to them. A family settlement had taken place within the family wherein some properties had been transferred by the father of the petitioners in their favour as well. The

petitioners allege that the Investigating Officers are visiting the petitioners and pressurizing them to clear the dues of Divya Pharmacy and Patanjali Ayurveda Limited. The petitioners informed the investigating agency that Rakesh Mehra was not in India and that since the petitioners have no concern with the business/trade dispute of Rakesh Mehra with Divya Pharmacy and Patanjali Ayurveda Limited, they should not be harassed. The petitioner No.2 thereafter received an SMS from the Bank that the payments which she wanted to make had been reversed since the accounts of the petitioners have been freezed on a letter dated 14.07.2022 issued by the Cyber Crime Cell, Haridwar. The detail of the accounts ordered to be freezed by the Cyber Crime Cell, Haridwar, vide Letter No.OB No-522/22 dated 14.07.2022 is as under:-

Sr. No.	Bank Account/FD Accounts Number	Account Holder Name	Amount (In Lakhs)	Current Account/FD	Account Opening Date
1	00011400028491	Sri Shiva Corp.	50	FD	17.08.2022
2	00011400028492	Sri Shiva Corp.	50	FD	17.08.2022
3	00011400028499	Sri Shiva Corp.	50	FD	18.08.2022
4	00011400028498	Sri Shiva Corp.	50	FD	18.08.2022
5	00011100099521	Shiv Shakti Organic Products	100	Current Account	25.03.2022
6	00011400028383	Anushka Arora	65	FD	08.07.2022
7	00011400028430	Shiv	65	FD	28.07.2022

		Shakti Organic Products			
8	00011400028431	Shiv Shakti Organic Products	65	FD	28.07.2022
9	00011400028432	Shiv Shakti Organic Products	65	FD	28.07.2022
10	00011400028433	Sri Shiva Corp.	65	FD	28.07.2022
11	00011400028451	Shiv Shakti Organic Products	65	FD	02.08.2022
12	00011400028452	Shiv Shakti Organic Products	65	FD	02.08.2022
13	00011400028473	Shiv Shakti Organic Products	50	FD	09.08.2022
14	00011400028474	Shiv Shakti Organic Products	50	FD	09.08.2022

It is further averred that the letter dated 14.07.2022, issued by
the Cyber Crime Cell, Haridwar, is seemingly an ante-dated document since

it has directed freezing of all the above accounts, many of which have been opened after the date of the above said letter. It is further alleged that the respondent Authorities are bent upon harassing the petitioners to pressurize them to submit to the undue and illegal demands of the complainant.

Upon notice, written statement on behalf of respondents No.2 and 3 was filed wherein various objections were taken including that the writ petition being not maintainable for want of territorial jurisdiction since the FIR in question has been lodged and pending investigation with the Uttarakhand Police. It was also averred that the petitioners have concealed the material facts from the Court and that the quashing petition filed by their father had already been dismissed by the High Court of Uttarakhand at Nainital and proceedings against the Notary Public have also been initiated for attesting the affidavit especially when Rakesh Mehra father of the petitioners was not in India on the date when the affidavit was attested. It is stated that father of the petitioners had transferred money obtained by him by playing fraud upon the Divya Pharmacy and Patanjali Ayurveda Limited to the bank accounts of the petitioners herein. It has also been stated that the petitioners had not been co-operating in the investigation of the case and were avoiding notices issued by the investigating agency. The FIR was registered since goods were not delivered by Rakesh Mehra despite obtaining huge amounts to the tune of Rs.31 crores approximately.

Notices under Section 41-A of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') were also pasted at the residence of the petitioners but they chose not to appear before the Investigating Agency. Details as to the steps taken by the investigating agency to conduct investigation against the petitioners have also been set

out which are however irrelevant for the adjudication of the present controversy and are hence not being adverted to.

Learned counsel appearing for respondent No.1-Punjab and Sind Bank, however, has submitted that the accounts in question were ordered to be frozen by the investigating agency and that they have no personal reasons against freezing/de-freezing of the aforesaid accounts.

No rejoinder to the written statement filed by the respondents has been filed by the petitioners.

Learned counsel appearing on behalf of the petitioners has vehemently argued that the action of the respondent Authorities is illegal and is an act of an abuse of power. He reiterates that the order dated 14.07.2022 directing freezing of the accounts that were opened later in point of time shows that the letter directing freezing of the accounts is an ante-dated document. He further submits that the petitioners are not accused in the said case and the transactions, if any, are between Rakesh Mehra i.e. the father of the petitioners and the complainant. Once there are no financial transactions of the petitioners with the complainant, there is no occasion for the respondent Authorities to direct freezing of the bank accounts belonging to the petitioners. As a result of the above said order of freezing of bank accounts, business of the petitioners has suffered a serious setback. No offence under Section 420 of the Indian Penal Code, 1860 could be said to be made out even in the FIR as is evident from long business association as there was no intention of cheating from the initiation of the business relationship. He refers to the provisions of Section 177 Cr.P.C. to contend that where even part of the cause of action accrues to the prejudice of a person, Courts of that jurisdiction are competent to entertain the petition. It

is argued that as the petitioners are not accused in the FIR, hence, they have no occasion to seek quashing of the FIR. Their grievance is restricted to and arose on account of freezing of the bank accounts that are operational within the territorial jurisdiction of this Court, hence, the writ petition before this Court is maintainable. It is vehemently argued that even if the version of the respondents is accepted that certain money had been transferred from the bank account of the father of the petitioners, the said amount is only to the tune of Rs.4 crores whereas the total amount in the accounts that had been ordered to be freezed is approximately Rs.22 Crores.

The respondents thus cannot strangle the business operations and the resources of the petitioners in such an illegal manner only to make them bleed and to agree to the unfair terms under such pressure. He places reliance on the judgment of the Hon'ble Supreme Court in the matter of **Navinchandra N. Majithia Vs. State of Maharashtra, AIR 2000 SC 2966**. The relevant extract of the aforesaid judgment is reads thus:-

25. Article 226 of the Constitution of India which provides the power to High Courts to issue certain writs reads as follows:-

"226. Power of High Courts to issue certain writs. - (1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) xxx xxx xxx

(4) xxx xxx xxx

26. From the provision in clause (2) of Article 226 it is clear that the maintainability or otherwise of the writ petition in the High Court depends on whether the cause of action for filing the same arose, wholly or in part, within the territorial jurisdiction of that Court.”

Further reliance is placed on the judgment of the Hon’ble Supreme Court in the matter **Nevada Properties Private Limited through its Directors Vs. State of Maharashtra and another, reported as 2019 (4) RCR (Criminal) 592**. The relevant extract 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 Cri.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. In other 1988 Cri.L.J. 241 (Del) (DB) Criminal Appeal arising out of words, 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.*

There was sufficient cause for the CBI to set the criminal law into motion. In this case, the allegation was that subsidies were obtained illegally and without entitlement from the Government of India, and the amounts so received were deposited in the bank accounts that had prima facie linked the accused with various offences with which they were charged. The cause of action, therefore, for seizing the bank accounts arose when a suspicion was created relating to the multiple and spurious handling of bank accounts.”

A reference is also made to the judgment of the Bombay High Court in the matter of **Gulam Sarvar Vs. State of Maharashtra and ors. bearing Criminal Writ Petition No.1132 of 2017 decided on 05.02.2018.**

The relevant extract whereof 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.”

A reliance is also placed on the judgment of the Madras High Court in the matter of **B. Kavitha Vs. Inspector of Police and others, 2019 (2) LW (Crl.) 56**. The relevant extract whereof reads thus:-

“6. It is an unfortunate case where the 1st respondent has completely misused his power. Freezing of bank account has to be undertaken only in rare cases and that to in strict compliance with the mandatory procedure under section 102 of the Cr.P.C., 1973 Time and again this Court has held that if a bank account is freezed without notice to the accused persons and without submitting a report before the Magistrate immediately, the same amounts to violation of the mandatory procedure prescribed under section 102 of Cr.P.C., 1973.”

Further reference was also made to the judgment of **R. Chandrasekar Vs. Inspector of Police, Salem and another, reported as 2003 (1) RCR (Criminal) 503**. The relevant extract is reproduced as under:-

“9. In the case on hand, the position is different. Here it is not the discovery of property that has created suspicion that an offence has been committed. There are no circumstances attendant upon the bank account or its operation that have led the police to suspect that some offence has been committed somewhere. The allegation of the prosecution is that the bank account in this case is a sequel to the discovery of the commission of the offence. This is not sufficient to attract [Section 102](#) of Cr.P.C. as it cannot be since that the bank account has been traced or discovered in circumstance which have made the police aware of the commission of an offence.”

He further submits that the writ jurisdiction of the Court would not be barred merely because there is an alternative remedy provided to the petitioner and that in an appropriate case, the High Court can duly examine the issue despite availability of other alternative remedies especially when fundamental rights of a person are being violated or there is a violation of principles of natural justice. Further, where the order is wholly without jurisdiction even in such circumstances, the writ Court can be approached. Once the glaring illegalities are evident reflected from the proceedings of the present case, the act of the petitioners in approaching the High Court raising a challenge to the same would thus be lawful and appropriate. It is further contended that even the procedure provided under Section 102 Cr.P.C., has not been followed in the present case and hence, the process suffers from material irregularity and impropriety. It is also averred that, at this juncture, it is only a case of suspicion that some part of the property transferred by father of the petitioners to them needs to be kept in-tact. A mere suspicion of the investigating agency cannot be sufficient to freeze accounts when there is nothing to suggest that the aforesaid amount was received by the petitioners is a proceed of crime. Moreover, the discovery of the bank accounts is not a result of disclosure or discovery of the commission of offence itself. Thus, there was no occasion for directing freezing of the bank account. He contends that the police officers were required to refer the issue to the Magistrate and also that since the details of the accounts were already made available, there was no necessity for directing freezing of the accounts.

Learned counsel appearing on behalf of the State of

Uttarakhand, on the other hand, has argued that the investigation of the case

is yet not concluded and that there is sufficient evidence to show that the money had been transferred from the account of the father of the petitioners to the accounts of the petitioners. He submits that various notices were sent by the Investigating Agency to the petitioners, however, they never chose to submit the necessary documents. He further avers that the petitioners have appended only one letter sent by the police to the bank for freezing of the accounts and that the other accounts were frozen pursuant to the subsequent orders passed by the investigating agency on 12.08.2011 and 22.09.2022 as well and the same have not been attached. Hence, the order of freezing the bank accounts is not ante-dated as suggested. It is submitted that the petitioners have also thereafter been arrayed as accused in the above said FIR No.0177 dated 07.06.2022 under Sections 420 and 506 of the Indian Penal Code, 1860 and that they have already filed a quashing petition before the High Court of Uttarakhand at Nainital. Once the petitioners have already approached the High Court of Uttarakhand at Nainital by filing a writ petition, there is no occasion why the petitioners ought not to have also raised a challenge to the orders passed by the investigating officer directing freezing of the bank accounts as well. He refers to the judgment of the Andhra Pradesh High Court in the matter of **Metkore Alloys and Industries Limited Hyderabad and another Vs. Union of India and another, bearing Writ Petition No.37056 of 2013 decided on 24.01.2014, reported as 2014 (1) Andh LD (Criminal) 980**. The relevant extract of the same reads thus:-

“12. Company of complainant is registered in Mumbai. Said company made investments through the office located in Mumbai and the transactions were undertaken in Mumbai and amounts payable for the transactions undertaken by the

complainant were to be made in Mumbai. The complainant alleges conspiracy and collusion by the Directors of NSEL and trading members in misappropriating huge public funds and causing default in making payment of amounts due to the complainant. A bare perusal of complaint brings out that entire cause of action arose within the State of Maharashtra. Thus, Maharashtra State Police are entitled to investigate into the crime. Petitioners do not assail the jurisdiction of Maharashtra Police to investigate into the crime. The relief sought by the petitioners is against the decision of Maharashtra Police applying the provisions of the Act, 1999, while investigating into the Crime No.89 of 2013. The consequential reliefs sought by the petitioners relate to the steps taken by the Maharashtra Police to seize the properties of the petitioners and to freeze the accounts, consequent to the decision to investigate into the crime in accordance with the provisions of the Act, 1999. Once the competency of Maharashtra State Police to investigate into Crime No.89 of 2013 is not doubted, this Court has no jurisdiction to entertain the writ petition and consider the grievance of the petitioners. This Court has no jurisdiction to go into the veracity and correctness of the decision taken by the Maharashtra State Police as part of investigation into Crime No.89 of 2013. This Court cannot exercise jurisdiction over the Special Sessions Court, Mumbai, which is the designated Court under Act, 1999. The location of Head Office of first petitioner company, location of warehouse of the first petitioner company and the existence of bank accounts in the branches located in State of Andhra Pradesh, are not relevant to confer jurisdiction on this Court when allegation of criminal offence was committed in State of Maharashtra.”

A reference is also made to the judgment of the Karnataka

High Court in the matter of **Coastal Mines and Minerals Vs. State of**

Chhattisgarh and others, reported as 2014 (12) RCR (Criminal) 1019. The relevant extract of which reads thus:-

“Therefore, this court does not choose to address the rival contentions, on factual aspects of the matter. It is evident that this court has entertained the present petitions on the primary grievance of the petitioners that the Raipur Police have compelled the several banks, where the petitioners hold bank accounts within the jurisdiction of this court, to freeze the operation of the accounts. The entertainment of the writ petitions has been questioned by the respondents on the question of jurisdiction and it is particularly sought to be canvassed that even according to the petitioners, the contractual relationship was created in the State of Goa and the transaction has taken place in the State of Goa and that the cause of action, if any, would be only in that State and therefore, the mere fact that there are banks, in which accounts are held by the petitioners within the jurisdiction of this court, would hardly afford jurisdiction in respect of the transaction or in respect of the proceedings initiated by the Raipur Police, who are outside the jurisdiction of this court. This aspect of the matter is no longer res integra, since Clause (2) of [Article 226](#) of the Constitution of India clearly would afford jurisdiction to this court. If it is an admitted fact that the bank accounts of the petitioners held by them in banks within the jurisdiction of this court are involved, it could then be said that the cause of action for the petitioners has arisen partly within the jurisdiction of this court. This is affirmed in several decisions of the apex Court.”

A reference is also made to the judgment in the matter of

Neelofar Abass Vs. State of J&K and others, reported as 2021 CriLJ 580.

The relevant extract of the judgment is reproduced as under:-

“9. Now it is to be seen whether the Bank account of one spouse can be frozen when the matter under investigation pertains to the other spouse. At this juncture, it would be appropriate to take note of the judgment of the Apex Court rendered in case titled State of Maharashtra versus Tapas D Neogy reported in (1999) 7 SCC 685. The relevant paras are 6 and 12 of the judgment, the same are reproduced as under:

"6. A plain reading of sub-section (1) of [Section 102](#) indicates that the police officer has the power to seize any property which may be found under circumstances creating suspicion of the commission of any offence. The legislature having used the expression "any property" and "any offence" have made the applicability of the provisions wide enough to cover offences created under any Act. But the two preconditions for applicability of [Section 102\(1\)](#) are that it must be "property" and secondly, in respect of the said property there must have been suspicion of commission of any offence. In this view of the matter the two further questions that arise for consideration are whether the bank account of an accused or of his relation can be said to be "property" within the meaning of sub-section (1) of [Section 102](#) CrPC and secondly, whether circumstances exist, creating suspicion of commission of any offence in relation to the same. Different High Courts in the country have taken divergent views in this regard. In the case of [Swaran Sabharwal v. Commr. of Police](#) [1988 Cri LJ 241 (Del) (DB)] a Division Bench of the Delhi High Court examined the question whether a bank account can be held to be "property" within the meaning of [Section 102](#) CrPC. In the said case, proceeds realised by sale of official secrets were deposited by the accused in his wife's account. The Court in that case came to hold that it is not quite sure whether monies deposited in a bank account can be seized by means of a prohibitory order under the

provisions of [Section 102](#) but even assuming that a bank account is a "property" within the meaning of [Section 102](#) of the Code of Criminal Procedure, the further consideration must be satisfied namely that the property has been found under circumstances which create the suspicion of the commission of an offence. But in that case it is not the discovery of the property that has created suspicion of commission of an offence but on the other hand the discovery of the bank account is a sequel to the discovery of commission of offence inasmuch as the police suspected that some of the proceeds realised by the sale of the official secrets have been passed on to the bank account of the wife of the accused. Therefore, the Court was of the opinion that the provisions of [Section 102](#) cannot be invoked. In the case of [Purbanchal Road Service v. State](#) [1991 Cri LJ 2798 (Gau)] a learned Single Judge of the Gauhati High Court examined the provisions of [Section 102](#) of the Criminal Procedure Code and the validity of an order by a police officer, prohibiting the Bank from paying amount to the accused from his account. The learned Judge came to the conclusion that the word "seize" used in [Section 102](#) CrPC means actual taking possession in pursuance of a legal process and, therefore, in exercise of the said power, a bank cannot be prohibited not to pay any amount out of the account of the accused to the accused nor can the accused be prohibited from taking away any property from the locker, as such an order would not be a "seizure" within the meaning of [Section 102](#) of the Criminal Procedure Code. The learned Single Judge agreed with the view taken by the Allahabad High Court in the case of [Textile Traders Syndicate Ltd. v. State of U.P.](#) [AIR 1960 All 405 : 1960 Cri LJ 871] In the Allahabad case on which the Gauhati High Court relied upon ([Textile Traders](#) [AIR 1960 All 405 : 1960 Cri LJ 871]), what was

decided by the Court is, once money passes on from the accused to some other person or to the bank, money itself becomes unidentifiable and, therefore, there cannot be any question of seizure of the same by the police officer.

12. Having considered the divergent views taken by different High Courts with regard to the power of seizure under [Section 102](#) of the Code of Criminal Procedure, and whether the bank account can be held to be "property" within the meaning of the said [Section 102\(1\)](#), we see no justification to give any narrow interpretation to the provisions of the Criminal Procedure Code. It is well known that corruption in public offices has become so rampant that it has become difficult to cope up with the same. Then again the time consumed by the courts in concluding the trials is another factor which should be borne in mind in interpreting the provisions of [Section 102](#) of the Criminal Procedure Code and the underlying object engrafted therein, inasmuch as if there can be no order of seizure of the bank account of the accused then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdrawn by the accused and the courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer. 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 the Criminal Procedure Code and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence for which the police officer is investigating into. The contrary view expressed by the Karnataka, Gauhati and Allahabad High Courts, does not represent the correct law.

It may also be seen that under the [Prevention of Corruption Act](#), 1988, in the matter of imposition of fine under sub-section (2) of [Section 13](#), the legislatures have provided that the courts in fixing the amount of fine shall take into consideration the amount or the value of the property which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of [Section 13](#), the pecuniary resources or property for which the accused person is unable to account satisfactorily. The interpretation given by us in respect of the power of seizure under [Section 102](#) of the Criminal Procedure Code is in accordance with the intention of the legislature engrafted in [Section 16](#) of the Prevention of Corruption Act referred to above. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court of Bombay committed error in holding that the police officer could not have seized the bank account or could not have issued any direction to the bank officer, prohibiting the account of the accused from being operated upon. Though we have laid down the law, but so far as the present case is concerned, the order impugned has already been given effect to and the accused has been operating his account, and so, we do not interfere with the same"

(Emphasis Supplied)

10. Thus, is it is evident that the bank account of the accused as well as his relative falls within the definition of the "property" under [section 102](#) Cr.P.C can be validly frozen during the course of investigation, if the circumstances exist creating suspicion regarding commission of any offence.

11. The next issue that arises for the consideration of this Court is whether the money lying in the account of the

petitioner falls within the purview of [section 102 Cr.P.C](#) so as to warrant the freezing of account. The respondent No. 3 has categorically stated in the status report that the questionnaire was submitted to the petitioner and her husband to submit all the property related documents (both immovable/movable) acquired during the period before the Investigating Officer, but they did not furnish the same. More so, in paragraph 15 of the petition, the petitioner has submitted that she made a formal representation on 20.08.2020 and the same is annexed as annexure A-5. However, its perusal reveals that the representation was made to respondent No. 4 only, who had frozen the account only on the instructions of respondent Nos. 2 and 3 and could not have been independently de-frozeed the salary account of the petitioner without there being any instructions to that extent by respondent Nos. 2 and 3. This Court while exercising writ jurisdiction under [Article 226](#) of the Constitution of India, cannot determine the disputed question of facts as to whether the amount lying in the salary account of the petitioner falls within the mischief of [section 102 \(1\) of the Cr.P.C](#) or not. There are serious allegations and investigation is still going on. To be fair to the petitioner and her husband, the questionnaires have been issued to them by Investigating Officer but those have been not replied by the petitioner as well as her husband. The petitioner has an option to demonstrate before I.O that the money lying in her account is the remuneration earned by her from her employer. The Investigating Officer may de-freeze her account if her contentions are found to be genuine and other wise after the conclusion of the investigation and after the filing of the report before the concerned court, the petitioner can still demonstrate before the concerned court with regard to the legitimacy of the amount lying in her salary account. Reliance is placed upon the decision of Apex Court in case titled [Teesta Atul Setalvad v.](#)

State of Gujarat, reported in (2018) 2 SCC 372 and the relevant para is reproduced as under:

26. Although both sides have adverted to statement of accounts and vouchers to buttress their respective submissions, we do not deem it necessary nor think it appropriate to analyse the same while considering the matter on hand which emanates from an application preferred by the appellants to defreeze the stated bank accounts pending investigation of the case. Indisputably, the investigation is still in progress. The appellants will have to explain their position to the investigating agency and after investigation is complete, the matter can proceed further depending on the material gathered during the investigation. The suspicion entertained by the investigating agency as to how the appellants appropriated huge funds, which in fact were meant to be disbursed to the unfortunate victims of 2002 riots will have to be explained by the appellants. Further, once the investigation is complete and police report is submitted to the court concerned, it would be open to the appellants to apply for defreezing of the bank accounts and persuade the court concerned that the said bank accounts are no more necessary for the purpose of investigation, as provided in sub-section (3) of [Section 102](#) of the Code. It will be open to the court concerned to consider that request in accordance with law after hearing the investigating agency, including to impose conditions as may be warranted in the fact situation of the case."

(Emphasis Supplied)

A further reference is also made to the judgment of the Hon'ble Supreme Court in the matter of **Teesta Atul Setalvad Vs. State of**

Gujarat, reported as 2018 (1) RCR (Criminal) 598. The relevant extract of the judgment reads thus:-

44. The arguments impugning the freezing of the accounts under [Section 102](#) of Cr.P.C. without notice to the petitioners are to be noted for rejection for the simple reason that the [Section 102](#) does not contemplate issuance of any such notice, and for the purpose of investigation, no notice to the suspect can be expected under the law. [Section 102](#) of Cr.P.C. is an important step towards investigation and in view of settled legal position that accused cannot have any say in investigation, notice to the suspect is out of question. The intention of the investigating agency is not required to be revealed to the suspect at that crucial stage, else, a message of alert would be received by the suspect creating a huge room for manipulation and or destruction of evidence.

45. It is noticed from the impugned order that the notice of the seizure or freezing of the accounts or its intimation was sent to the competent magistrate, and therefore, learned counsel for the petitioners has fairly not pressed the said argument.

46. It is also misconceived to argue that the seizure in exercise of powers under [Section 102](#) of Cr.P.C. would be valid only if the accounts in question contain the proceeds of crime.

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17. In the present case, FIR has been registered at least against three private appellants, naming them as accused. CJP Trust has not been named as an accused in the FIR. But the investigation thus far, according to the respondents, reveals that Teesta Atul Setalvad and Javed Anand are actively associated with the said Trusts and have carried out transactions which may be found under circumstances suspicious of the commission of the alleged offence. That is

still a matter of investigation. For the present, the Investigating Officer is of the view that there are certain circumstances emerging from the transactions done from these bank accounts which create suspicion of the commission of an offence. It is on that belief he has exercised his discretion to issue directions to seize the bank accounts pertaining to CJP Trust.

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22. Suffice it to observe that as the Investigating Officer was in possession of materials pointing out circumstances which create suspicion of the commission of an offence, in particular, the one under investigation and he having exercised powers under [Section 102](#) of the Code, which he could, in law, therefore, could legitimately seize the bank accounts of the appellants after following the procedure prescribed in sub-Section (2) and sub-Section (3) of the same provision. As aforementioned, the Investigating Officer after issuing instructions to seize the stated bank accounts of the appellants submitted report to the Magistrate concerned and thus complied with the requirement of sub-Section (3).

23. Although both sides have adverted to statement of accounts and vouchers to buttress their respective submissions, we do not deem it necessary nor think it appropriate to analyse the same while considering the matter on hand which emanates from an application preferred by the appellants to de-freeze the stated bank accounts pending investigation of the case. Indisputably, the investigation is still in progress. The appellants will have to explain their position to the investigating agency and after investigation is complete, the matter can proceed further depending on the material gathered during the investigation. The suspicion entertained by the investigating agency as to how the appellants appropriated huge funds, which in fact were meant to be disbursed to the

unfortunate victims of 2002 riots will have to be explained by the appellants.

Further, once the investigation is complete and police report is submitted to the concerned Court, it would be open to the appellants to apply for de-freezing of the bank accounts and persuade the concerned Court that the said bank accounts are no more necessary for the purpose of investigation, as provided in sub-Section (3) of [Section 102](#) of the Code. It will be open to the concerned Court to consider that request in accordance with law after hearing the investigating agency, including to impose conditions as may be warranted in the fact situation of the case.”

Further reference is also made to the judgment of Bombay High Court in the matter of **Shri Rohan Ashok Jagdale Vs. The State of Maharashtra reported as 2015 (46) RCR (Criminal) 159**. The relevant extract is as under:-

*“15. **Vinoskumar Ramchandran Valluvar v. The State of Maharashtra** (supra), is the Full Bench judgment of this Court. The Full Bench has held that at the stage of investigation, notice of seizure is not required to be given to the account holder before or at the time of attachment of the bank account. In-fact this is not a bone of contention by the petitioners before us. Their only effort is to show that they are not accused and are not even privy to the crime by Shekhar Wankhede or M/s. Swastik Business Advisory and Consultancy. It is apparent that the investigation is still going on, and the investigating officer at least as this stage has demonstrated that for money received by the petitioners, petitioners are not in a position to bring on record any expenses incurred. However, this is not a stage at which a finding can be finally recorded in this respect.*

16. With the result, we find that the amounts earned by committing an offence by Shekhar Wankhede and his Firm have been found parked in the bank accounts of the petitioners. The action of respondent no.2 in freezing those accounts therefore, cannot be said to be illegal.”

Referring to the aforesaid judgments, learned Senior counsel appearing on behalf of the respondents contends that the police officer has ample powers under Section 102 Cr.P.C. to direct seizure of the property when he entertains a suspicion with regard to the mode and manner in which such property has been obtained and it being a part of the crime. The explanation offered by the petitioners is at best a disputed question of fact and such defence is yet to be considered by the investigating agency. It is argued that the petitioners may, if so advised, approach the concerned authorities along with explanation and evidence and that the investigating officer shall examine the evidence to be relied by the petitioners to establish their bona fide or to demonstrate that the property in the aforesaid bank accounts is their self-acquired property and not a proceed of crime. He further contends that since the petitioners are now accused in the above said case and have already approached the competent High Court, there is no reason why the petitioners ought not to agitate the present issue before that court itself. The grounds pleaded by the petitioners that they had approached this Court since they were not the accused in the said FIR and were being prejudiced by an act which was an abuse of the authority by the investigating officer, does not survive any further. It would thus be imperative that the petitioners invoke the jurisdiction of the competent High Court where the cause of action has arisen and where the investigation is

being conducted. Institution of the present petition before High Court of different territorial judicature is misconceived.

I have heard the learned Senior counsel representing the respective parties and have also gone through the documents available on the record.

It is not disputed by the petitioners that they have since been arraigned as accused in the above said FIR and that they have also approached the High Court of Uttarakhand at Nainital for seeking quashing of the aforesaid FIR against them. The said writ petition has already been heard on 27.01.2023 and respondent No.2 has been restrained from carrying out any coercive action against the petitioners.

The same now leads to the first objection as regards maintainability of the writ petition before this Court. Article 226 (2) of the Constitution of India clearly lay down the legal position. A court where a cause of action arose wholly or in part would have jurisdiction to entertain a writ petition.

The question which, however, arises in the present case is as to whether it would be appropriate for this Court to exercise its writ jurisdiction in the facts of the present case and to issue directions especially when the petitioners have also approached the High Court of Uttarakhand at Nainital in whose territorial jurisdiction the FIR has been registered. The contention of the petitioners at the time of approaching this Court at the first instance was that they were not accused in the said FIR and as such, they had no occasion to approach the High Court of Uttarakhand at Nainital and that qua them the cause of action arose only on the issuance of the order of freezing of the bank accounts. However, the said contention pales into

insignificance after the petitioners have been arraigned as accused in the said FIR. The order of freezing of the bank accounts is thus a part of the ongoing investigation against the petitioners herein. The “cause of action” as ordinarily understood to mean “a situation or state of facts that entitles a party to maintain an action in a Court giving rise to one or more basis for suing,” is thus the registration of the FIR and not the order of freezing of bank accounts for assuming jurisdiction. Hence, a person is expected to approach the Court exercising territorial jurisdiction for any substantial relief and not before a forum where impact of cause of action is felt. Such subsequent Court should ordinarily exercise its jurisdiction restrictively and in cases where the person aggrieved cannot seek protection of his right except for an indulgence from the Court where the consequential impact is being experienced. The exercise of discretion is thus limited and in exceptional circumstances where non-exercise of power would defeat the ends of justice and would be denial to constitutional remedies.

It would now be relevant to refer to certain provisions of the Code of Criminal Procedure which are 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.

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177. Ordinary place of inquiry and trial.—Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.”

It is evident from perusal of the aforesaid provisions of Section 102 Cr.P.C., that a police officer may seize any property which may be alleged or suspected to have been stolen. The seizure is required to be reported to the Magistrate having jurisdiction and the police officer may give custody of such property to the person on his executing the

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. Further Section 177 Cr.P.C., defines the ordinary place of inquiry and trial. Hence, an offence is to be ordinarily tried by a Court within whose local jurisdiction it is committed. The jurisdiction in criminal law is thus ordinarily governed by the commission of offence and not just any cause of action. Hence, irrespective of the cause of action, the jurisdiction for adjudication qua the offence would vest only in the Court where the offence is committed. Such fixing of territorial boundaries should ordinarily be respected by Courts and they should exercise judicial restraint when exercise of jurisdiction is likely to be viewed as a judicial over-reach.

The petitioners have numerous alternative remedies available to them i.e. to approach the concerned Police Officer and to furnish the document in support of their claim to seek de-freezing of the aforesaid bank accounts or to move an appropriate application for being permitted to operate the aforesaid bank accounts on furnishing of bonds/undertakings and/or furnishing of any such conditions as may be so imposed. Such an application may also be moved before the competent Illaqua Magistrate exercising jurisdiction over the offence. Further, the petitioners may also move an application before the High Court within whose territorial jurisdiction, the offence has been committed. Hence, it would be in the interest of judicial discipline and propriety that such person ordinarily approaches the Court exercising territorial jurisdiction over where the cause of action has accrued and seek redressal of his/her grievances from such competent forum.

Any such prayer/petition by any other High Court may be entertained where the petitioners demonstrate emergent circumstances warranting an immediate action failing which their right to seek constitutional remedies would be defeated and it would give rise to an irreparable loss and injury. In such given circumstances, the High Court where the petitioners suffer the prejudice/consequences of the cause of action may also entertain an appropriate petition and may grant such relief as is in furtherance of the interests of justice and to enable the petitioners to take recourse to appropriate remedies in law and to approach the competent Court of judicature for protection of their rights. Such compelling circumstances, however, do not exist in the present case as petitioners have already approached High Court of Uttarakhand, hence, this Court would thus not go into the merits of issue as to the amount of money transferred to the accounts of the petitioners and/or apportionment of the amount allegedly received by father of the petitioners.

In so far as the plea of the petitioners about merits of the case are concerned, it would not be appropriate for this Court to be commenting on the same especially when the writ is not being entertained for the reasons that the petitioners should approach the competent Court/High Court

Accordingly, the present petition is dismissed, at this stage.

The petitioners are, however, at liberty to take recourse to the remedies available to them as per law before the Court of competent jurisdiction.

March 17, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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