IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.56997 of 2022

Date of decision: 13th January, 2023

Gurdarshan Singh

… Petitioner

Versus

State of Punjab & others

… Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Shantanu Bansal, Advocate for the petitioner.

Mr. Amit Rana, Sr. Deputy Advocate General, Punjab for respondent No.1/State.

Mr. APS Sehgal, Advocate for respondent No.2.

Mr. Paras Talwar, Advocate for respondent No.3.

MANJARI NEHRU KAUL, J. (ORAL)

Petitioner in the instant case filed under Section 482 Cr.P.C. is seeking quashing of the notice/order (Annexure P-3) under Section 91 of the Cr.P.C. passed by the respondents, whereby the debit transactions from his bank account were ordered to be frozen.

Learned counsel appearing for the petitioner has submitted that the impugned order (Annexure P-3), on the face of it, is perverse and liable to be set aside as it violates the mandatory provision of Section 102 Cr.P.C. He has vehemently argued that Section 91 Cr.P.C. only empowers the investigating officer to issue summons for production of documents or any other thing and does not in any way grant any power to order freezing of a bank account of an accused or any other person. Learned counsel has further submitted that the statutory mandate regulating seizure under Section 102(3) Cr.P.C. was not even adhered to inasmuch as no notice or report was sent to the Illaqa Magistrate having the requisite jurisdiction.

Per contra, learned State counsel assisted by Mr. APS Sehgal, Advocate appearing on behalf of respondent No.2 and Mr.Paras Talwar, Advocate representing respondent No.3, has vehemently opposed the prayer and submissions made by the counsel opposite. It has been vehemently urged that Section 102(1) Cr.P.C. empowers the police officials to seize any property alleged or suspected to have been stolen, or directly or indirectly related to the commission of any crime. It has been submitted that in the instant case, the petitioner had embezzled an amount of ₹ 10.00 lacs by fraudulently depositing it in his own bank account. Therefore, the impugned notice requesting the bank concerned to freeze the debit transactions of the petitioner had been rightly issued. It was further submitted that the investigating agency was well empowered under Section 102 Cr.P.C. to issue notice to the bank for freezing the debit transaction, else the petitioner would have misappropriated even the balance amount lying in his account, which he had gained by playing a fraud upon the private respondents.

I have heard learned counsel for the parties and perused the relevant material on record.

Before proceeding further, it would be apposite to reproduce Sections 91 as well as 102 Cr.P.C.

Section 91 Cr.P.C. reads as under:

*"**91. Summons to produce document or other thing.-***

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

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

(3) Nothing in this section shall be deemed-

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

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

Section 102 Cr.P.C. reads 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."

A perusal of the provisions of Section 91 Cr.P.C. leaves no manner of doubt that no such power of seizure has been given under the aforementioned provision to the investigating agency. It is thus, evident that the investigating agency blatantly violated the provisions of

Section 102(1) Cr.P.C. The bank account of the petitioner could have been only frozen by sending a separate communication under Section 102(3) Cr.P.C. followed by a report to the Magistrate having relevant jurisdiction. The provisions of Section 102 Cr.P.C. are mandatory in nature. Admittedly, in the impugned notice no such intimation, as provided for under Section 102(3) Cr.P.C., was sent to the Magistrate concerned.

In the facts and circumstances as enumerated hereinabove, this Court thus, has no hesitation in holding that the impugned notice (Annexure P-3) deserves to be set aside to the extent where the debit transactions from the bank account of the petitioner were ordered to be frozen. However, as far as summoning of some documents under Section 91 Cr.P.C. in the notice (Annexure P-3) is concerned, no interference is warranted.

The petition stands disposed of accordingly.

(MANJARI NEHRU KAUL)
JUDGE

January 13, 2023
rps

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