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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 6702/2023, CRL.M.A. 25086/2023**

SEAGULL MARITIME AGENCIES PVT. LTD.Petitioner

Through: Mr. Mudit Jain, Mr. Zeeshan Thomas,
Ms. Mahima Malhotra, Mr. Aayush
Goswami and Mr. Satya Jha,
Advocates.

versus

STATE OF NCT DELHI & ANR.Respondents

Through: Mr. Aashneet Singh, APP for State
with Insp. Awadhesh Kr. Singh, P.S.
EOW.
Mr. Sumer Singh Boparai, Advocate
for respondent No.2.
Mr. Rohan J. Alva, Amicus Curiae.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

06.08.2024

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1. Petitioner/complainant has filed the present petition whereby seeking to assail the order dated 08.06.2023 passed by Id. ACJM in FIR No. 14/2022 registered under Sections 408/420/467/468/471/120-B at P.S. EOW, South West.
2. Ld. Amicus Curiae submits that the issue raised in the present case stands squarely covered by the recent decision of the Supreme Court in Shento Varghese v. Julfikar Husen and Others, reported as **2024 SCC Online SC 895**. He submits that paragraphs 13-27 are of the said judgment are relevant to the controversy in the present petition. The relevant para 13, 14, 16, 17, 22-24 and 27 of the said judgment are extracted hereinbelow :-



“13. This requires us to consider whether validity of the seizure order is contingent on compliance with the reporting obligation? In our view, the validity of the power exercised under Section 102(1) Cr. P.C. is not dependent on the compliance with the duty prescribed on the police officer under Section 102(3) Cr. P.C. The validity of the exercise of power under Section 102(1) Cr. P.C. can be questioned either on jurisdictional grounds or on the merits of the matter. That is to say, the order of seizure can be challenged on the ground that the seizing officer lacked jurisdiction to act under Section 102(1) Cr. P.C. or that the seized item does not satisfy the definition of ‘property’ or on the ground that the property which was seized could not have given rise to suspicion concerning the commission of a crime, in order for the authorities to justify the seizure. The pre-requisite for exercising powers under Section 102(1) is the existence of a direct link between the tainted property and the alleged offence. It is essential that the properties sought to be seized under Section 102(1) of the Cr. P.C. must have a direct or close link with the commission of offence in question.

14. As stated hereinbefore, the obligation to report the seizure to the Magistrate is neither a jurisdictional pre-requisite for exercising the power to seize nor is the exercise of such power made subject to compliance with the reporting obligation. While Section 105E(1) confers the substantive power to make seizure under circumstances provided in that section, sub-section (2) of Section 105E declares that the order passed under Section 105E(1) ‘shall have no effect unless the said order is confirmed by an order of the said Court, within a period of thirty days of its being made’. In that sense, the order of seizure, for it to take effect and have legal force, is subjected to a further statutory requirement of the seizure order being confirmed by an order of Court. It is only upon passing of the confirmation order within the stipulated period does the order of seizure take effect. Until then, it remains an order in form but without having any legal force.



16Drawing from this analogy, the delay in reporting the seizure to the Magistrate may, subject to proof of prejudice, at best, dent the veracity of the prosecution case vis-à-vis the date, time and occasion for seizure of the property. Since the proof of prejudice on part of the accused and the explanation for delay on part of the prosecution can only be demonstrated at trial, the effect of non-compliance becomes an issue to be adjudicated at the time of appreciation of evidence. Moreover, this Court has consistently held that even illegalities in the investigation (including illegality in search and seizures) is no ground for setting aside the investigation in toto.

17. In the background of the aforesaid discussion, therefore, the line of precedents which have taken the position that 'seizure orders' are vitiated for delay in compliance with the reporting obligation are declared to be manifestly erroneous and are accordingly, overruled. The relevant question to be determined was not whether the duty of the police to report the seizure to the Magistrate is mandatory or directory. Instead, what ought to have been inquired into was whether the exercise of the seizure power was subjected to compliance of reporting obligation, as illustrated in Section 105E Cr. P.C.

22. From the discussion made above, it would emerge that the expression 'forthwith' means 'as soon as may be', 'with reasonable speed and expedition', 'with a sense of urgency', and 'without any unnecessary delay'. In other words, it would mean as soon as possible, judged in the context of the object sought to be achieved or accomplished.

23. We are of the considered view that the said expression must receive a reasonable construction and in giving such construction, regard must be had to the nature of the act or thing to be performed and the prevailing circumstances of the case. When it is not the mandate of the law that the act should be done within a fixed time, it would mean that the act must be done within a reasonable time. It all depends upon the circumstances that may unfold in a given case and there cannot



be a straightjacket formula prescribed in this regard. In that sense, the interpretation of the word 'forthwith' would depend upon the terrain in which it travels and would take its colour depending upon the prevailing circumstances which can be variable.

24. Therefore, in deciding whether the police officer has properly discharged his obligation under Section 102(3) Cr. P.C., the Magistrate would have to, firstly, examine whether the seizure was reported forthwith. In doing so, it ought to have regard to the interpretation of the expression, 'forthwith' as discussed above. If it finds that the report was not sent forthwith, then it must examine whether there is any explanation offered in support of the delay. If the Magistrate finds that the delay has been properly explained, it would leave the matter at that. However, if it finds that there is no reasonable explanation for the delay or that the official has acted with deliberate disregard/wanton negligence, then it may direct for appropriate departmental action to be initiated against such erring official. We once again reiterate that the act of seizure would not get vitiated by virtue of such delay, as discussed in detail herein above.

27. The reasoning adopted by the High Court cannot be sustained in the light of aforestated discussion. This takes us to the consequential question, namely, whether at this distance of time, we ought to direct freezing of the bank accounts afresh? The answer has to be in the negative, since undisputedly by virtue of the impugned order, the bank accounts of the respondents has been defrozeed and resultantly, the Respondents would have operated the accounts and amount of Rs. 19,83,036/- which had been frozen would have been withdrawn. The ends of justice would be met and the interest of prosecution would be served if the Respondents are called upon, forthwith, to execute a bond undertaking to deposit the amount (which has been thus far withdrawn from the seized bank accounts) before the jurisdictional Court in the event the Court were to return a finding of guilt against the accused



persons. The Respondents would have to undertake to deposit the amount within four weeks from the date on which the Court passes an order of conviction. It is needless to say that the bond executed would stand discharged if the accused persons are acquitted at the end of trial.”

3. Learned counsels for the parties also acknowledge that the aforesaid decision applies squarely to the present case.
4. Learned counsel for the respondent/accused further submits that on the date of the impugned order whereby the accounts of the company were directed to be de-frozen, a sum of Rs.21,80,128.71 was laying deposited. The amounts have been utilised and the respondent No.2 has already furnished an indemnity bond in line of the aforesaid decision. This fact is also acknowledged by the learned APP for the State.
6. In view of the aforesaid, no further orders are required to be passed and the present petition is disposed of alongwith pending application.
7. This Court appreciates the efforts put in by Mr. Rohan Alva for filing written submissions and bringing the aforesaid decision to the notice of this Court.

MANOJ KUMAR OHRI, J

AUGUST 6, 2024

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